

Award Form, Crown Copyright 2025, 202505-GS107 Furniture Supply

Award Form

Items highlighted in yellow to be confirmed post tender submissions.

This Award Form creates this Contract. It summarises the main features of the procurement and includes the Buyer and the Supplier's contact details.

1.	Buyer	Karbon Home Comforts Ltd. (the Buyer) whose principal place of business is at Number Five, Gosforth Park Avenue, Newcastle upon Tyne, NE12 8ET.
2.	Supplier	<p>Name: Furniture Resource Centre Limited</p> <p>Address: 1 Cartwrights Farm Road, Speke, Liverpool, L24 1UY</p> <p>Registration number: 02296329</p> <p>SID4GOV ID: PCBW-3893-ZGMH</p>
3.	Contract	<p>This Contract between the Buyer and the Supplier is for the supply of Deliverables, being to supply Karbon (and its Customers) with a convenient route to furniture and appliance rental - see Schedule 2 (Specification) for full details.</p> <p>This opportunity is advertised in this Contract Notice in Find A Tender, reference 2025/S 000-043992 (FTS Contract Notice).</p>
4.	Contract reference	202505- GS107
5.	Buyer Cause	<p>Any material breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents in connection with or in relation to the subject-matter of this Contract and in respect of which the Buyer is liable to the Supplier.</p> <p>And the Buyer shall have no obligation to perform any obligations placed on it in Schedule 2 (<i>Specification</i>) or Schedule 4 (<i>Tender</i>) unless they are specifically identified above.</p>

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6.	Collaborative working principles	The Collaborative Working Principles apply to this Contract. See Clause 3.1.3 for further details.
7.	Financial Transparency Objectives	The Financial Transparency Objectives do not apply to this Contract. See Clause 6.3 for further details.
8.	Start Date	02 January 2026
9.	Expiry Date	01 January 2028
10.	Extension Period	The Contract will be for an initial 24-month period, with an option to extend for a further 24-month period subject to satisfactory contract performance and the Buyer still having the need and funding for the Contract. The extension period will be in 12-month cycles. The total contract duration will not exceed 48 months. Extension exercised where the Buyer gives the Supplier no less than 3 Months' written notice before this Contract expires.
11.	Ending this Contract without a reason	The Buyer shall be able to terminate this Contract in accordance with Clause 14.3. Provided that the amount of notice that the Buyer shall give to terminate in Clause 14.3 shall be 90 days.
12.	Incorporated Terms (together these documents form the " this Contract ")	The following documents are incorporated into this Contract. Where numbers are missing we are not using these Schedules. If there is any conflict, the following order of precedence applies: (a) This Award Form (b) Core Terms (c) Schedule 6 (Intellectual Property Rights) (d) Schedule 1 (Definitions) (e) Schedule 20 (Processing Data)

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		<p>(f) The following Schedules (in equal order of precedence):</p> <p>(g) Schedule 2 (Specification)</p> <p>(h) Schedule 3 (Charges)</p> <p>(i) Schedule 5 (Commercially Sensitive Information)</p> <p>(j) Schedule 7 (Staff Transfer)</p> <p>(k) Schedule 9 (Installation Works)</p> <p>(l) Schedule 10 (Performance Levels)</p> <p>(m) Schedule 11 (Continuous Improvement)</p> <p>(n) Schedule 12 (Benchmarking)</p> <p>(o) Schedule 14 (Business Continuity and Disaster Recovery)</p> <p>(p) Schedule 17 (Service Recipients)</p> <p>(q) Schedule 18 (Prompt Payment)</p> <p>(r) Schedule 21 (Variation Form)</p> <p>(s) Schedule 22 (Insurance Requirements)</p> <p>(t) Schedule 24 (Financial Difficulties)</p> <p>(u) Schedule 25 (Rectification Plan)</p> <p>(v) Schedule 26 (Sustainability)</p> <p>(w) Schedule 29 (Key Supplier Staff)</p> <p>(x) Schedule 32 (Background Checks)</p> <p>(y) Schedule 4 (Tender), unless any part of the Tender offers a better commercial position for the Buyer (as decided by the Buyer, in its absolute discretion), in which case that part of the Tender will take precedence over the documents above.</p>
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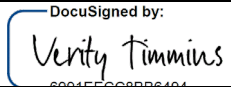

13.	Special Terms	Not Used.
14.	Buyer's Environmental Policy	Not Used.
15.	Social Value Commitment	The Supplier agrees, in providing the Deliverables and performing its obligations under this Contract, to deliver the Social Value outcomes in Schedule 4 (<i>Tender</i>) and report on the Social Value KPIs as required by Schedule 10 (<i>Performance Levels</i>).
16.	Buyer's Security Requirements	Not Used.
17.	Goods	12 months from receipt of goods applies in respect of Buyer's right to reject Goods under Clause 3.2.13.
18.	Charges	As detailed in Annex 6 FRC Commercial Schedule Indexation is applicable as detailed in Schedule 3 (Charges) Details in Schedule 3 (<i>Charges</i>)
19.	Estimated Year 1 Charges	[Redacted-commercially sensitive]
20.	Reimbursable expenses	None
21.	Payment method	30 days in arrears upon receipt of a valid invoice.

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22.	Key Performance Indicators	<p>Service Credits will accrue in accordance with Schedule 10 (<i>Performance Levels</i>).</p> <p>The Service Credit Cap is: [Redacted-commercially sensitive]</p> <p>The Service Period is: 1 Month</p> <p>A Critical KPI Failure is: Failure to meet all four monthly KPIs in the same reporting period (month) or three failures of the same KPI over a rolling four-month period.</p>
23.	Liability	In accordance with Clause 15.1 each Party's total aggregate liability in each Contract Year under this Contract (whether in tort, contract or otherwise) is no more than the greater of £1 million or 150% of the Estimated Yearly Charges.
24.	Progress Meetings and Progress Reports	As detailed in the ITT.
25.	Guarantor	Not applicable.
26.	Virtual Library	Not applicable.
27.	Supplier's Contract Manager	<p>[Redacted-commercially sensitive]</p> <p>Customer Account Manager</p> <p>[Redacted-commercially sensitive]</p>
28.	Supplier Authorised Representative	<p>[Redacted-commercially sensitive]</p> <p>Sales Director</p> <p>[Redacted-commercially sensitive]</p> <p>[Redacted-commercially sensitive]</p>
29.	Supplier Compliance Officer	<p>[Redacted-commercially sensitive]</p> <p>Customer Service Team Leader</p>

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		[Redacted-commercially sensitive]
30.	Supplier Data Protection Officer	[Redacted-commercially sensitive] Customer Service Manager [Redacted-commercially sensitive] [Redacted-commercially sensitive]
31.	Supplier Marketing Contact	Customer Service Administrator / Customer Service Specialist [Redacted-commercially sensitive] [Redacted-commercially sensitive] [Redacted-commercially sensitive]
32.	Key Subcontractors	Not applicable.
33.	Buyer Authorised Representative	Paul Fiddaman Group Chief Executive Paul.Fiddaman@karbonhomes.co.uk 0191 223 8468

For and on behalf of the Supplier:		For and on behalf of the Buyer:	
Signature:		Signature:	
Name:	[Redacted-commercially sensitive]	Name:	Paul Fiddaman
Role:	Sales & Marketing Director	Role:	Chief Executive
Date:	19/12/2025 16:34 GMT	Date:	22/12/2025 01:00 PST

Core Terms – Mid-tier

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1. Definitions used in the contract

Interpret this Contract using Schedule 1 (*Definitions*).

2. How the contract works

2.1 The Contract:

2.1.1 is between the Supplier and the Buyer; and

2.1.2 includes Core Terms, Schedules and any other changes or items in the completed Award Form.

2.2 The Supplier acknowledges it has all the information required to perform its obligations under this Contract before entering into it. When information is provided by the Buyer no warranty of its accuracy is given to the Supplier.

2.3 The Supplier acknowledges that it has satisfied itself of all details relating to:

2.3.1 the Buyer's requirements for the Deliverables;

2.3.2 the Buyer's operating processes and working methods; and

2.3.3 the ownership and fitness for purpose of the Buyer Assets,

and it has advised the Buyer in writing of:

2.3.4 each aspect, if any, of the Buyer's requirements for the Deliverables, operating processes and working methods that is not suitable for the provision of the Services;

2.3.5 the actions needed to remedy each such unsuitable aspect; and

2.3.6 a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,

and such actions, timetable and costs are fully reflected in this Contract.

2.4 The Supplier won't be excused from any obligation, or be entitled to additional Costs or Charges because it failed to either:

2.4.1 verify the accuracy of the Due Diligence Information; and

2.4.2 properly perform its own adequate checks.

2.5 The Buyer will not be liable for errors, omissions or misrepresentation of any information.

- 2.6 The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

3. **What needs to be delivered**

3.1 All deliverables

3.1.1 The Supplier must provide Deliverables:

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

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

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

- (a) 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 Buyer Third Parties;
- (c) where reasonable, adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with Buyer Third Parties;
- (d) providing reasonable cooperation, support, information and assistance to Buyer Third Parties in a proactive,

transparent and open way and in a spirit of trust and mutual confidence; and

- (e) identifying, implementing and capitalising on opportunities to improve deliverables and deliver better solutions and performance throughout the relationship lifecycle.

3.2 Goods clauses

- 3.2.1 All Goods delivered must be new, or as new if recycled, unused and of recent origin.
- 3.2.2 The Supplier transfers ownership of the Goods on Delivery or payment for those Goods, whichever is earlier.
- 3.2.3 Risk in the Goods transfers to the Buyer on Delivery of the Goods, but remains with the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within three (3) Working Days of Delivery.
- 3.2.4 The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- 3.2.5 The Supplier warrants that the Goods shall be:
 - (a) of satisfactory quality (within the meaning of the Sale of Goods Act 1979);
 - (b) fit for any purpose held out by the Supplier or made known to the Supplier by the Buyer; and
 - (c) free from defects in design, material and workmanship.
- 3.2.6 The Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.
- 3.2.7 The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.
- 3.2.8 All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- 3.2.9 The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.
- 3.2.10 The Supplier must indemnify the Buyer against the costs of any Recall of the Goods and give notice of actual or anticipated action about the Recall of the Goods.
- 3.2.11 The Buyer can cancel any order or part order of Goods which has not been Delivered. If the Buyer gives less than fourteen (14)

days' notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier uses all reasonable endeavours to minimise these costs.

3.2.12 The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they don't conform with Clause 3. If the Supplier doesn't do this it will pay the Buyer's costs including repair or re-supply by a third party.

3.2.13 Without limiting any other remedies to which it may be entitled, the Buyer shall be entitled to exercise its rights under Clause 3.2.12 in relation to Goods that don't conform with Clause 3.2.5, for a reasonable period, or such period specified in the Award Form, regardless of whether the Goods have been accepted by the Buyer.

3.2.14 The Buyer will not be liable for any actions, claims or Losses incurred by the Supplier or any third party during Delivery of the Goods unless and to the extent that it is caused by negligence or other wrongful act of the Buyer or its servant or agent. If the Buyer suffers or incurs any Loss or injury (whether fatal or otherwise) occurring in the course of Delivery or installation then the Supplier shall indemnify the Buyer from any losses, charges, costs or expenses which arise as a result of or in connection with such Loss or injury where it is attributable to any act or omission of the Supplier or any of its Subcontractors or Supplier Staff.

3.3 Services clauses

3.3.1 Late Delivery of the Services will be a Default of this Contract.

3.3.2 The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions of the Buyer or third party suppliers.

3.3.3 The Supplier must at its own risk and expense provide all Supplier Equipment required to Deliver the Services. Any equipment provided by the Buyer to the Supplier for supplying the Services remains the property of the Buyer and is to be returned to the Buyer on expiry or termination of this Contract.

3.3.4 The Supplier must allocate sufficient resources and appropriate expertise to this Contract.

3.3.5 The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.

3.3.6 On completion of the Services, the Supplier is responsible for leaving the Buyer Premises in a clean, safe and tidy condition and making good any damage that it has caused to the Buyer Premises or Buyer Assets, other than fair wear and tear.

3.3.7 The Supplier must ensure all Services, and anything used to Deliver the Services, are of good quality and free from defects.

3.3.8 The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under this Contract.

4. **Pricing and payments**

4.1 In exchange for the Deliverables, the Supplier must invoice the Buyer for the Charges in the Award Form.

4.2 All Charges:

4.2.1 exclude VAT, which is payable on provision of a valid VAT invoice; and

4.2.2 include all costs connected with the Supply of Deliverables.

4.3 The Buyer must pay the Supplier the Charges,

4.3.1 before the end of the period of thirty (30) days beginning with the day on which an invoice is received by the Buyer in respect of the sum; or

4.3.2 if later, by the date on which the payment falls due in accordance with the invoice,

subject to the invoice being verified by the Buyer as valid and undisputed; and

4.3.3 in cleared funds using the payment method and details stated in the invoice or in the Award Form.

4.4 A Supplier invoice is only valid if it:

4.4.1 includes the minimum required information set out in Section 68(9) of the Procurement Act 2023;

4.4.2 includes all appropriate references including this Contract reference number and other details reasonably requested by the Buyer; and

4.4.3 includes a detailed breakdown of Delivered Deliverables and Milestone(s) (if any).

- 4.5 Where any invoice does not conform to the Buyer's requirements set out in Clause 4.4, or the Buyer disputes the invoice, the Buyer shall notify the Supplier without undue delay.
- 4.6 The Buyer shall accept for processing any electronic invoice that complies with the Electronic Invoice Standard, provided that it is valid and undisputed.
- 4.7 Where any invoice does not conform to the Buyer's requirements set out in this Clause 4, the Buyer shall notify the Supplier without undue delay and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.
- 4.8 The Buyer may retain or set-off payment of any amount owed to it by the Supplier under this Contract or any other agreement between the Supplier and the Buyer if notice and reasons are provided.
- 4.9 The Supplier must ensure that all Subcontractors are paid, in full:
 - 4.9.1 before the end of the period of thirty (30) days beginning with the day on which an invoice is received by the Supplier in respect of the sum; or
 - 4.9.2 if later, by the date on which the payment falls due in accordance with the invoice,subject to the invoice being verified by the Supplier as valid and undisputed. If this does not happen, the Buyer can publish the details of the late payment or non-payment.
- 4.10 The Supplier has no right of set-off, counterclaim, discount or abatement unless they're ordered to do so by a court.

5. **The Buyer's obligations to the supplier**

- 5.1 If Supplier Non-Performance arises from a Buyer Cause:
 - 5.1.1 the Buyer cannot terminate this Contract under Clause 14.4.1;
 - 5.1.2 the Supplier is entitled to reasonable and proven additional expenses and to relief from liability and Deductions under this Contract;
 - 5.1.3 the Supplier is entitled to additional time needed to make the Delivery;
 - 5.1.4 the Supplier cannot suspend the ongoing supply of Deliverables.
- 5.2 Clause 5.1 only applies if the Supplier:

- 5.2.1 gives notice to the Buyer of the Buyer Cause within ten (10) Working Days of becoming aware;
- 5.2.2 demonstrates that the Supplier Non-Performance only happened because of the Buyer Cause; and
- 5.2.3 mitigated the impact of the Buyer Cause.

6. Record keeping and reporting

- 6.1 The Supplier must attend Progress Meetings with the Buyer and provide Progress Reports when specified in the Award Form.
- 6.2 The Supplier must keep and maintain full and accurate records and accounts in respect of this Contract during the Contract Period and for seven (7) years after the End Date and in accordance with the UK GDPR or the EU GDPR as the context requires, including the records and accounts which the Buyer has a right to Audit.
- 6.3 Where the Award Form states that the Financial Transparency Objectives apply, the Supplier must co-operate with the Buyer to achieve the Financial Transparency Objectives and, to this end, will provide a Financial Report to the Buyer:
 - 6.3.1 on or before the Effective Date;
 - 6.3.2 at the end of each Contract Year; and
 - 6.3.3 within six (6) Months of the end of the Contract Period,and the Supplier must meet with the Buyer if requested within ten (10) Working Days of the Buyer receiving a Financial Report.
- 6.4 If the Supplier becomes aware of an event that has occurred or is likely to occur in the future which will have a material effect on the:
 - 6.4.1 Supplier's currently incurred or forecast future Costs; and
 - 6.4.2 forecast Charges for the remainder of this Contract,then the Supplier must notify the Buyer in writing as soon as practicable setting out the actual or anticipated effect of the event.
- 6.5 The Buyer or an Auditor can Audit the Supplier.
- 6.6 The Supplier must allow any Auditor access to their premises and the Buyer will use reasonable endeavours to ensure that any Auditor:
 - 6.6.1 complies with the Supplier's operating procedures; and

- 6.6.2 does not unreasonably disrupt the Supplier or its provision of the Deliverables.
- 6.7 During an Audit, the Supplier must provide information to the Auditor and reasonable co-operation at their request including access to:
 - 6.7.1 all information within the permitted scope of the Audit;
 - 6.7.2 any Sites, equipment and the Supplier System used in the performance of this Contract; and
 - 6.7.3 the Supplier Staff.
- 6.8 The Parties will bear their own costs when an Audit is undertaken unless the Audit identifies a Material Default by the Supplier, in which case the Supplier will repay the Buyer's reasonable costs in connection with the Audit.
- 6.9 The Supplier must comply with the Buyer's reasonable instructions following an Audit, including:
 - 6.9.1 correcting any identified Default;
 - 6.9.2 rectifying any error identified in a Financial Report; and
 - 6.9.3 repaying any Charges that the Buyer has overpaid.
- 6.10 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
 - 6.10.1 tell the Buyer and give reasons;
 - 6.10.2 propose corrective action; and
 - 6.10.3 provide a deadline for completing the corrective action.
- 6.11 Except where an Audit is imposed on the Buyer by a regulatory body or where the Buyer has reasonable grounds for believing that the Supplier has not complied with its obligations under this Contract, the Buyer may not conduct an Audit of the Supplier or of the same Key Subcontractor more than twice in any Contract Year.
- 6.12 At the end of each Contract Year, at its own expense, the Supplier will provide a report to the Buyer setting out a summary of its compliance with Clause 4.9, such report to be certified by the Supplier's Authorised Representative as being accurate and not misleading.

7. **Supplier staff**

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

7.1.1 be appropriately trained and qualified;

7.1.2 be vetted using

- (a) the staff vetting requirements set out in Schedule 16 (*Security*) (if that Schedule is used);
- (b) the requirements set out in the Award Form (if set out there); or
- (c) where no other requirements are set out, the HMG Baseline Personnel Security Standard found at https://assets.publishing.service.gov.uk/media/5b169993ed915d2cbae4af03/HMG_Baseline_Personnel_Security_Standard_-_May_2018.pdf, as replaced or updated from time to time;

7.1.3 where the performance of this Contract will, or is likely to, give Supplier Staff access to children, vulnerable persons or other members of the public to whom the Buyer owes a special duty of care, be further vetted in accordance with Schedule 32 (*Background Checks*); and

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

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

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

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

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

7.6 The provisions of this Clause 7 are in addition to and not in substitution for the employment exit provisions of Schedule 7 (*Staff Transfer*).

8. Supply chain

8.1 Appointing Subcontractors

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

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

8.1.2 The Supplier must ensure that it does not any time during the Contract Period enter into a Subcontract with:

- (a) any supplier that is on the debarment list on the basis of a mandatory exclusion ground within the meaning of the Procurement Act 2023 and associated regulations; or
- (b) any supplier that is on the debarment list on the basis of a discretionary exclusion ground within the meaning of the Procurement Act 2023 and associated regulations, unless the Supplier has obtained the Buyer's prior written consent to the appointment of the relevant proposed Subcontractor.

8.2 **Mandatory provisions in Sub-Contracts**

8.2.1 If a Subcontractor is to be appointed under this Contract, then the Buyer may, in accordance with Section 72 of the Procurement Act 2023, require that the Supplier enters into a legally binding arrangement with the proposed Subcontractor within such reasonable period after the Effective Date as may be specified by the Buyer.

8.2.2 If the Supplier does not enter into a legally binding agreement in accordance with Clause 8.2.1 the Buyer may:

- (a) terminate this Contract and the consequences of termination set out in Clauses 14.5.1(b) to 14.5.1(g) shall apply; or
- (b) require the Supplier to enter into a legally binding agreement with an alternate Subcontractor.

8.2.3 For Sub-Contracts in the Supplier's supply chain entered into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract:

- (a) where such Sub-Contracts are entered into after the Effective Date, the Supplier will ensure that they all contain provisions that; or

- (b) where such Sub-Contracts are entered into before the Effective Date, the Supplier will take all reasonable endeavours to ensure that they all contain provisions that:
 - (i) allow the Supplier to terminate the Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social or employment Law;
 - (ii) require that all Subcontractors are paid:
 - i. before the end of the period of thirty (30) days beginning with the day on which an invoice is received by the Supplier or other party in respect of the sum; or
 - ii. if later, the date by which the payment falls due in accordance with the invoice,

subject to the invoice being verified by the party making payment as valid and undisputed;
 - (iii) require the party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion and notify the Subcontractor without undue delay if it considers the invoice invalid or it disputes the invoice; and
 - (iv) allow the Buyer to publish the details of the late payment or non-payment if this thirty (30) day limit is exceeded.

8.2.4 The Supplier must ensure that a term equivalent to Clause 8.2.3 is included in each Sub-Contract in its supply chain, such that each Subcontractor is obliged to include those terms in any of its own Sub-Contracts in the supply chain for the delivery of this Contract. References to the “Supplier” and “Subcontractor”, in Clause 8.2.1 are to be replaced with references to the respective Subcontractors who are parties to the relevant contract.

8.3 When Sub-Contracts can be ended

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

- (a) there is a Change of Control of a Subcontractor which isn’t pre-approved by the Buyer in writing;
- (b) the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 14.4;

- (c) a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer; and/or
- (d) the Subcontractor fails to comply with its obligations in respect of environmental, social or employment Law.

8.4 Ongoing responsibility of the Supplier

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

8.5 Competitive terms

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

8.5.2 If the Buyer uses Clause 8.5.1 then the Charges must be reduced by an agreed amount by using the Variation Procedure.

9. Rights and protection

9.1 The Supplier warrants and represents that:

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

9.1.2 this Contract is entered into by its authorised representative;

9.1.3 it is a legally valid and existing organisation incorporated in the place it was formed;

9.1.4 there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform this Contract;

9.1.5 all necessary rights, authorisations, licences and consents (including in relation to IPRs) are in place to enable the Supplier to perform its obligations under this Contract and for the Buyer to receive the Deliverables;

9.1.6 it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform this Contract; and

- 9.1.7 it is not impacted by an Insolvency Event or a Financial Distress Event.
 - 9.2 The warranties and representations in Clauses 2.6 and 9.1 are repeated each time the Supplier provides Deliverables under this Contract.
 - 9.3 The Supplier indemnifies the Buyer against each of the following:
 - 9.3.1 wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts this Contract; and
 - 9.3.2 non-payment by the Supplier of any tax or National Insurance.
 - 9.4 All claims indemnified under this Contract must use Clause 30.
 - 9.5 The description of any provision of this Contract as a warranty does not prevent the Buyer from exercising any termination right that it may have for Default of that provision by the Supplier.
 - 9.6 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.
 - 9.7 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier for free.
- 10. Intellectual Property Rights (IPRs)**
- 10.1 The Parties agree that the terms set out in Schedule 6 (*Intellectual Property Rights*) shall apply to this Contract.
 - 10.2 If there is an IPR Claim, the Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.
 - 10.3 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:
 - 10.3.1 obtain for the Buyer the rights to continue using the relevant item without infringing any third party IPR; or
 - 10.3.2 replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Deliverables.
 - 10.4 If the Buyer requires that the Supplier procures a licence in accordance with Clause 10.3.1 or to modify or replace an item pursuant to Clause 10.3.2, but this has not avoided or resolved the IPR Claim, then the Buyer may terminate this Contract by written notice with immediate effect and the consequences of termination set out in Clauses 14.5.1 shall apply.

11. Rectifying issues

- 11.1 If there is a Notifiable Default, the Supplier must notify the Buyer within three (3) Working Days of the Supplier becoming aware of the Notifiable Default and the Buyer may request that the Supplier provide a Rectification Plan within ten (10) Working Days of the Buyer's request alongside any additional documentation that the Buyer requires.
- 11.2 When the Buyer receives a requested Rectification Plan it can either:
 - 11.2.1 reject the Rectification Plan or revised Rectification Plan giving reasons; or
 - 11.2.2 accept the Rectification Plan or revised Rectification Plan (without limiting its rights) in which case the Supplier must immediately start work on the actions in the Rectification Plan at its own cost.
- 11.3 Where the Rectification Plan or revised Rectification Plan is rejected, the Buyer:
 - 11.3.1 will give reasonable grounds for its decision; and
 - 11.3.2 may request that the Supplier provides a revised Rectification Plan within five (5) Working Days.

12. Escalating issues

- 12.1 If the Supplier fails to:
 - 12.1.1 submit a Rectification Plan or a revised Rectification Plan within the timescales set out in Clauses 11.1 or 11.3; and
 - 12.1.2 adhere to the timescales set out in an accepted Rectification Plan to resolve the Notifiable Default.or if the Buyer otherwise rejects a Rectification Plan, the Buyer can require the Supplier to attend an Escalation Meeting on not less than five (5) Working Days' notice. The Buyer will determine the location, time and duration of the Escalation Meeting(s) and the Supplier must ensure that the Supplier Authorised Representative is available to attend.
- 12.2 The Escalation Meeting(s) will continue until the Buyer is satisfied that the Notifiable Default has been resolved, however, where an Escalation Meeting(s) has continued for more than five (5) Working Days, either Party may treat the matter as a Dispute to be handled through the Dispute Resolution Procedure.
- 12.3 If the Supplier is in Default of any of its obligations under this Clause 12, the Buyer shall be entitled to terminate this Agreement and the consequences of termination set out in Clauses 14.5.1 shall apply as if the contract were terminated under Clause 14.4.1.

13. Step-in rights

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

13.1.1 whether it will be taking action itself or with the assistance of a third party;

13.1.2 what Required Action the Buyer will take during the Step-In Process;

13.1.3 when the Required Action will begin and how long it will continue for;

13.1.4 whether the Buyer will require access to the Sites; and

13.1.5 what impact the Buyer anticipates that the Required Action will have on the Supplier's obligations to provide the Deliverables.

13.2 For as long as the Required Action is taking place:

13.2.1 the Supplier will not have to provide the Deliverables that are the subject of the Required Action;

13.2.2 no Deductions will be applicable in respect of Charges relating to the Deliverables that are the subject of the Required Action; and

13.2.3 the Buyer will pay the Charges to the Supplier after subtracting any applicable Deductions and the Buyer's costs of taking the Required Action.

13.3 The Buyer will give notice to the Supplier before it ceases to exercise its rights under the Step-In Process and within twenty (20) Working Days of this notice the Supplier will develop a draft Step-Out Plan for the Buyer to approve.

13.4 If the Buyer does not approve the draft Step-Out Plan, the Buyer will give reasons and the Supplier will revise the draft Step-Out Plan and re-submit it for approval.

13.5 The Supplier shall bear its own costs in connection with any step-in by the Buyer under this Clause 13, provided that the Buyer shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Buyer under:

13.5.1 limbs (f) or (g) of the definition of a Step-In Trigger Event; or

13.5.2 limbs (h) and (i) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Buyer serving a notice under Clause 13.1 is identified as not being the result of the Supplier's Default).

14. Ending the contract

14.1 The Contract takes effect on the Effective Date and ends on the End Date or earlier if terminated under this Clause 14 or if required by Law.

14.2 The Buyer can extend this Contract for the Extension Period by giving the Supplier written notice before this Contract expires as described in the Award Form.

14.3 Ending the contract without a reason

The Buyer has the right to terminate this Contract at any time without reason by giving the Supplier not less than ninety (90) days' notice (unless a different notice period is set out in the Award Form) and if it's terminated Clause 14.6.3 applies.

14.4 When the Buyer can end this Contract

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

- (a) there's a Supplier Insolvency Event;
- (b) there's a Notifiable Default that is not corrected in line with an accepted Rectification Plan;
- (c) the Buyer rejects a Rectification Plan or the Supplier does not provide it within ten (10) days of the request;
- (d) there's any Material Default of this Contract;
- (e) there's any Material Default of any Joint Controller Agreement relating to this Contract;
- (f) there's a Default of Clauses 2.6, 12, 31 or Schedule 28 (*ICT Services*) (where applicable);
- (g) the performance of the Supplier causes a Critical KPI Failure to occur;
- (h) there's a consistent repeated failure to meet the Key Performance Indicators in Schedule 10 (*Performance Levels*);
- (i) there's a Change of Control of the Supplier which isn't pre-approved by the Buyer in writing;
- (j) the Supplier or its Affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them;

- (k) the Supplier fails to comply with its legal obligations in the fields of environmental, social or employment Law when providing the Deliverables;
- (l) the Supplier fails to comply with its obligations under Part D (*Pensions*) of Schedule 7 (*Staff Transfer*);
- (m) the Supplier committing a material Default under Paragraphs 7.1.1 or 7.1.2 of Part D (*Pensions*) of Schedule 7 (*Staff Transfer*);
- (n) in accordance with Section 78, and/or Section 79 (where applicable), of the Procurement Act 2023, and provided that the requirements of Section 78(7) of the Procurement Act 2023 have been met, where:
 - (i) the Buyer considers that the Contract was awarded or modified in material breach of the Procurement Act 2023 or regulations made under it;
 - (ii) the Supplier has, since the award of the Contract become an excluded supplier or excludable supplier (including by reference to an associated person) as set out in Section 57 of the Procurement Act 2023 and provided that the conditions in Sections 78(8) (where applicable) of the Procurement Act 2023 have been met; and/or
 - (iii) any Subcontractor has, since the award of the Contract become an excluded supplier or excludable supplier as set out in Section 57 of the Procurement Act 2023 and provided that the conditions in Section 78(3) to 78(8) of the Procurement Act 2023 have been met;
- (o) the Supplier fails to enter into a legally binding agreement with any Subcontractor in accordance with Section 72 of the Procurement Act 2023; and/or
- (p) where any Subcontractor has, since the award of the Contract, become an excluded supplier or excludable supplier as defined in Section 57 of the Procurement Act 2023, provided that prior to exercising its right of termination under this Clause 14.4.1(p) the Buyer:
 - (i) has notified the Supplier of its intention to terminate under this Clause, and why the Buyer has decided to terminate the Contract;

- (ii) has given the Supplier reasonable opportunity to make representations about whether this Clause applies and the Buyer's decision to terminate; and
- (iii) has given the Supplier a reasonable opportunity to end its Sub-Contract with the excluded or excludable supplier, and if necessary, find an alternative Subcontractor.

14.5 What happens if the contract ends

14.5.1 Where the Buyer terminates this Contract under Clauses 14.4.1 (excluding 14.4.1(n)(i)), 10.4, 12.3 or 36.3, Paragraph 7 of Part D of Schedule 7 (*Staff Transfer*), Paragraph 2.2 of Schedule 12 (*Benchmarking*) (where applicable), Paragraph 4.1 of Schedule 19 (*Corporate Resolution Planning*) (where applicable) Paragraph 7 of Schedule 24 (*Financial Difficulties*) (where applicable) or Paragraph 3.1.12(b) of Part A or Paragraph 3.8.2 of Part B (where applicable) of Schedule 26 (*Sustainability*) all of the following apply:

- (a) the Supplier is responsible for the Buyer's reasonable costs of procuring Replacement Deliverables for the rest of the Contract Period;
- (b) the Buyer's payment obligations under the terminated Contract stop immediately;
- (c) accumulated rights of the Parties are not affected;
- (d) the Supplier must promptly delete or return the Government Data except where required to retain copies by Law, other than Government Data (i) that is Personal Data in respect of which the Supplier is a Controller; and (ii) in respect of which the Supplier has rights to hold the Government Data independently of this Contract;
- (e) the Supplier must promptly return any of the Buyer's property provided under the terminated Contract;
- (f) the Supplier must, at no cost to the Buyer, co-operate fully in the handover and re-procurement (including to a Replacement Supplier); and
- (g) the Supplier must repay to the Buyer all the Charges that it has been paid in advance for Deliverables that it has not provided as at the date of termination or expiry.

14.5.2 If either Party terminates this Contract under Clause 24.3 or the Buyer terminates under Clause 14.4.1(n)(i):

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

14.5.3 The following Clauses survive the termination or expiry of this Contract: 3.2.12, 4, 6, 7.4, 7.5, 10, 14.5, 14.6.3, 15, 18, 19, 20, 21, 22, 23, 35.3.2, 39, 40, Schedule 1 (*Definitions*), Schedule 3 (*Charges*), Schedule 7 (*Staff Transfer*), Schedule 30 (*Exit Management*)) (if used), Schedule 6 (*Intellectual Property Rights*) and any Clauses and Schedules which are expressly or by implication intended to continue.

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

14.6.1 The Supplier can issue a Reminder Notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate this Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract Value within thirty (30) days of the date of the Reminder Notice.

14.6.2 The Supplier also has the right to terminate this Contract in accordance with Clauses 24.3 and 27.5.

14.6.3 Where the Buyer terminates this Contract under Clause 14.3 or the Supplier terminates this Contract under Clause 14.6.1 or 27.5:

- (a) the Buyer must promptly pay all outstanding Charges incurred to the Supplier;
- (b) the Buyer must pay the Supplier reasonable committed and unavoidable Losses as long as the Supplier provides a fully itemised and costed schedule with evidence – the maximum value of this payment is limited to the total sum payable to the Supplier if this Contract had not been terminated; and
- (c) Clauses 14.5.1(b) to 14.5.1(g) apply.

14.7 **Partially ending and suspending the contract**

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

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

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

- (a) reject the Variation; or
- (b) increase the Charges, except where the right to partial termination is under Clause 14.3.

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

15. How much you can be held responsible for?

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

15.2 Neither Party is liable to the other for:

15.2.1 any indirect Losses; and/or

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

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

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

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

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

15.4 In spite of Clause 15.1, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.4, 9.3.2, 10.2, 35.3.2 or Schedule 7 (*Staff Transfer*) of this Contract.

15.5 In spite of Clause 15.1, the Buyer does not limit or exclude its liability for any indemnity given under Clause 7 or Schedule 7 (*Staff Transfer*) of this Contract.

15.6 In spite of Clause 15.1, but subject to Clauses 15.2 and 15.3, the Supplier's total aggregate liability in each Contract Year under Clause 18.6.4 is no more than the Data Protection Liability Cap.

- 15.7 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with this Contract, including any indemnities.
- 15.8 When calculating the Supplier's liability under Clause 15.1 the following items will not be taken into consideration:
 - 15.8.1 Deductions; and
 - 15.8.2 any items specified in Clause 15.4.
- 15.9 If more than one Supplier is party to this Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

16. **Obeying the law**

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

17. **Insurance**

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

18. **Data protection and security**

- 18.1 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Schedule 20 (*Processing Data*).
- 18.2 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 18.3 The Supplier must ensure that any Supplier, Subcontractor and Subprocessor system (including any cloud services or end user devices used by the Supplier, Subcontractor and Subprocessor) holding any

Government Data, including back-up data, is a secure system that complies with the Security Requirements (including Schedule 16 (*Security*) (if used)) and otherwise as required by Data Protection Legislation.

18.4 If at any time the Supplier suspects or has reason to believe that the Government Data is corrupted, lost or sufficiently degraded, then the Supplier must immediately notify the Buyer and suggest remedial action.

18.5 If the Government Data is any of (i) corrupted, (ii) lost or (iii) sufficiently degraded, in each case as a result of the Supplier's Default, so as to be unusable the Buyer may either or both:

18.5.1 tell the Supplier (at the Supplier's expense) to restore or get restored Government Data as soon as practical but no later than five (5) Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier; and

18.5.2 restore the Government Data itself or using a third party and shall be repaid by the Supplier any reasonable expenses incurred in doing so.

18.6 The Supplier:

18.6.1 must, subject to the Security Requirements, including in Schedule 16 (*Security*) (if used), provide the Buyer with copies of Government Data held by the Supplier or any Subcontractor in an agreed format (provided it is secure and readable) within ten (10) Working Days of a written request;

18.6.2 must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;

18.6.3 must, subject to the Security Requirements including in Schedule 16 (*Security*) (if used), securely erase all Government Data held by the Supplier or a Subcontractor when asked to do so by the Buyer (and certify to the Buyer that it has done so) using a deletion method that ensures that even a determined expert using specialist techniques can recover only a small fraction of the data deleted, unless and to the extent required by Law to retain it, other than Government Data in respect of which the Supplier is a Controller, or the Supplier has rights to hold the Government Data independently of the Contract; and

18.6.4 indemnifies the Buyer against any and all Losses incurred if the Supplier breaches Clause 18 or any Data Protection Legislation.

19. What you must keep confidential

- 19.1 Each Party must:
- 19.1.1 keep all Confidential Information it receives confidential and secure;
 - 19.1.2 not disclose, use or exploit the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent, except for the purposes anticipated under this Contract; and
 - 19.1.3 immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.
- 19.2 In spite of Clause 19.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:
- 19.2.1 where disclosure is required by applicable Law, a regulatory body or a court with the relevant jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
 - 19.2.2 if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party;
 - 19.2.3 if the information was given to it by a third party without obligation of confidentiality;
 - 19.2.4 if the information was in the public domain at the time of the disclosure;
 - 19.2.5 if the information was independently developed without access to the Disclosing Party's Confidential Information;
 - 19.2.6 on a confidential basis, to its auditors or for the purpose of regulatory requirements;
 - 19.2.7 on a confidential basis, to its professional advisers on a need-to-know basis; and
 - 19.2.8 to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 19.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under this Contract. The Supplier Staff shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.

- 19.4 The Buyer may disclose Confidential Information in any of the following cases:
- 19.4.1 on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
 - 19.4.2 on a confidential basis to any other Crown Body, any successor body to a Crown Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;
 - 19.4.3 if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
 - 19.4.4 where requested by Parliament;
 - 19.4.5 under Clauses 4.9 and 20; and
 - 19.4.6 on a confidential basis under the audit rights in Clauses 6.5 to 6.9 (inclusive), Clause 13 (Step-in rights), Schedule 7 (*Staff Transfer*) and Schedule 30 (if used).
- 19.5 For the purposes of Clauses 19.2 to 19.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 19.
- 19.6 Transparency Information and any information which is disclosed pursuant to Clause 20 is not Confidential Information.
- 19.7 The Supplier must not make any press announcement or publicise this Contracts or any part of them in any way, without the prior written consent of the Buyer and must use all reasonable endeavours to ensure that Supplier Staff do not either.

20. **When you can share information**

- 20.1 The Supplier must tell the Buyer within forty eight (48) hours if it receives a Request For Information.
- 20.2 In accordance with a reasonable timetable and in any event within five (5) Working Days of a request from the Buyer, the Supplier must give the Buyer full co-operation and information needed so the Buyer can:
- 20.2.1 publish the Transparency Information; and
 - 20.2.2 comply with any Request for Information,
- any such co-operation and/or information from the Supplier shall be provided at no additional cost.
- 20.3 To the extent that it is allowed and practical to do so, the Buyer will use reasonable endeavours to notify the Supplier of a Request for

Information and may talk to the Supplier to help it decide whether to publish information under Clause 20, taking into account any agreed Commercially Sensitive Information set out in Schedule 5. However, the extent, content and format of the disclosure shall be decided by the Buyer, in its sole discretion.

21. Invalid parts of the contract

If any provision or part provision of this Contract is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract.

22. No other terms apply

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

23. Other people's rights in this Contract

23.1 The provisions of Clauses 4.9, 8.2.3 and 8.2.4, Paragraphs 2.1 and 2.3 of Part A, Paragraphs 2.1, 2.3, 3.1 and 3.3 of Part B, Paragraphs 1.2, 1.4 and 1.7 of Part C, Part D and Paragraphs 1.4, 1.7, 2.3, 2.5 and 2.10 of Part E of Schedule 7 (*Staff Transfer*) and the provisions of Paragraph 3.1, 6.1, 7.2, 8.2, 8.5, 8.6 and 8.9 of Schedule 30 (*Exit Management*) (together "**Third Party Provisions**") confer benefits on persons named or identified in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act ("**CRTPA**").

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

23.3 Except for the provisions of Clauses 4.9, 8.2.3 and 8.2.4, no Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Buyer, which may, if given, be given on and subject to such terms as the Buyer may determine.

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

24. Circumstances beyond your control

24.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under this Contract while the inability to perform continues, if it both:

24.1.1 provides a Force Majeure Notice to the other Party; and

24.1.2 uses all reasonable measures practical to reduce the impact of the Force Majeure Event.

24.2 Any failure or delay by the Supplier to perform its obligations under this Contract that is due to a failure or delay by an agent, Subcontractor or supplier will only be considered a Force Majeure Event if that third party is itself prevented from complying with an obligation to the Supplier due to a Force Majeure Event.

24.3 Either party can partially or fully terminate this Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for ninety (90) days continuously.

25. **Relationships created by the contract**

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

26. **Giving up contract rights**

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

27. **Transferring responsibilities**

27.1 The Supplier cannot assign, novate or in any other way dispose of this Contract or any part of it without the Buyer's written consent.

27.2 Subject to Schedule 27 (*Key Subcontractors*), the Supplier cannot subcontract this Contract or any part of it without the Buyer's prior written consent. The Supplier shall provide the Buyer with information about the Subcontractor as it reasonably requests. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. If the Buyer does not communicate a decision to the Supplier within ten (10) Working Days of the request for consent then its consent will be deemed to have been given. The Buyer may reasonably withhold its consent to the appointment of a Subcontractor if it considers that:

27.2.1 the appointment of a proposed Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;

27.2.2 the proposed Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers;

27.2.3 the proposed Subcontractor employs unfit persons; and/or

27.2.4 the proposed Subcontractor is an excluded or excludable supplier within the meaning of the Procurement Act 2023 and any associated regulations.

27.3 The Buyer can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.

27.4 When the Buyer uses its rights under Clause 27.3 the Supplier must enter into a novation agreement in the form that the Buyer specifies.

27.5 The Supplier can terminate this Contract novated under Clause 27.3 to a private sector body that is experiencing an Insolvency Event.

27.6 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.

27.7 If at any time the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:

27.7.1 their name;

27.7.2 the scope of their appointment;

27.7.3 the duration of their appointment;

27.7.4 a copy of the Sub-Contract; and

27.7.5 whether the Supplier considers that an exclusion ground within the meaning of the Procurement Act 2023 and any associated regulations does or may apply to the Sub-contractor.

28. **Changing the Contract**

28.1 Either Party can request a Variation to this Contract which is only effective if agreed in writing, including where it is set out in the Variation Form, and signed by both Parties.

28.2 The Supplier must provide an Impact Assessment either:

28.2.1 with the Variation Form, where the Supplier requests the Variation; and

28.2.2 within the time limits included in a Variation Form requested by the Buyer.

28.3 If the Variation to this Contract cannot be agreed or resolved by the Parties, the Buyer can either:

28.3.1 agree that this Contract continues without the Variation; and

28.3.2 refer the Dispute to be resolved using Clause 39 (*Resolving Disputes*).

28.4 The Buyer is not required to accept a Variation request made by the Supplier.

28.5 The Supplier may only reject a Variation requested by the Buyer if the Supplier:

28.5.1 reasonably believes that the Variation would materially and adversely affect the risks to the health and safety of any person or that it would result in the Deliverables being provided in a way that infringes any Law; or

28.5.2 demonstrates to the Buyer's reasonable satisfaction that the Variation is technically impossible to implement and that neither the Tender nor the Specification state that the Supplier has the required technical capacity or flexibility to implement the Variation.

28.6 If there is a General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Charges.

28.7 If there is a Specific Change in Law or one is likely to happen during this Contract Period the Supplier must give the Buyer notice of the likely effects of the changes as soon as reasonably practical. They must also say if they think any Variation is needed either to the Deliverables, the Charges or this Contract and provide evidence:

28.7.1 of how it has affected the Supplier's costs; and

28.7.2 that the Supplier has kept costs as low as possible, including in Subcontractor costs.

28.8 Any change in the Charges or relief from the Supplier's obligations because of a Specific Change in Law must be implemented using Clauses 28.1 to 28.4.

29. **How to communicate about the contract**

29.1 All notices under this Contract shall be in writing and be served by e-mail unless it is not practicable to do so. An e-mail is effective at 9:00am on the first Working Day after sending unless an error message is received.

29.2 If it is not practicable for a notice to be served by e-mail in accordance with Clause 29.1, notices can be served by means of personal delivery or Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery. If either of these options are used to serve a notice, such notices are considered effective on the

Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise, the notice is effective on the next Working Day.

29.3 Notices to the Buyer must be sent to the Buyer Authorised Representative's address or e-mail address in the Award Form.

29.4 This Clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

30. **Dealing with claims**

30.1 If a Beneficiary is notified of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than ten (10) Working Days.

30.2 At the Indemnifier's cost the Beneficiary must both:

30.2.1 allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim; and

30.2.2 give the Indemnifier reasonable assistance with the claim if requested.

30.3 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.

30.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that doesn't damage the Beneficiary's reputation.

30.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.

30.6 Each Beneficiary must use all reasonable endeavours to minimise and mitigate any losses that it suffers because of the Claim.

30.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:

30.7.1 the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; and

30.7.2 the amount the Indemnifier paid the Beneficiary for the Claim.

31. **Exclusions**

- 31.1 During the Contract Period the Supplier shall notify the Buyer as soon as reasonably practicable if:
- 31.1.1 the Supplier considers that an exclusion ground within the Procurement Act 2023 and any associated regulations applies to the Supplier, including where the Supplier is put on the debarment list or becomes an excluded or excludable supplier by virtue of any associated persons or subcontractors where information relating to such was provided under Section 28 of the Procurement Act 2023; and/or
 - 31.1.2 there are any changes to the Supplier's associated persons within the meaning of the Procurement Act 2023.
- 31.2 If the Supplier notifies the Buyer in accordance with Clause 31.1.1 then the Supplier must promptly provide any information the Buyer reasonably requests in relation to the notification, including information to support an assessment of whether the circumstances giving rise to the exclusion ground are continuing or likely to occur again.
- 31.3 If the Supplier notifies the Buyer in accordance with Clause 31.1.2 above then the Supplier must promptly provide any information reasonably requested by the Buyer in relation to the change to the Supplier's associated persons, including any information set out in the Procurement Regulations 2024.
- 31.4 The Buyer may terminate this Contract if:
- 31.4.1 the Supplier has failed to provide notification under Clause 31.1.1 as soon as reasonably practicable after the Supplier become aware that an exclusion ground within the Procurement Act 2023 and any associated regulations does or may apply to the Supplier;
 - 31.4.2 the Supplier has failed to provide notification under Clause 31.1.2 as soon as reasonably practicable after the Supplier becoming aware of any changes to the Supplier's associated persons within the meaning of the Procurement Act 2023; and/or
 - 31.4.3 any notification or information provided by the Supplier under Clause 31.1, 31.2 and/or 31.3 is incomplete, inaccurate or misleading,
- and the consequences of termination set out in Clause 14.5.1 shall apply.
- 31.5 Clause 31.4 is without prejudice to the Buyer's rights to terminate the Contract in accordance with Clause 14.4.1(n).

32. Equality, diversity and human rights

32.1 The Supplier must follow all applicable equality Law when they perform their obligations under this Contract, including:

32.1.1 protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and

32.1.2 any other requirements and instructions which the Buyer reasonably imposes related to equality Law.

32.2 The Supplier must use all reasonable endeavours, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on this Contract.

33. **Health and safety**

33.1 The Supplier must perform its obligations meeting the requirements of:

33.1.1 all applicable Law regarding health and safety; and

33.1.2 the Buyer's current health and safety policy while at the Buyer's Premises, as provided to the Supplier.

33.2 The Supplier and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer Premises that relate to the performance of this Contract.

34. **Environment**

34.1 When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.

34.2 The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.

35. **Tax**

35.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Buyer cannot terminate this Contract where the Supplier has not paid a minor tax or social security contribution.

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

- 35.2.1 the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant; and
 - 35.2.2 other information relating to the Occasion of Tax Non-Compliance that the Buyer may reasonably need.
- 35.3 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under this Contract, the Supplier must both:
 - 35.3.1 comply with the Income Tax (Earnings and Pensions) Act 2003, the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to income tax and National Insurance contributions (including IR35); and
 - 35.3.2 indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.
- 35.4 At any time during the Contract Period, the Buyer may specify information that the Supplier must provide with regard to the Supplier, the Supplier Staff, the Workers, or the Supply Chain Intermediaries and set a deadline for responding, which:
 - 35.4.1 demonstrates that the Supplier, Supplier Staff, Workers, or Supply Chain Intermediaries comply with the legislation specified in Clause 35.3.1, or why those requirements do not apply; and
 - 35.4.2 assists with the Buyer's due diligence, compliance, reporting, or demonstrating its compliance with any of the legislation in Clause 35.3.1.
- 35.5 The Buyer may supply any information they receive from the Supplier under Clause 35.4 to HMRC for revenue collection and management and for audit purposes.
- 35.6 The Supplier must inform the Buyer as soon as reasonably practicable if there any Workers or Supplier Staff providing services to the Buyer who are contracting, begin contracting, or stop contracting via an intermediary which meets one of conditions A-C set out in Section 61N of the Income Tax (Earnings and Pensions) Act 2003 and/or Regulation 14 of the Social Security Contributions (Intermediaries) Regulations 2000.
- 35.7 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:

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

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

35.7.3 the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies with Clause 35.3.1 or confirms that the Worker is not complying with those requirements; and

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

36. **Conflict of interest**

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

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

36.3 The Buyer will consider whether there are any reasonable steps that can be put in place to mitigate an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Buyer, such steps do not or will not resolve an actual or potential Conflict of Interest, the Buyer may terminate its Contract immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest and, subject to Clause 36.4, where the reason for the unresolvable actual or potential Conflict of Interest is in the reasonable opinion of the Buyer

36.3.1 outside of the control of the Supplier, Clauses 14.5.1(b) to 14.5.1(g) shall apply; or

36.3.2 within the control of the Supplier, the whole of Clause 14.5.1 shall apply.

36.4 Where the Supplier has failed to notify the Buyer about an actual or potential Conflict of Interest and the Buyer terminates under Clause 36.3, the whole of Clause 14.5.1 shall apply.

37. **Reporting a breach of the contract**

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

37.1.1 breach of Law;

37.1.2 Default of Clause 16.1; and

37.1.3 Default of Clauses 31 to 36.

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

38. **Further Assurances**

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

39. **Resolving disputes**

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

39.2 If the Parties cannot resolve the Dispute via commercial negotiation, they can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 39.4 to 39.6.

39.3 Unless the Buyer refers the Dispute to arbitration using Clause 39.5, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

39.3.1 determine the Dispute;

39.3.2 grant interim remedies; and

39.3.3 grant any other provisional or protective relief.

39.4 The Supplier agrees that the Buyer has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.

39.5 The Buyer has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under

Clause 39.4, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 39.5.

39.6 The Supplier cannot suspend the performance of this Contract during any Dispute.

40. **Which law applies**

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

Schedule 1 (Definitions)

1. Definitions

- 1.1 In this Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In this Contract, unless the context otherwise requires:
 - 1.3.1 reference to a gender includes the other gender and the neuter;
 - 1.3.2 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
 - 1.3.3 a reference to any Law includes a reference to that Law as modified, amended, extended, consolidated, replaced or re-enacted from time to time (including as a consequence of the Retained EU Law (Revocation and Reform) Act 2023) before or after the date of this Contract and any prior or subsequent legislation under it;
 - 1.3.4 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
 - 1.3.5 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - 1.3.6 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 this Contract;
 - 1.3.7 references to "**Clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses and schedules of the Core Terms and references in any Schedule to parts, Paragraphs, Annexes and tables are, unless otherwise provided, references to the parts, Paragraphs, Annexes and tables of the Schedule in which these references appear;
 - 1.3.8 references to "**Paragraphs**" are, unless otherwise provided, references to the Paragraph of the appropriate Schedules unless otherwise provided;

- 1.3.9 references to a series of Clauses or Paragraphs shall be inclusive of the Clause or Paragraph numbers specified;
- 1.3.10 where the Buyer is a Crown Body the Supplier shall be treated as contracting with the Crown as a whole;
- 1.3.11 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) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of Section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of Section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
- 1.3.12 a reference to a document (including this Contract) is to that document as varied, amended, novated, ratified or replaced from time to time.
- 1.4 In this Contract, unless the context otherwise requires, the following words shall have the following meanings:
- | | |
|--------------------------------------|---|
| "Achieve" | in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and " Achieved ", " Achieving " and " Achievement " shall be construed accordingly; |
| "Additional FDE Group Member" | any entity (if any) specified as an Additional FDE Group Member in Part A of Annex 3 of Schedule 24 (<i>Financial Difficulties</i>); |
| "Affected Party" | the party seeking to claim relief in respect of a Force Majeure Event; |
| "Affiliates" | in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time; |
| "Allowable Assumptions" | the assumptions (if any) set out in Annex 2 of Schedule 3 (<i>Charges</i>); |
| "Annex" | extra information which supports a Schedule; |

- "Approval"** the prior written consent of the Buyer and **"Approve"** and **"Approved"** shall be construed accordingly;
- "Associates"** in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;
- "Audit"** the Buyer's right to:
- (a) verify the integrity and content of any Financial Report;
 - (b) verify the accuracy of the Charges and any other amounts payable by the Buyer under a Contract (including proposed or actual variations to them in accordance with this Contract);
 - (c) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Services;
 - (d) verify the Open Book Data;
 - (e) verify the Supplier's and each Subcontractor's compliance with the applicable Law;
 - (f) identify or investigate actual or suspected breach of Clauses 3 to 37 and/or Schedule 26 (*Sustainability*), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Buyer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - (g) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor, and/or any Subcontractors or their ability to provide the Deliverables;
 - (h) obtain such information as is necessary to fulfil the Buyer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including

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

"Buyer Authorised Representative"	the representative appointed by the Buyer from time to time in relation to this Contract initially identified in the Award Form;
"Buyer Cause"	has the meaning given to it in the Award Form;
"Buyer Equipment"	any hardware, computer or telecoms devices, and equipment that forms part of the Buyer System;
"Buyer Existing IPR"	any and all IPR that are owned by or licensed to the Buyer, and where the Buyer is a Crown Body, any Crown IPR, and which are or have been developed independently of this Contract (whether prior to the Effective Date or otherwise);
"Buyer Premises"	premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Subcontractors for the provision of the Deliverables (or any of them);
"Buyer Property"	the property, other than real property and IPR, including the Buyer System, any equipment issued or made available to the Supplier by the Buyer in connection with this Contract;
"Buyer Software"	any software which is owned by or licensed to the Buyer and which is or will be used by the Supplier for the purposes of providing the Deliverables;
"Buyer System"	the Buyer's information and communications technology system, including any software or Buyer Equipment, owned by the Buyer, or leased or licenced to it by a third party, that: <ul style="list-style-type: none">(a) is used by the Buyer or the Supplier in connection with this Contract;(b) interfaces with the Supplier System; and/or(c) is necessary for the Buyer to receive the Services;
"Buyer Third Party"	any supplier to the Buyer (other than the Supplier), which is notified to the Supplier from time to time;

"Buyer's Confidential Information"	<p>(a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Buyer (including all Buyer Existing IPR and New IPR);</p> <p>(b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Buyer's attention or into the Buyer's possession in connection with this Contract; and</p> <p>information derived from any of the above;</p>
"Change in Law"	any change in Law which impacts on the supply of the Deliverables and performance of this Contract which comes into force after the Effective Date;
"Change of Control"	a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
"Charges"	the prices (exclusive of any applicable VAT), payable to the Supplier by the Buyer under this Contract, as set out in the Award Form, for the full and proper performance by the Supplier of its obligations under this Contract less any Deductions;
"Claim"	any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract;
"Commercially Sensitive Information"	the Confidential Information listed in Schedule 5 (<i>Commercially Sensitive Information</i>) (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Buyer that, if disclosed by the Buyer, would cause the Supplier significant commercial disadvantage or material financial loss;

"Comparable Supply"	the supply of Deliverables to another Buyer of the Supplier that are the same or similar to the Deliverables;
"Confidential Information"	any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Buyer or the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as " confidential ") or which ought reasonably to be considered to be confidential;
"Conflict of Interest"	a direct or indirect conflict between the financial, professional or personal interests of the Supplier or the Supplier Staff and the duties owed to the Buyer under this Contract, in the reasonable opinion of the Buyer;
"Contract"	the contract between the Buyer and the Supplier, which consists of the terms set out and referred to in the Award Form;
"Contract Period"	the term of this Contract from the earlier of the: (a) Start Date; or (b) the Effective Date, until the End Date;
"Contract Value"	the higher of the actual or expected total Charges paid or payable under this Contract where all obligations are met by the Supplier;
"Contract Year"	a consecutive period of twelve (12) Months commencing on the Effective Date or each anniversary thereof;
"Control"	control in either of the senses defined in Sections 450 and 1124 of the Corporation Tax Act 2010 and " Controlled " shall be construed accordingly;
"Controller"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;

- "Core Terms"** the Buyer's terms and conditions which apply to and comprise one part of this Contract set out in the document called **"Core Terms"**;
- "Costs"** the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Deliverables:
- (a) the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per Work Day, of engaging the Supplier Staff, including:
 - (i) base salary paid to the Supplier Staff;
 - (ii) employer's National Insurance contributions;
 - (iii) pension contributions;
 - (iv) car allowances;
 - (v) any other contractual employment benefits;
 - (vi) staff training;
 - (vii) work place accommodation;
 - (viii) work place IT equipment and tools reasonably necessary to provide the Deliverables (but not including items included within limb (b) below); and
 - (ix) reasonable recruitment costs, as agreed with the Buyer;
 - (b) costs incurred in respect of Supplier Assets which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Buyer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;
 - (c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Deliverables; and

- (d) Reimbursable Expenses to the extent these have been specified as allowable in the Award Form and are incurred in delivering any Deliverables;

but excluding:

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

"COTS Software" or "Commercial off the shelf Software"	non-customised software where the IPR may be owned and licensed either by the Supplier or a third party depending on the context, and which is commercially available for purchase and subject to standard licence terms;
"Critical KPI Failure"	has the meaning given to it in the Award Form;
"Crown Body"	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the Welsh Government), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Crown IPR"	any IPR which is owned by or licensed to the Crown, and which are or have been developed independently of this Contract (whether prior to the Effective Date or otherwise);
"CRTPA"	the Contract 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 Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
"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"	(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 Protection Liability Cap"	has the meaning given to it in the Award Form;
"Data Protection Officer"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Data Subject"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Data Subject Access Request"	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"Deductions"	all Service Credits, Delay Payments (if applicable), or any other deduction which the Buyer is paid or is payable to the Buyer under this Contract;
"Default"	any breach of the obligations of the Supplier (including abandonment of this Contract in breach of its terms) or any other default (including Material Default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to the Buyer;

"Defect"	<p>any of the following:</p> <ul style="list-style-type: none">(a) any error, damage or defect in the manufacturing of a Deliverable; or(b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or(c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract; or(d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract;
"Delay Payments"	<p>the amounts (if any) payable by the Supplier to the Buyer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;</p>
"Deliverables"	<p>Goods, Services or software that may be ordered and/or developed under this Contract including the Documentation;</p>
"Delivery"	<p>delivery of the relevant Deliverable or Milestone in accordance with the terms of this Contract as confirmed and accepted by the Buyer by the either (a) confirmation in writing to the Supplier; or (b) where Schedule 8 (<i>Implementation Plan and Testing</i>) is used issue by the Buyer of a Satisfaction Certificate. "Deliver" and "Delivered" shall be construed accordingly;</p>

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

to be supplied by the Supplier to the Buyer under this Contract as:

- (a) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables
- (b) is required by the Supplier in order to provide the Deliverables; and/or
- (c) has been or shall be generated for the purpose of providing the Deliverables;

"DOTAS" the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions;

"DPA 2018" the Data Protection Act 2018;

"Due Diligence Information" any information supplied to the Supplier by or on behalf of the Buyer prior to the Effective Date;

"Effective Date" the date on which the final Party has signed this Contract;

"EIR" the Environmental Information Regulations 2004;

"Electronic Invoice Standard" in relation to an electronic invoice means a form that:

- (a) complies with the standard for electronic invoicing approved and issued by the British Standards Institution in the document numbered BS EN 16931-1:2017 (Electronic invoicing - Part 1: Semantic data model of the core elements of an electronic invoice); and
- (b) uses a syntax which is listed as a syntax that complies with that standard in the document numbered PD CEN/TS 16931-2:2017 (Electronic invoicing - Part 2: List of syntaxes

that comply with EN 16931-1) approved and issued by the British Standards Institution;

"Employment Regulations"	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;
"End Date"	the earlier of: <ul style="list-style-type: none">(a) the Expiry Date as extended by the Buyer under Clause 14.2; or(b) if this Contract is terminated before the date specified in (a) above, the date of termination of this Contract;
"End User"	a party that is accessing the Deliverables provided pursuant to this Contract (including the Buyer where it is accessing services on its own account as a user);
"Environmental Policy"	to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Buyer;
"Equality and Human Rights Commission"	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
"Escalation Meeting"	a meeting between the Supplier Authorised Representative and the Buyer Authorised Representative to address issues that have arisen during the Rectification Plan Process;
"Estimated Year 1 Charges"	the anticipated total Charges payable by the Buyer in the first Contract Year specified in the Award Form;
"Estimated Yearly Charges"	for the purposes of calculating each Party's annual liability under Clause 15.1 means: <ul style="list-style-type: none">(a) in the first Contract Year, the Estimated Year 1 Charges; or

	<ul style="list-style-type: none">(b) in any subsequent Contract Years, the Charges paid or payable in the previous Contract Year; or(c) after the end of this Contract, the Charges paid or payable in the last Contract Year during the Contract Period;
"EU GDPR"	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law;
"Existing IPR"	any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of this Contract (whether prior to the Start Date or otherwise);
"Exit Plan"	has the meaning given to it in Paragraph 4.1 of Schedule 30 (<i>Exit Management</i>);
"Expiry Date"	the date of the end of this Contract as stated in the Award Form;
"Extension Period"	such period or periods beyond which the Initial Period may be extended, specified in the Award Form;
"FDE Group"	the Supplier and any Additional FDE Group Member;
"Financial Distress Event"	the occurrence of one or more the following events: <ul style="list-style-type: none">(a) the credit rating of any FDE Group entity drops below the applicable Credit Rating Threshold of the relevant Rating Agency;(b) any FDE Group entity issues a profits warning to a stock exchange or makes any other public announcement, in each case about a material deterioration in its financial position or prospects;(c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of any FDE Group entity;

- (d) any FDE Group entity commits a material breach of covenant to its lenders;
- (e) a Key Subcontractor notifies the Buyer that the Supplier has not paid any material sums properly due under a specified invoice and not subject to a genuine dispute;
- (f) any FDE Group entity extends the filing period for filing its accounts with the Registrar of Companies so that the filing period ends more than nine (9) months after its accounting reference date without an explanation to the Buyer which the Buyer (acting reasonably) considers to be adequate;
- (g) any FDE Group entity is late to file its annual accounts without a public notification or an explanation to the Buyer which the Buyer (acting reasonably) considers to be adequate;
- (h) the directors and/or external auditors of any FDE Group entity conclude that a material uncertainty exists in relation to that FDE Group entity's going concern in the annual report including in a reasonable but plausible downside scenario. This includes, but is not limited to, commentary about liquidity and trading prospects in the reports from directors or external auditors;
- (i) any of the following:
 - (i) any FDE Group entity makes a public announcement which contains commentary with regards to that FDE Group entity's liquidity and trading and trading prospects, such as but not limited to, a profit warning or ability to trade as a going concern;
 - (ii) commencement of any litigation against any FDE Group entity with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m;
 - (iii) non-payment by any FDE Group entity of any financial indebtedness;

- (iv) any financial indebtedness of any FDE Group entity becoming due as a result of an event of default;
 - (v) the cancellation or suspension of any financial indebtedness in respect of any FDE Group entity; or
 - (vi) an external auditor of any FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE Group entity,
- (j) in each case which the Buyer reasonably believes (or would be likely reasonably to believe) could directly impact on the continued provision of the Deliverables in accordance with this Contract; or
 - (k) any one of the Financial Indicators set out in Part C of Annex 2 of Schedule 24 (*Financial Difficulties*) for any of the FDE Group entities failing to meet the required Financial Target Threshold;

"Financial Report"

a report provided by the Supplier to the Buyer that:

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

"Financial Transparency Objectives"

- (a) the Buyer having a clear analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Staff in providing the Services and the Supplier Profit Margin so that it can understand any payment sought by the Supplier;

- (b) the Parties being able to understand Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;
- (c) the Parties being able to understand the quantitative impact of any Variations that affect ongoing Costs and identifying how these could be mitigated and/or reflected in the Charges;
- (d) the Parties being able to review, address issues with and re-forecast progress in relation to the provision of the Services;
- (e) the Parties challenging each other with ideas for efficiency and improvements; and
- (f) enabling the Buyer to demonstrate that it is achieving value for money for the tax payer relative to current market prices;

"FOIA"

the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;

"Force Majeure Event"

any event, circumstance, matter or cause affecting the performance by either the Buyer or the Supplier of its obligations arising from:

- (a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under a Contract;
- (b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
- (c) acts of a Crown Body, local government or regulatory bodies;
- (d) fire, flood or any disaster; or
- (e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
 - (i) any industrial dispute relating to the Supplier, the Supplier Staff (including

	any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain;
	(ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and
	(iii) any failure of delay caused by a lack of funds,
	and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party;
"Force Majeure Notice"	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
"General Anti-Abuse Rule"	(a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions;
"General Change in Law"	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"Goods"	goods made available by the Supplier as specified in Schedule 2 (<i>Specification</i>) and in relation to a Contract;
"Good Industry Practice"	at any time the standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected at such time from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Government"	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the Welsh

Government), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

"Government Data"

any:

- (a) 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;
- (b) Personal Data for which the Buyer is a, or the, Controller; or
- (c) any meta-data relating to categories of data referred to in (a) or (b),
that:
 - (i) is supplied to the Supplier by or on behalf of the Buyer; or
 - (ii) that the Supplier is required to generate, Process, Handle, store or transmit under this Contract;

"Government Procurement Card"

the Government's preferred method of purchasing and payment for low value goods or services
<https://www.gov.uk/government/publications/government-procurement-card--2>;

"Guarantor"

the person (if any) who has entered into a guarantee in the form set out in Schedule 23 (*Guarantee*) in relation to this Contract;

"Halifax Abuse Principle"

the principle explained in the CJEU Case C-255/02 Halifax and others;

"Handle"

any operation 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 of that data;

"HMRC"

His Majesty's Revenue and Customs;

"ICT Environment"	the Buyer System and the Supplier System;
"ICT Policy"	the Buyer's policy in respect of information and communications technology, referred to in the Award Form (if used), which is in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;
"Impact Assessment"	<p>an assessment of the impact of a Variation request by the Buyer completed in good faith, including:</p> <ul style="list-style-type: none">(a) details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under this Contract;(b) details of the cost of implementing the proposed Variation;(c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Charges (as applicable), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;(d) a timetable for the implementation, together with any proposals for the testing of the Variation; and(e) such other information as the Buyer may reasonably request in (or in response to) the Variation request;
"Implementation Plan"	the plan for provision of the Deliverables set out in Schedule 8 (<i>Implementation Plan and Testing</i>) where that Schedule is used or otherwise as agreed between the Supplier and the Buyer;
"Incorporated Terms"	the contractual terms applicable to this Contract specified in the Award Form;
"Indemnifier"	a Party from whom an indemnity is sought under this Contract;

"Independent Controller"	a party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data;
"Indexation"	the adjustment of an amount or sum in accordance with this Contract;
"Information Commissioner"	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
"Initial Period"	the initial term of this Contract specified in the Award Form;
"Insolvency Event"	with respect to any person, means: <ul style="list-style-type: none">(a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:<ul style="list-style-type: none">(i) (being a company or an LLP) is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or(ii) (being a partnership) is deemed unable to pay its debts within the meaning of Section 222 of the Insolvency Act 1986;(b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, an LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;(c) another person becomes entitled to appoint a receiver over the assets of that person or

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

effect equivalent or similar to any of the events mentioned above;

"Installation Works"	all works which the Supplier is to carry out at the beginning of the Contract Period to install the Goods in accordance with this Contract;
"Intellectual Property Rights" or "IPR"	<p>(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>(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</p> <p>(c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
"IP Completion Day"	has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020;
"IPR Claim"	any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR (excluding COTS Software where Part B of Schedule 6 (<i>Intellectual Property Rights</i>) is used), used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Buyer in the fulfilment of its obligations under this Contract;
"IR35"	means Chapter 8 and Chapter 10 of Part 2 of Income Tax (Earnings and Pensions) Act 2003 and the Social Security Contributions (Intermediaries) Regulations 2000;
"Joint Controller Agreement"	the agreement (if any) entered into between the Buyer and the Supplier substantially in the form set out in Annex 2 of Schedule 20 (<i>Processing Data</i>);

"Joint Control"	where two (2) or more Controllers jointly determine the purposes and means of Processing;
"Joint Controllers"	has the meaning given in Article 26 of the UK GDPR, or EU GDPR, as the context requires;
"Key Performance Indicators"	any key performance indicators applicable to the provision of the Deliverables under this Contract (as specified in the Annex to Part A of Schedule 10 (<i>Performance Levels</i>));
"Key Staff"	the persons who the Supplier shall appoint to fill key roles in connection with the Services as listed in Annex 1 of Schedule 29 (<i>Key Supplier Staff</i>);
"Key Sub-Contract"	each Sub-Contract with a Key Subcontractor;
"Key Subcontractor"	<p>any Subcontractor:</p> <ul style="list-style-type: none">(a) which is relied upon to deliver any work package within the Deliverables in their entirety; and/or(b) which, in the opinion of the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables; and/or(c) with a Sub-Contract with this 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, <p>and the Supplier shall list all such Key Subcontractors in the Award Form;</p>
"Know-How"	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already in the other Party's possession before the Effective Date;
"Law"	any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation,

	order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
"Law Enforcement Processing"	processing under Part 3 of the DPA 2018;
"Losses"	all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;
"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;
"Material Default"	a single serious Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied)
"Marketing Contact"	shall be the person identified in the Award Form;
"Milestone"	an event or task described in the Implementation Plan;
"Milestone Date"	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
"Month"	a calendar month and "Monthly" shall be interpreted accordingly;
"National Insurance"	contributions required by the Social Security Contributions and Benefits Act 1992 and made in

accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004);

- "New IPR"**
- (a) IPR 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 database schema; and/or
 - (b) IPR in or arising as a result of the performance of the Supplier's obligations under this Contract and all updates and amendments to the same;

but shall not include the Supplier's Existing IPR;

"New IPR Item" a deliverable, document, product or other item within which New IPR subsists;

- "Notifiable Default"**
- (a) the Supplier commits a Material Default; and/or
 - (b) the performance of the Supplier is likely to cause or causes a Critical KPI Failure;

"Object Code" software and/or data in machine-readable compiled object code form;

"Open Book Data" complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of this Contract, including details and all assumptions relating to:

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

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

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

"Open Licence Publication Material"	items created pursuant to this Contract which the Buyer may wish to publish as Open Licence which are supplied in a format suitable for publication under Open Licence;
"Overhead"	those amounts which are intended to recover a proportion of the Supplier's or the Key Subcontractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Staff and accordingly included within limb (a) of the definition of "Costs";
"Parent Undertaking"	has the meaning set out in Section 1162 of the Companies Act 2006;
"Parliament"	takes its natural meaning as interpreted by Law;
"Party"	the Buyer or the Supplier and "Parties" shall mean both of them where the context permits;
"Personal Data"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Personal Data Breach"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Prescribed Person"	a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in "Whistleblowing: list of prescribed people and bodies", 24 November 2016, available online at: https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies ;
"Processing"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires, and "Process" shall be construed accordingly;
"Processor"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;

"Processor Personnel"	all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under this Contract;
"Progress Meeting"	a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;
"Progress Report"	a report provided by the Supplier indicating the steps taken to achieve Milestones or delivery dates;
"Protective Measures"	technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation including 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 16 (<i>Security</i>) (if used) and Schedule 20 (<i>Processing Data</i>);
"Provisional Supplier Staff List"	has the meaning given in Schedule 7 (<i>Staff Transfer</i>);
"Public Sector Body "	a formally established organisation that is (at least in part) publicly funded to deliver a public or government service;
"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;
"Recipient Party"	the Party which receives or obtains directly or indirectly Confidential Information;

"Rectification Plan"	<p>the Supplier's plan (or revised plan) to rectify its breach using the template in Schedule 25 (<i>Rectification Plan</i>) which shall include:</p> <ul style="list-style-type: none">(a) full details of the Notifiable Default that has occurred, including a root cause analysis;(b) the actual or anticipated effect of the Notifiable Default; and(c) the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable);
"Rectification Plan Process"	<p>the process set out in Clause 11 (<i>Rectifying issues</i>);</p>
"Reimbursable Expenses"	<p>the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Buyer's expenses policy current from time to time, but not including:</p> <ul style="list-style-type: none">(a) travel expenses incurred as a result of Supplier Staff travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Buyer otherwise agrees in advance in writing; and(b) subsistence expenses incurred by Supplier Staff whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;
"Relevant Tax Authority"	<p>HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;</p>
"Reminder Notice"	<p>a notice sent in accordance with Clause 14.6.1 given by the Supplier to the Buyer providing notification that payment has not been received on time;</p>
"Replacement Deliverables"	<p>any deliverables which are substantially similar to any of the Deliverables and which the Buyer</p>

	receives in substitution for any of the Deliverables, whether those goods are provided by the Buyer internally and/or by any third party;
"Replacement Supplier"	any third party provider of Replacement Deliverables appointed by or at the direction of the Buyer from time to time or where the Buyer is providing Replacement Deliverables for its own account, shall also include the Buyer;
"Request For Information"	a request for information or an apparent request relating to this Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs;
"Required Action"	the action the Buyer will take and what Deliverables it will control during the Step-In Process;
"Required Insurances"	the insurances required by Schedule 22 (<i>Insurance Requirements</i>);
"Satisfaction Certificate"	the certificate (materially in the form of the document contained in Annex 2 of Part B of Schedule 8 (<i>Implementation Plan and Testing</i>) or as agreed by the Parties where Schedule 8 is not used in this Contract) granted by the Buyer when the Supplier has Achieved a Milestone or a Test;
"Schedules"	any attachment to this Contract which contains important information specific to each aspect of buying and selling;
"Security Management Plan"	the Supplier's security management plan prepared pursuant to Schedule 16 (<i>Security</i>) (if applicable);
"Security Requirements"	the security requirements in the Award Form including Schedule 16 (<i>Security</i>) (if used);
"Serious Fraud Office"	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
"Service Credits"	any service credits specified in the Annex to Part A of Schedule 10 (<i>Performance Levels</i>) being payable by the Supplier to the Buyer in respect of any failure

	by the Supplier to meet one or more Performance Levels;
"Service Period"	has the meaning given to it in the Award Form;
"Services"	services made available by the Supplier as specified in Schedule 2 (<i>Specification</i>) and in relation to a Contract;
"Sites"	any premises (including the Buyer Premises, the Supplier's premises or third party premises): <ul style="list-style-type: none">(a) from, to or at which:<ul style="list-style-type: none">(i) the Deliverables are (or are to be) provided; or(ii) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables;(b) where:<ul style="list-style-type: none">(i) any Supplier Equipment or any part of the Supplier System is located;(ii) any physical interface with the Buyer 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 enterprises;
"Social Value"	the additional social benefits that can be achieved in the delivery of this Contract set out in Schedule 2 (<i>Specification</i>) and Schedule 10 (<i>Performance Levels</i>);
"Social Value KPIs"	the Social Value priorities set out in Schedule 2 (<i>Specification</i>) and Schedule 10 (<i>Performance Levels</i>);
"Software"	any software including Specially Written Software, COTS Software and software that is not COTS Software;

"Software Supporting Materials"	has the meaning given to it in Schedule 6 (<i>Intellectual Property Rights</i>);
"Source Code"	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
"Special Terms"	any additional terms and conditions set out in the Award Form incorporated into this Contract;
"Specially Written Software"	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Subcontractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software does not constitute New IPR;
"Specific Change in Law"	a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Deliverables is not reasonably foreseeable at the Effective Date;
"Specification"	the specification set out in Schedule 2 (<i>Specification</i>);
"Standards"	any: (a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier

	would reasonably and ordinarily be expected to comply with;
	(b) standards detailed in the specification in Schedule 2 (<i>Specification</i>);
	(c) standards agreed between the Parties from time to time;
	(d) relevant Government codes of practice and guidance applicable from time to time;
"Start Date"	the date specified on the Award Form;
"Step-In Process"	the process set out in Clause 13 (<i>Step-in rights</i>);
"Step-In Trigger Event"	the occurrence of any of the following: <ul style="list-style-type: none">(a) the Supplier's level of performance constituting a Critical KPI Failure;(b) the Supplier committing a Material Default which is irremediable;(c) where a right of termination is expressly reserved in this Contract;(d) an Insolvency Event occurring in respect of the Supplier or any Guarantor;(e) a Default by the Supplier that is materially preventing or materially delaying the provision of the Deliverables or any material part of them;(f) the Buyer considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this agreement;(g) the Buyer being advised by a regulatory body that the exercise by the Buyer of its rights under Clause 13 is necessary;(h) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Deliverables; and/or(i) a need by the Buyer to take action to discharge a statutory duty;
"Step-Out Plan"	the Supplier's plan that sets out how the Supplier will resume the provision of the Deliverables and

perform all its obligations under this Contract following the completion of the Step-In Process;

"Sub-Contract"	any contract or agreement (or proposed contract or agreement), other than this Contract, pursuant to which a third party: <ul style="list-style-type: none">(a) provides the Deliverables (or any part of them);(b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or(c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);
"Subcontractor"	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
"Subprocessor"	any third Party appointed to process Personal Data on behalf of the Processor related to this Contract;
"Subsidiary Undertaking"	has the meaning set out in Section 1162 of the Companies Act 2006;
"Supplier"	the person, firm or company identified in the Award Form;
"Supplier Assets"	all assets and rights used by the Supplier to provide the Deliverables in accordance with this Contract but excluding the Buyer Assets;
"Supplier Authorised Representative"	the representative appointed by the Supplier named in the Award Form, or later defined in a Contract;
"Supplier Equipment"	the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Buyer) in the performance of its obligations under this Contract;
"Supplier Existing IPR"	any and all IPR that are owned by or licensed to the Supplier and which are or have been developed

	independently of this Contract (whether prior to the Effective Date or otherwise);
"Supplier Existing IPR Licence"	a licence to be offered by the Supplier to the Supplier Existing IPR as set out in Schedule 6 (<i>Intellectual Property Rights</i>);
"Supplier Group"	the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
"Supplier New and Existing IPR Licence"	a licence to be offered by the Supplier to the New IPR and Supplier Existing IPR as set out in Schedule 6 (<i>Intellectual Property Rights</i>);
"Supplier Non-Performance"	where the Supplier has failed to: (a) Achieve a Milestone by its Milestone Date; (b) provide the Goods and/or Services in accordance with the Key Performance Indicators; and/or (c) comply with an obligation under this Contract;
"Supplier Profit"	in relation to a period, the difference between the total Charges (in nominal cash flow terms) but excluding any Deductions and total Costs (in nominal cash flow terms) in respect of this Contract for the relevant period;
"Supplier Profit Margin"	in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
"Supplier Staff"	any individual engaged, directly or indirectly, or employed by the Supplier or any Subcontractor, in the management or performance of the Supplier's obligations under this Contract;
"Supplier System"	the information and communications technology system used by the Supplier or any Subcontractor in supplying the Deliverables, including the COTS Software, the Supplier Equipment, configuration and

management utilities, calibration and testing tools and related cabling (but excluding the Buyer System);

"Supplier's Confidential Information"	<p>(a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing IPR) trade secrets, Know-How, and/or personnel of the Supplier;</p> <p>(b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with this Contract; and</p> <p>(c) information derived from any of (d) and (e) above;</p>
"Supplier's Contract Manager"	<p>the person identified in the Award Form appointed by the Supplier to oversee the operation of this Contract and any alternative person whom the Supplier intends to appoint to the role, provided that the Supplier informs the Buyer prior to the appointment;</p>
"Supply Chain Intermediary"	<p>any entity (including any company or partnership) in an arrangement with a Worker, where the Worker performs or is under an obligation personally to perform, services for the Buyer;</p>
"Supporting Documentation"	<p>sufficient information in writing to enable the Buyer to reasonably assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer under this Contract detailed in the information are properly payable;</p>
"Tender Response"	<p>the tender submitted by the Supplier to the Buyer and annexed to or referred to in Schedule 4 (<i>Tender</i>);</p>
"Termination Assistance"	<p>the activities to be performed by the Supplier pursuant to the Exit Plan, and other assistance required by the Buyer pursuant to the Termination Assistance Notice;</p>

"Termination Assistance Period"	the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of Schedule 30 (<i>Exit Management</i>);
"Termination Assistance Notice"	has the meaning given to it in Paragraph 5.1 of Schedule 30 (<i>Exit Management</i>);
"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 on a specified date and setting out the grounds for termination;
"Test Issue"	any variance or non-conformity of the Deliverables or Deliverables from their requirements as set out in this Contract;
"Test Plan"	a plan: <ul style="list-style-type: none">(a) for the Testing of the Deliverables; and(b) setting out other agreed criteria related to the achievement of Milestones;
"Tests and Testing"	any tests required to be carried out pursuant to this Contract as set out in the Test Plan or elsewhere in this Contract and "Tested" shall be construed accordingly;
"Third Party IPR"	Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;
"Third Party IPR Licence"	a licence to the Third Party IPR as set out in Schedule 6 (<i>Intellectual Property Rights</i>);
"Transparency Information"	(a) any information permitted or required to be published by the Procurement Act 2023, any regulations published under it, and any Procurement Policy Notes, subject to any exemptions set out in Sections 94 and 99 of the Procurement Act 2023 which shall be determined by the Buyer taking into

account Schedule 5 (*Commercially Sensitive Information*);

- (b) any information about this Contract, including the content of this Contract requested and required to be disclosed under FOIA or the EIRs, and any changes to this Contract agreed from time to time, subject to any relevant exemptions, which shall be determined by the Buyer taking into account Schedule 5 (*Commercially Sensitive Information*);
- (c) any information which is published in accordance with guidance issued by His Majesty's Government, from time to time; and
- (d) any of the information that the Buyer is permitted or required to publish by the Procurement Act 2023, any regulations published under it and any Procurement Policy Notes, relating to the performance of the Supplier against any KPI and any information contained in any Performance Monitoring Reports (as that term is defined in Schedule 10 (*Performance Levels*)), subject to any exemptions set out in Sections 94 and 99 of the Procurement Act 2023, or under the provisions of FOIA, which shall be determined by the Buyer taking into account Commercially Sensitive Information listed in Schedule 5 (*Commercially Sensitive Information*) (if any);

"UK GDPR"	has the meaning as set out in Section 3(10) of the DPA 2018, supplemented by Section 205(4) of the DPA 2018;
"US Data Privacy Framework"	as applicable: (a) the UK Extension to the EU-US Data Privacy Framework; and/or (b) the EU-US Data Privacy Framework;
"Variation"	a variation to this Contract;
"Variation Form"	the form set out in Schedule 21 (<i>Variation Form</i>);
"Variation Procedure"	the procedure set out in Clause 28 (<i>Changing the contract</i>);

"VAT"	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"VCSE"	a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
"Verification Period"	has the meaning given to it in the table in Annex 2 of Schedule 3 (<i>Charges</i>);
"Work Day"	7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
"Work Hours"	the hours spent by the Supplier Staff properly working on the provision of the Deliverables including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
"Worker"	any individual that personally performs, or is under an obligation personally to perform services for the Buyer; and
"Working Day"	any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by the Parties in the Award Form.

Schedule 2 (Specification)

This Schedule sets out what the Buyer wants.

For all Deliverables, the Supplier must help the Buyer comply with any specific applicable Standards of the Buyer.

The Buyer's social value priorities

These are the Buyer's priorities in this procurement:

- Offer Karbon Customers (including Customers of current and any future subsidiaries and current and any future members of the Karbon Solutions Limited Cost Sharing Group) who without it would struggle to afford to set up home, a convenient route to furniture and appliance rental, which is of an excellent quality and service.
- Local employment- see Annex 3 Unlocking Social Value Calculator for specific measures.
- Local community project support- see Annex 3 Unlocking Social Value Calculator for specific measures.

Specification as detailed in Appendix B of the ITT.



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Schedule 3 (Charges)

1. How Charges are calculated

1.1 The Charges:

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

1.1.2 cannot be increased except as specifically permitted by this Schedule and in particular shall only be subject to Indexation where specifically stated in the Award Form; and

1.2 Any variation to the Charges payable under a Contract must be agreed between the Supplier and the Buyer and implemented using the procedure set out in this Schedule.

2. The pricing mechanisms

The pricing mechanisms and prices set out in Annex 1 shall be available for use in calculation of Charges in this Contract.

3. Are costs and expenses included in the Charges

3.1 Except as expressly set out in Paragraph 4 below, or otherwise stated in the Award Form the Charges shall include all costs and expenses relating to the provision of Deliverables. No further amounts shall be payable in respect of matters such as:

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

3.1.2 costs incurred prior to the commencement of this Contract.

4. When the Supplier can ask to change the Charges

4.1 The Charges will be fixed until 30/09/26 (the date of expiry of such period is a "**Review Date**"). Charges will then be fixed until 01/01/28 (the date of expiry of such period is a "**Review Date**"). After this Charges can only be adjusted on each following yearly anniversary (the date of each such anniversary is also a "**Review Date**").

- 4.2 The Supplier shall give the Buyer at least three (3) Months' notice in writing prior to a Review Date where it wants to request an increase. If the Supplier does not give notice in time then it will only be able to request an increase prior to the next Review Date.
- 4.3 Any notice requesting an increase shall include:
- 4.3.1 a list of the Charges to be reviewed;
 - 4.3.2 for each of the Charges under review, written evidence of the justification for the requested increase including:
 - (a) a breakdown of the profit and cost components that comprise the relevant part of the Charges;
 - (b) details of the movement in the different identified cost components of the relevant Charge;
 - (c) reasons for the movement in the different identified cost components of the relevant Charge;
 - (d) evidence that the Supplier has attempted to mitigate against the increase in the relevant cost components; and
 - (e) evidence that the Supplier's profit component of the relevant Charge is no greater than that applying to Charges using the same pricing mechanism as at the Effective Date.
- 4.4 The Buyer shall consider each request for a price increase. The Buyer may grant Approval to an increase at its sole discretion.
- 4.5 Where the Buyer approves an increase then it will be implemented from the first (1st) Working Day following the relevant Review Date or such later date as the Buyer may determine at its sole discretion and Annex 1 shall be updated accordingly.

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

- 5.1 The Charges can also be varied (and Annex 1 will be updated accordingly) due to:
- 5.1.1 a Specific Change in Law in accordance with Clauses 28.7 to 28.8;
 - 5.1.2 a benchmarking review in accordance with Schedule 12 (*Benchmarking*);
 - 5.1.3 a request from the Supplier, which it can make at any time, to decrease the Charges;
 - 5.1.4 indexation, where Annex 1 states that a particular Charge or any component is "subject to Indexation" in which event Paragraph 6 below shall apply.

6. When the Charges are linked to inflation

- 6.1 Where the Charges are stated to be "subject to Indexation" they shall be adjusted in line with changes in the Consumer Price Index (CPI) or Retail Price Index (RPI) for all items, whichever is the lower, at the time of the increase as published by the Office of National Statistics or other reputable source (the "**Index**") pursuant to Paragraph 6.4. All other costs, expenses, fees and charges shall not be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier.
- 6.2 The following costs, expenses, fees or charges included in the Charges shall not be subject to adjustment under this Paragraph 6 and shall not be included in the relevant amount or sum for the purposes of Paragraph 6.1:
 - 6.2.1 Any costs charged by the Supplier to the Buyer in respect of Supplier Assets or Buyer Assets (including capital costs and installation, maintenance and support costs) which are incurred by the Supplier prior to the relevant adjustment date but which remain to be recovered through the Charges.
- 6.3 Charges shall not be indexed during the first year (1 year) following the Start Date (the "**Non-Indexation Period**").
- 6.4 Where Annex 1 states a Charge is 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 Index during the one year period immediately following the end of the Non-Indexation Period. Subsequent adjustments shall take place on each following yearly anniversary to reflect the percentage change in the Index since the previous change.
- 6.5 Where the Index:
 - 6.5.1 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
 - 6.5.2 is no longer published, the Buyer and the Supplier shall agree an appropriate replacement index which shall cover to the maximum extent possible the same economic activities as the original index.

Annex 1 – Rates and Prices

Table 1: Fixed/Firm Prices

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

[Redacted-commercially sensitive]

Schedule 4 (Tender)

[Redacted-commercially sensitive]



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Schedule 5 (Commercially Sensitive Information)

1. What is the Commercially Sensitive Information?

- 1.1 In this Schedule the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA, the EIRs or under any PPN as well as any information that would be considered sensitive commercial information under Section 94 of the Procurement Act 2023.
- 1.2 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 and in the Award Form (which shall be deemed incorporated into the table below).
- 1.3 Without prejudice to the Buyer's obligation to disclose information in accordance with the FOIA, the EIRs, any PPN, the Procurement Act 2023 and any regulations published under it, or Clause 20 (*When you can share information*), the Buyer will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA, the EIRs, any PPN or Section 94 of the Procurement Act 2023 and any regulations published under it, to the following information:

No.	Date	Item(s)	Duration of Confidentiality
1	02/01/26	Commercial Schedule	Contract duration
2	02/01/26	Annex 2 FRC Tender Response	Contract duration
3	02/01/26	Annex 3 FRC Social Value	Contract duration
4	02/01/26	FRC Implementation Plan	Contract duration
5	02/01/26	FRC Group & Karbon Homes Order Process Flowchart	Contract duration
6	02/01/26	All FRC staff names, email addresses and telephone numbers	Contract duration

Schedule 6 (Intellectual Property Rights)

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Part B: Intellectual Property Rights (ICT Services) NOT USED	7

Part A: Intellectual Property Rights (no ICT Services)

Option 1

1. General Provisions and Ownership of IPR

- 1.1 Any New IPR created under this Contract is owned by the Buyer.
- 1.2 Each Party keeps ownership of its own Existing IPR.
- 1.3 Where either Party acquires, by operation of law, ownership of Intellectual Property Rights that is inconsistent with Paragraphs 1.1 and 1.2, it must assign in writing the Intellectual Property Rights concerned to the other Party on the other Party's request (whenever made).
- 1.4 Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under this Contract or otherwise agreed in writing.
- 1.5 Except as expressly granted elsewhere under this Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.
- 1.6 Unless otherwise agreed in writing, the Supplier and the Buyer will record any New IPR in the table at Annex 1 to this Schedule and keep this updated throughout the Contract Period.
- 1.7 If the Supplier becomes aware at any time, including after the earlier of the End Date or date of termination, that, in respect of any Deliverable, the Buyer has not received the licences to Supplier Existing IPRs or Third Party IPRs required by Paragraphs 2 and 4, the Supplier must, within 10 Working Days notify the Buyer:
 - 1.7.1 the specific Intellectual Property Rights the Buyer has not received licences to; and
 - 1.7.2 the Deliverables affected.
- 1.8 For the avoidance of doubt:
 - 1.8.1 except as provided for in Paragraphs 2.3.2(b)(iii)(A) or 4.1.2(b) and (c), the expiry or termination of this Contract does not of itself terminate the licences granted to the Buyer under Paragraphs 2 and 4;
 - 1.8.2 the award of this Contract or the ordering of any Deliverables does not constitute an authorisation by the Crown under:

- (a) sections 55 and 56 of the Patents Act 1977;
- (b) section 12 of the Registered Designs Act 1949; or
- (c) sections 240 to 243 of the Copyright, Designs and Patents Act 1988.

2. Licences in respect of Supplier Existing IPR

2.1 The Supplier grants the Buyer a Supplier Existing IPR Licence on the terms set out in Paragraph 2.3 in respect of each Deliverable where:

2.1.1 the Supplier Existing IPR is embedded in the Deliverable;

2.1.2 the Supplier Existing IPR is necessary for the Buyer to use the Deliverable for its intended purpose; or

2.1.3 the Deliverable is a customisation or adaptation of Supplier Existing IPR.

2.2 The categories of Supplier Existing IPR described in Paragraph 2.1 are mutually exclusive.

2.3 The Supplier Existing IPR Licence granted by the Supplier to the Buyer is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:

2.3.1 in the case of Supplier Existing IPR embedded in a Deliverable:

(a) has no restriction on the identity of any transferee or sub-licensee;

(b) allows the Buyer and any transferee or sub-licensee to use, copy and adapt the Supplier Existing IPR for any of the purposes set out in Paragraph 2.4; and

(c) is subject to the restriction that no sub-licence granted to the Supplier Existing IPR shall purport to provide the sub-licensee with any wider rights than those granted to the Buyer under this Paragraph;

2.3.2 in the case of Supplier Existing IPR that is necessary for the Buyer to use the Deliverable for its intended purpose or has been customised or adapted to provide the Deliverable:

(a) allows the Buyer and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant Supplier Existing IPRs for any of the purposes set out in Paragraph 2.4;

(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 Buyer had previously performed or carried out; or
- (iii) a person or organisation that is not a direct competitor of the Supplier and that transferee either:
 - (A) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
 - (B) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (*What you must keep confidential*);
- (c) is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier) where the Replacement Supplier either:
 - (i) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
 - (ii) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (*What you must keep confidential*); and
- (d) is subject to the restriction that no sub-licence granted to the Supplier Existing IPR shall purport to provide the sub- licensee with any wider rights than those granted to the Buyer under this Paragraph.

2.4 For the purposes of Paragraph 2.3, the relevant purposes are

2.4.1 to allow the Buyer or any End User to receive and use the Deliverables;

2.4.2 to allow the Buyer to commercially exploit (including by publication under Open Licence) the New IPR and New IPR Items; and

2.4.3 for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Public Sector Body, any other Public Sector Body's) business or function.

3. Licences granted by the Buyer

3.1 The Buyer grants the Supplier a licence to the New IPR and Buyer Existing IPR that:

3.1.1 is non-exclusive, royalty-free and non-transferable;

3.1.2 is sub-licensable to any Sub-contractor where:

(a) the Sub-contractor enters into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (*What you must keep confidential*); and

(b) the sub-licence does not purport to provide the sub-licensee with any wider rights than those granted to the Supplier under this Paragraph;

3.1.3 allows the Supplier and any sub-licensee to use, copy and adapt any Buyer Existing IPR and New IPR for the purpose of fulfilling its obligations under this Contract; and

3.1.4 terminates at the end of the Contract Period or the end of any Termination Assistance Period, whichever is the later.

3.2 When the licence granted under Paragraph 3.1 terminates, the Supplier must, and must ensure that each Sub-contractor granted a sub-licence under Paragraph 3.1.2:

3.2.1 immediately cease all use of the Buyer Existing IPR and New IPR (including the Government Data within which the Buyer Existing IPR or New IPR may subsist);

3.2.2 either:

(a) at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the Buyer Existing IPR, New IPR and the Government Data; or

(b) if the Buyer has not made an election within six months of the termination of the licence, destroy the documents and other tangible materials that contain any of the Buyer Existing IPR, the New IPR and the Government Data (as the case may be); and

3.2.3 ensure, so far as reasonably practicable, that any Buyer Existing IPR, New IPR and Government Data held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier.

4. Licences in respect of Third Party IPR

4.1 The Supplier shall not use in the delivery of the Deliverables any Third Party IPR unless:

4.1.1 Approval is granted by the Buyer; and

4.1.2 one of the following conditions is met:

- (a) the owner or an authorised licensor of the relevant Third Party IPR has granted a direct Third Party IPR Licence on the terms set out in Paragraph 4.1.3;
- (b) if the Supplier cannot, after commercially reasonable endeavours, obtain for the Buyer a Third Party IPR licence as set out in Paragraph 4.1.2(a), all the following conditions are met:
 - (i) the Supplier has notified the Buyer in writing giving details of:
 - (A) what licence terms can be obtained from the relevant third party; and
 - (B) whether there are providers which the Supplier could seek to use and the licence terms obtainable from those third parties;
 - (ii) the Buyer has agreed to accept the licence terms of one of those third parties; and
 - (iii) the owner and authorised licensor of the Third Party IPR has granted a direct licence of the Third Party IPR to the Buyer on those terms; or
- (c) the Buyer has provided authorisation to the use of the Third Party IPR in writing, with reference to the acts authorised and the specific IPR involved.

4.1.3 The Third Party IPR licence referred to in Paragraph 4.1 is the licence set out in Paragraph 2.3 as if:

- (a) the term Third Party IPR were substituted for the term Supplier Existing IPR; and
- (b) the term third party were substituted for the term Supplier, in each place they occur.

5. Patents

- 5.1 Where a patent owned by the Supplier is infringed by the use of the New IPR by the Buyer or any Replacement Supplier, the Supplier hereby grants to the Buyer and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software.

Part B: Intellectual Property Rights (ICT Services) NOT USED

ANNEX 1: NEW IPR AND SPECIALLY WRITTEN SOFTWARE

Name of New IPR	Details

Name of Specially Written Software	Details

ANNEX 2: FORM OF CONFIDENTIALITY UNDERTAKING

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [date] 20

BETWEEN:

- (1) [insert name] of [insert address] (the “Sub-licensee”); and
- (2) [insert name] of [insert address] (the “Supplier” and together with the Supplier, the “Parties”).

WHEREAS:

- (A) [insert name of Buyer] (the “Buyer”) and the Supplier are party to a contract dated [insert date] (the “Contract”) for the provision by the Supplier of [insert brief description of services] to the Buyer.
- (B) The Buyer wishes to grant a sub-licence to the Sub-licensee in respect of certain software and intellectual property rights licensed to the Buyer pursuant to this Contract (the “Sub-licence”).
- (C) It is a requirement of this Contract that, before the Buyer grants such sub-licence to the Sub-licensee, the Sub-licensee execute a confidentiality agreement in favour of the Supplier in or substantially in the form of this Agreement to protect the Confidential Information of the Buyer.

IT IS AGREED as follows:

1 Interpretation

1.1 In this Agreement, unless the context otherwise requires:

“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 Buyer 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) the source code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation supplied by the Supplier to the Buyer pursuant to or in connection with the Sub-licence;
- (c) other Information provided by the Buyer pursuant to this Agreement to the Sub-licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub-licensee's attention or into the Sub-licensee's possession in connection with the Sub-licence; and
- (d) Information derived from any of the above,

but not including any Information that:

- (e) was in the possession of the Sub-licensee without obligation of confidentiality prior to its disclosure by the Buyer;
- (f) 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) 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 (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

1.2.6 references to Clauses are to clauses of this Agreement.

2 Confidentiality Obligations

2.1 In consideration of the Buyer entering into the Sub-licence, the Sub- licensee shall:

2.1.1 treat all Confidential Information as secret and confidential;

2.1.2 have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);

2.1.3 not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Agreement;

2.1.4 not transfer any of the Confidential Information outside the United Kingdom;

- 2.1.5 not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;
- 2.1.6 immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- 2.1.7 upon the expiry or termination of the Sub-licence:
 - (a) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
 - (b) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub- licensee) from any computer, word processor, voicemail system or any other device; and
 - (c) make no further use of any Confidential Information.

3 Permitted Disclosures

- 3.1 The Sub- licensee may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
 - 3.1.1 reasonably need to receive the Confidential Information in connection with the Sub- licence; and
 - 3.1.2 have been informed by the Sub- licensee of the confidential nature of the Confidential Information; and
 - 3.1.3 have agreed to terms similar to those in this Agreement.
- 3.2 The Sub- licensee shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Sub- licensee.
- 3.3 Before making a disclosure pursuant to Clause 3.2, the Sub- licensee shall, if the circumstances permit:
 - 3.3.1 notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
 - 3.3.2 ask the court or other public body to treat the Confidential Information as confidential.

4 General

- 4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
 - 4.2.1 to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;
 - 4.2.2 to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
 - 4.2.3 as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub-licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub-licensee of any of the provisions of this Agreement. Accordingly, the Sub-licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Sub-licensee to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart

shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

5 Notices

5.1 Any notice to be given under this Agreement (each a “**Notice**”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.

5.2 Any Notice:

5.2.1 if to be given to the Supplier shall be sent to:

[Address]

Attention: [Contact name and/or position, e.g. “The Finance Director”]

5.2.2 if to be given to the Sub-licensee shall be sent to:

[Name of Organisation]

[Address]

Attention: []

6 Governing law

6.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.

6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

IN WITNESS of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of [name of Supplier]

Signature:

Date:

Name:

Position:

For and on behalf of [name of Sub-licensee]

Signature:

Date:

Name:

Position:

Schedule 7 (Staff Transfer)

1. Definitions

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

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

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

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and

maternity or sexual orientation or claims for equal pay;

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

"Fair Deal Employees"

as defined in Part D;

"Final Supplier Staff List"	a list provided by the Supplier of all Supplier Staff whose will transfer under the Employment Regulations on the Service Transfer Date;
"Former Supplier"	a supplier supplying the Services to the Buyer before any Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any subcontractor of such supplier (or any subcontractor of any such subcontractor);
"New Fair Deal"	<p>the revised Fair Deal position set out in the HM Treasury guidance: <i>"Fair Deal for staff pensions: staff transfer from central government"</i> issued in October 2013 including:</p> <ul style="list-style-type: none">(a) any amendments to that document immediately prior to the Relevant Transfer Date;(b) any similar pension protection in accordance with the Annexes inclusive to Part of this Schedule as notified to the Supplier by the Buyer;
"Notified Subcontractor"	a Subcontractor identified in the Annex to this Schedule to whom Transferring Buyer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
"Old Fair Deal"	HM Treasury Guidance <i>"Staff Transfers from Central Government: A Fair Deal for Staff Pensions"</i> issued in June 1999 including the

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

- "Partial Termination"** the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 14.4 (*When the Buyer can end this contract*) or 14.6 (*When the Supplier can end the contract*);
- "Provisional Supplier Staff List"** a list prepared and updated by the Supplier of all Supplier Staff who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
- "Replacement Subcontractor"** a subcontractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any subcontractor of any such subcontractor);
- "Relevant Transfer"** a transfer of employment to which the Employment Regulations applies;
- "Relevant Transfer Date"** in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place, and for the purposes of Part D and its Annexes, where the Supplier or a Subcontractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or

Subcontractor), references to the Relevant Transfer Date shall become references to the Start Date;

- "Service Transfer"** any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor;
- "Service Transfer Date"** the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
- "Staffing Information"** in relation to all persons identified on the Provisional Supplier Staff List or Final Supplier Staff List, as the case may be, the information required in Annex E2 (*Table of Staffing Information*) in that format together with employee liability information specified in regulation 11(2) and 11(3) and if applicable 11(4) of the Employment Regulations and such other information as the Buyer may reasonably require. The Buyer may acting reasonably make changes to the format or information requested in Annex E2 from time to time.
- "Statutory Schemes"** means the CSPS, NHSPS or LGPS as defined in the Annexes to Part D of this Schedule;
- "Transferring Buyer Employees"** those employees of the Buyer 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 Subcontractors to whom the Employment Regulations will apply on the Relevant Transfer Date.

2. Interpretation

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

3. Which parts of this Schedule apply

The following parts of this Schedule shall apply to this Contract:

- 3.1 Part A N/A;
- 3.2 Part B N/A;
- 3.3 Part C (No Staff Transfer Expected On Operational Services Commencement Date);
- 3.4 Part D N/A;
- 3.5 Part E N/A

Part A: Staff Transfer at the Start Date NOT APPLICABLE

Transferring Employees from the Buyer to the Supplier

1. What is a relevant transfer

1.1 The Buyer and the Supplier agree that:

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

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

1.2 The Buyer shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Buyer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Buyer; and (ii) the Supplier and/or any Subcontractor (as appropriate).

2. Indemnities the Buyer must give

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

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

2.1.2 the breach or non-observance by the Buyer before the Relevant Transfer Date of:

(a) any collective agreement applicable to the Transferring Buyer Employees; and/or

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

- 2.2.1 arising out of the resignation of any Transferring Buyer Employee before the Relevant Transfer Date on account of substantial detrimental changes to their working conditions proposed by the Supplier and/or any Subcontractor to occur in the period from (and including) the Relevant Transfer Date; or
 - 2.2.2 arising from the failure by the Supplier or any Subcontractor to comply with its obligations under the Employment Regulations.
- 2.3 Subject to Paragraphs 2.4 and 2.5, if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that their contract of employment has been transferred from the Buyer to the Supplier and/or any Subcontractor pursuant to the Employment Regulations then:
- 2.3.1 the Supplier will, or shall procure that the Subcontractor will, within five (5) Working Days of becoming aware of that fact, notify the Buyer in writing; and
 - 2.3.2 the Buyer may offer (or may procure that a third party may offer) employment to such person, or take such other steps as it considers appropriate to resolve the matter, within fifteen (15) Working Days of receipt of notice from the Supplier and/or any Subcontractor, or take such other reasonable steps as the Buyer considers appropriate to deal with the matter provided always that such steps are in compliance with the Law;
 - 2.3.3 if such offer of employment is accepted, or if the situation has otherwise been resolved by the Buyer, the Supplier shall, or shall procure that the Subcontractor shall, immediately release the person from its employment or alleged employment;
 - 2.3.4 if after the period referred to in Paragraph 2.3.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within five (5) Working Days give notice to terminate the employment of such person;
- and subject to the Supplier's compliance with Paragraphs 2.3.1 to 2.3.4 and in accordance with all applicable proper employment procedures set out in applicable Law, the Buyer will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in this Paragraph 2.3 provided that the Supplier takes, or procures that the Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.4 The indemnity in Paragraph 2.3 shall not apply to any claim:
- 2.4.1 for any contravention of the Equality Act 2010 (or predecessor/successor legislation); or

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

3. Indemnities the Supplier must give and its obligations

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

- Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Buyer Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the Supplier or any Subcontractor to, or in respect of, any Transferring Buyer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Buyer in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Buyer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Buyer Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Buyer to the Supplier or a Subcontractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Supplier or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Buyer Employees in respect of the period from (and including) the Relevant Transfer Date;
- 3.1.8 any claim made by or in respect of a Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee relating to any act or omission of the Supplier or any Subcontractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Buyer's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 3.1.9 a failure by the Supplier or any Subcontractor to comply with its obligations under Paragraph 2.6 above.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Buyer whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities arising from the Buyer's failure to comply with its obligations under the Employment Regulations.

- 3.3 The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge all its obligations in respect of the Transferring Buyer Employees, from (and including) the Relevant Transfer Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Buyer and the Supplier

4. Information the Supplier must provide

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

5. Cabinet Office requirements

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall, and shall procure that each Subcontractor shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Buyer Employee as set down in:
- 5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;
 - 5.2.2 Old Fair Deal; and/or
 - 5.2.3 the New Fair Deal.
- 5.3 The Supplier acknowledges, in respect of those Transferring Buyer Employees who were eligible for compensation under the terms of Civil Service Compensation Scheme ("**CSCS**") immediately prior to transfer, that the right to benefits calculated in accordance with the terms of the CSCS will transfer under the Employment Regulations. The Supplier

acknowledges and accepts that for any employee who was eligible for compensation under or in accordance with the terms of the CSCS, the right to compensation, is a right to compensation in accordance with the terms of the CSCS applicable at the time at which the employee becomes entitled to such compensation (including voluntary or compulsory redundancy). Suppliers are advised to check the Civil Service Pensions website for the current CSCS terms.

- 5.4 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 Variation Procedure.

6. Pensions

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

- 6.1 the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and
- 6.2 the provisions in Part D: Pensions (and its Annexes) to this Staff Transfer Schedule.

Part B: Staff transfer at the Start Date NOT APPLICABLE

Transfer from a Former Supplier on Re-procurement

1. What is a relevant transfer

1.1 The Buyer and the Supplier agree that:

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

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

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

2. Indemnities given by the Former Supplier

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

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

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

- (a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
 - (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
 - 2.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (b) 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 their employment from the Former Supplier to the Supplier and/or any Notified Subcontractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
 - 2.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
 - 2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Subcontractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations; and
 - 2.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Subcontractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Subcontractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

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

that the Supplier takes, or shall procure that the Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.4 The indemnity in Paragraph 2.3:

2.4.1 shall not apply to:

(a) any claim for:

(i) any contravention of the Equality Act 2010 (or predecessor/successor legislation); or

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

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

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

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

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

3. Indemnities the Supplier must give and its obligations

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

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

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

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

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

- 3.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Subcontractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13(4) of the Employment Regulations; and
- 3.1.9 a failure by the Supplier or any Subcontractor to comply with its obligations under Paragraph 2.5 above.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

4. Information the Supplier must give

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

5. Cabinet Office requirements

- 5.1 The Supplier shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Former Supplier Employee as set down in

- 5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;
 - 5.1.2 Old Fair Deal; and/or
 - 5.1.3 the New Fair Deal.
- 5.2 Any changes necessary to this Contract as a result of changes to, or any replacement of, any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Variation Procedure.

6. Limits on the Former Supplier's obligations

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

7. Pensions

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

Part C: No Staff Transfer on the Start Date

1. What happens if there is a staff transfer

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

Supplier referred to in Paragraph 1.2 provided that the Supplier takes, or shall procure that the relevant Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

- 1.3 If any such person as is described in Paragraph 1.2 is neither re employed by the Buyer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Subcontractor within the period(s) referred to in Paragraph 1.2 such person shall be treated as having transferred to the Supplier and/or the Subcontractor (as appropriate) and the Supplier shall, or shall procure that the Subcontractor shall, (a) comply with such obligations as may be imposed upon it under Law and (b) comply with the provisions of Part D (Pensions) and its Annexes of this Staff Transfer Schedule.
- 1.4 Where any person remains employed by the Supplier and/or any Subcontractor pursuant to Paragraph 1.3, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Subcontractor and the Supplier shall indemnify the Buyer and any Former Supplier, and shall procure that the Subcontractor shall indemnify the Buyer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Subcontractor.
- 1.5 The indemnities in Paragraph 1.2 shall not apply to any claim:
 - 1.5.1 for any contravention of the Equality Act 2010 (or is predecessor/successor legislation); or
 - 1.5.2 equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, in relation to any alleged act or omission of the Supplier and/or Subcontractor; or
 - 1.5.3 any claim that the termination of employment was unfair because the Supplier and/or any Subcontractor neglected to follow a fair dismissal procedure; and
- 1.6 The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 6 Months from the relevant Transfer Date.
- 1.7 If the Supplier and/or the Subcontractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Subcontractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) indemnify the Buyer and any Former Supplier against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Subcontractor.

2. Limits on the Former Supplier's obligations

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

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

Part D: Pensions NOT APPLICABLE

1. Definitions

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

"Actuary"	a Fellow of the Institute and Faculty of Actuaries;
"Best Value Direction"	the Best Value Authorities Staff Transfers (Pensions) Direction 2007 or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 (as appropriate);
"Broadly Comparable"	<p>(a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and</p> <p>(b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,</p> <p>and "Broad Comparability" shall be construed accordingly;</p>
"CSPS"	the schemes as defined in Annex D1 to this Part D;

<p>"Direction Letter/Determination"</p>	<p>has the meaning in Annex D2 to this Part D;</p>
<p>"Fair Deal Eligible Employees"</p>	<p>each of the CSPS Eligible Employees (as defined in Annex D1 to this Part D), the NHSPS Eligible Employees (as defined in Annex D2 to this Part D) and/or the LGPS Eligible Employees (as defined in Annex D3 to this Part D) (as applicable) (and shall include any such employee who has been admitted to and/or remains eligible to join a Broadly Comparable pension scheme at the relevant time in accordance with Paragraph 10 or 11 of this Part D);</p>
<p>"Fair Deal Employees"</p>	<p>those:</p> <ul style="list-style-type: none"> (a) Transferring Buyer Employees; and/or (b) Transferring Former Supplier Employees; and/or (c) employees who are not Transferring Buyer Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Subcontractor, and whose employment is not terminated in accordance with the provisions of Paragraphs 2.3.4 of Parts A or B or Paragraph 1.2.4 of Part C;

	<p>(d) where the Former Supplier becomes the Supplier those employees;</p> <p>who at the Start Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Buyer;</p>
"Fair Deal Schemes"	the relevant Statutory Scheme or a Broadly Comparable pension scheme;
"Fund Actuary"	Fund Actuary as defined in Annex D3 to this Part D;
"LGPS"	the schemes as defined in Annex D3 to this Part D;
"NHSPS"	the schemes as defined in Annex D2 to this Part D; and
"New Fair Deal"	has the meaning given to it in Paragraph 1 of this Schedule 7 (<i>Staff Transfer</i>).

2. Supplier obligations to participate in the pension schemes

- 2.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPS, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.
- 2.2 The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter/Determination, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
- 2.3 The Supplier undertakes:

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

3. Supplier obligation to provide information

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

4. Indemnities the Supplier must give

- 4.1 The Supplier undertakes to the Buyer to indemnify and keep indemnified the Buyer and/or any Replacement Supplier and/or any Replacement Subcontractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:

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

5. What happens if there is a dispute

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

5.1.3 whose expenses shall be borne equally by the Buyer and the Supplier unless the independent Actuary shall otherwise direct.

5.2 The independent Actuary shall be agreed by the Parties or, failing such agreement the independent Actuary shall be appointed by the President for the time being of the Institute and Faculty of Actuaries on the application by the Parties.

6. Other people's rights

6.1 The Parties agree Clause 23 (*Other people's rights in this contract*) shall apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them or it by the Supplier under this Part D, in their or its own right under section 1(1) of the CRTPA.

6.2 Further, the Supplier must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Subcontractor in their or its own right under section 1(1) of the CRTPA.

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

7.1 The Supplier agrees to notify the Buyer should it Default any obligations it has under this Part D and agrees that the Buyer shall be entitled to terminate its Contract for Material Default and the consequences of termination set out in Clause 14.5.1 shall apply in the event that the Supplier:

7.1.1 commits an irremediable Default of any provision or obligation it has under this Part D; or

7.1.2 commits a Default of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Buyer giving particulars of the Default and requiring the Supplier to remedy it.

8. Transferring New Fair Deal Employees

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

8.1.1 notify the Buyer as far as reasonably practicable in advance of the transfer to allow the Buyer to make the necessary arrangement for participation with the relevant Statutory Scheme(s);

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

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

9. What happens to pensions if this Contract ends

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

10. Broadly Comparable Pension Schemes On The Relevant Transfer Date

- 10.1 If the terms of any of Paragraphs 4 of Annex D2: NHSPS or 3.1 of Annex D3: LGPS applies, the Supplier must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the Relevant Transfer Date until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.
- 10.2 Such Broadly Comparable pension scheme must be:
- 10.2.1 established by the Relevant Transfer Date;
 - 10.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
 - 10.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme or from a Former Supplier's Broadly Comparable pension scheme (unless otherwise instructed by the Buyer);
 - 10.2.4 capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Buyer); and

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

Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be on a past service reserve basis which should be calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits). The actuarial basis for this past service reserve basis should be aligned to the funding requirements of the Broadly Comparable pension scheme in place at the time the bulk transfer terms are offered. The bulk transfer terms shall be subject to an underpin in relation to any service credits awarded in the Broadly Comparable pension scheme in accordance with Paragraph 10.3.3 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 Subcontractor (as appropriate) as the date used to determine the actuarial assumptions; and

- 10.4.2 if the transfer payment paid by the trustees of the Broadly Comparable pension scheme is less (in the opinion of the Actuary to the Replacement Suppliers 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 the Subcontractor shall) pay the amount of the difference to the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) or as the Buyer shall otherwise direct. The Supplier shall indemnify the Buyer or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Buyer directs) for any failure to pay the difference as required under this Paragraph.

11. Broadly Comparable Pension Schemes In Other Circumstances

11.1 If the terms of any of Paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and/or 3.2 of Annex D3: LGPS apply, the Supplier must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Eligible Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme at the date of cessation of participation in the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.

11.2 Such Broadly Comparable pension scheme must be:

- 11.2.1 established by the date of cessation of participation in the Statutory Scheme;
- 11.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;

- 11.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the Buyer);
 - 11.2.4 capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Buyer); and
 - 11.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Buyer).
- 11.3 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 11, the Supplier shall (and shall procure that any of its Subcontractors shall):
- 11.3.1 supply to the Buyer details of its (or its Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the date of cessation of participation in the Statutory Scheme) covering all relevant Fair Deal Eligible Employees, as soon as it is able to do so before the cessation of participation in the Statutory Scheme (where possible) and in any event no later than seven (7) days after receipt of the certificate;
 - 11.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995; and
 - 11.3.3 where required to do so by the Buyer, instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing a bulk transfer process with the Actuary to the relevant Statutory Scheme and to provide all such co-operation and assistance with any other Actuary appointed by the Buyer (where applicable). The Supplier must ensure that day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme are provided in respect of any Fair Deal Employee who consents to such a transfer from the Statutory Scheme and the Supplier shall be fully responsible for any costs of providing those credits in excess of the bulk transfer payment received by the Broadly Comparable pension scheme; and
 - 11.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this Paragraph 11 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Subcontractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable

pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

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

12. Right Of Set-Off

- 12.1 The Buyer shall have a right to set off against any payments due to the Supplier under this Contract an amount equal to:
- 12.1.1 any unpaid employer's contributions or employee's contributions or any other financial obligations under the CSPA or any CSPA Admission Agreement in respect of the CSPA Eligible Employees whether due from the Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee;
 - 12.1.2 any unpaid employer's contributions or employee's contributions or any other financial obligations under the NHSPS or any Direction Letter/Determination in respect of the NHSPS Eligible Employees whether due from the Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee; or
 - 12.1.3 any unpaid employer's contributions or employee's contributions or any other financial obligations under the LGPS or any LGPS Admission Agreement in respect of the LGPS Eligible Employees whether due from the Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee;

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

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

Annex D1: Civil Service Pensions Schemes (CSPS) NOT APPLICABLE

1. Definitions

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

"CSPS Admission Agreement"	an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPS in respect of the Services;
"CSPS Eligible Employee"	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPS Admission Agreement;
"CSPS Fair Deal Employee"	a Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the CSPS in accordance with the provisions of New Fair Deal; and
"CSPS"	the "Alpha" pension scheme introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014 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.
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2. Access to equivalent pension schemes after transfer

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

Annex D2: NHS Pension Schemes NOT APPLICABLE

1. Definitions

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

<p>"Direction Letter/Determination"</p>	<p>an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Subcontractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Subcontractor in the NHSPS in respect of the NHSPS Eligible Employees;</p>
<p>"NHS Broadly Comparable Employees"</p>	<p>means each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:</p> <ul style="list-style-type: none"> (a) their employment with the Buyer, an NHS Body or other employer which participates automatically in the NHSPS; or (b) their employment with a Former Supplier who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in

	<p>respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Buyer, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),</p> <p>but who is now ineligible to participate in the NHSPS under the rules of the NHSPS and in respect of whom the Buyer has agreed are to be provided with a Broadly Comparable pension scheme to provide Pension Benefits that are Broadly Comparable to those provided under the NHSPS;</p>
<p>"NHSPS Eligible Employees"</p>	<p>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;</p>
<p>"NHSPS Fair Deal Employees"</p>	<p>means other than the NHS Broadly Comparable Employees, each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:</p> <p>(a) their employment with the Buyer, an NHS Body or other employer which participates automatically in the NHSPS; or</p>

	<p>(b) their employment with a Former Supplier who provides access to the NHSPS pursuant to an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal and were permitted to re-join the NHSPS, having been formerly in employment with the Buyer, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),</p> <p>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).</p> <p>For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the Services and being covered by an "open" Direction Letter or other NHSPS "access" facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHSPS) is not an NHSPS Eligible Employee;</p>
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"NHS Body"	has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;
"NHS Pensions"	NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS;
"NHSPS"	the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations;
"NHS Pension Scheme Arrears"	any failure on the part of the Supplier or its Subcontractors (if any) to pay employer's contributions or deduct and pay across employee's contributions to the NHSPS or meet any other financial obligations under the NHSPS or any Direction Letter in respect of the NHSPS Eligible Employees;
"NHS Pension Scheme Regulations"	as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time;

<p>"NHS Premature Retirement Rights"</p>	<p>rights to which any Fair Deal Employee (had they remained in the employment of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS) would have been or are entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;</p>
<p>"Pension Benefits"</p>	<p>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</p>
<p>"Retirement Benefits Scheme"</p>	<p>a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004.</p>

2. Membership of the NHS Pension Scheme

- 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Subcontractors to which the employment of any NHSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not an NHS Body or other employer which participates automatically in the NHSPS, shall each secure a Direction Letter/Determination to enable the NHSPS Fair Deal Employees to retain either continuous active membership of or eligibility for the NHSPS for so long as they remain employed in connection with the delivery of the Services under this Contract.
- 2.2 Where it is not possible for the Supplier and/or any of its Subcontractors to secure a Direction Letter/Determination on or before the Relevant Transfer Date, the Supplier must secure a Direction Letter/Determination as soon as possible after the

Relevant Transfer Date, and in the period between the Relevant Transfer Date and the date the Direction Letter/Determination is secure, the Provider must ensure that:

- 2.2.1 all employer's and NHSPS Fair Deal Employees' contributions intended to go to the NHSPS are kept in a separate bank account; and
- 2.2.2 the Pension Benefits and Premature Retirement Rights of NHSPS Fair Deal Employees are not adversely affected.
- 2.3 The Supplier must supply to the Buyer a complete copy of each Direction Letter/Determination within 5 Working Days of receipt of the Direction Letter/Determination.
- 2.4 The Supplier must ensure (and procure that each of its Subcontractors (if any) ensures) that all of its NHSPS Fair Deal Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter/Determination.
- 2.5 The Supplier will (and will procure that its Subcontractors (if any) will) comply with the terms of the Direction Letter/Determination, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health and Social Care in respect of the NHSPS Fair Deal Employees for so long as it remains bound by the terms of any such Direction Letter/Determination.
- 2.6 Where any employee omitted from the Direction Letter/Determination supplied in accordance with Paragraph 2 of this Annex are subsequently found to be an NHSPS Fair Deal Employee, the Supplier will (and will procure that its Subcontractors (if any) will) treat that person as if they had been an NHSPS Fair Deal Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
- 2.7 The Supplier will (and will procure that its Subcontractors (if any) will) provide any indemnity, bond or guarantee required by NHS Pensions in relation to a Direction Letter/Determination.

3. Continuation of early retirement rights after transfer

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

4. NHS Broadly Comparable Employees

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

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

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

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

- 6.1 If the Supplier (or its Subcontractor, if relevant) is unable to provide the NHSPS Eligible Employees with either membership of:
 - 6.1.1 the NHSPS (having used its best endeavours to secure a Direction Letter/Determination); or

6.1.2 a Broadly Comparable pension scheme,

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

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

7. Indemnities that a Supplier must give

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

Annex D3: Local Government Pension Schemes (LGPS) NOT APPLICABLE

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

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

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

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

1. Definitions

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

"2013 Regulations"	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) (as amended from time to time);
"Administering Authority"	in relation to the Fund [insert name] , the relevant Administering Authority of that Fund for the purposes of the Local Government Pension Scheme Regulations 2013;
"Fund Actuary"	the actuary to a Fund appointed by the Administering Authority of that Fund;

"Fund"	[insert name] , a pension fund within the LGPS;
["Initial Contribution Rate"]	[XX %] of pensionable pay (as defined in the 2013 Regulations);]
"LGPS"	the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;
"LGPS Admission Agreement"	an admission agreement within the meaning in Schedule 1 of the Local Government Pension Scheme Regulations 2013;
"LGPS Admission Body"	an admission body (within the meaning of Part 3 of Schedule 2 of the Local Government Pension Scheme Regulations 2013);
"LGPS Eligible Employees"	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the LGPS Admission Agreement or otherwise any Fair Deal Employees who immediately before the Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the LGPS or of a scheme Broadly Comparable to the LGPS; and

<p>"LGPS Fair Deal Employees"</p>	<p>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</p>
<p>"LGPS Regulations"</p>	<p>the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS.</p>

2. Supplier must become a LGPS admission body

2.1 In accordance with the principles of New Fair Deal and/or the Best Value Direction, the Supplier and/or any of its Subcontractors to which the employment of any LGPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not a scheme employer which participates automatically in the LGPS, shall each become an LGPS Admission Body by entering into an LGPS Admission Agreement 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 Subcontractors (if any) will) provide at its own cost any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.

3. Broadly Comparable Scheme

3.1 If the Supplier and/or any of its Subcontractors is unable to obtain an LGPS Admission Agreement in accordance with Paragraph 2.1 because the Administering Authority will not allow it to participate in the Fund, the Supplier shall (and procure that its Subcontractors shall), with effect from the Relevant Transfer Date, offer the LGPS Fair Deal Employees membership of a pension scheme which is Broadly Comparable to LGPS on the Relevant Transfer Date in accordance with the provisions of Paragraph 10 of Part D.

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

4. Discretionary Benefits

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

5. LGPS Risk Sharing

- 5.1 Subject to Paragraphs 5.4 to 5.10, if at any time during the term of this Contract the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Supplier or any Subcontractor to pay employer contributions or other payments to the Fund in aggregate in excess of the Initial Contribution Rate, the excess of employer contributions above the Initial Contribution Rate for a Contract Year (the "**Excess Amount**") shall be paid by the Supplier or the Subcontractor, as the case may be, and the Supplier shall be reimbursed by the Buyer.
- 5.2 Subject to Paragraphs 5.4 to 5.9 and 5.11, if at any time during the term of this Contract, the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Supplier or any Subcontractor to pay employer contributions or payments to the Fund in aggregate below the Initial Contribution Rate for a Contract Year, the Supplier shall reimburse the Buyer an amount equal to A–B (the "**Refund Amount**") where:
 - 5.2.1 the amount which would have been paid if contributions and payments had been paid equal to the Initial Contribution Rate for that Contract Year; and
 - 5.2.2 the amount of contributions or payments actually paid by the Supplier or Subcontractor for that Contract Year, as the case may be, to the Fund.
- 5.3 Subject to Paragraphs 5.4 to 5.10, where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Supplier or any Subcontractor is required to pay any exit payment under Regulation 64(2) of the 2013 Regulations (the "**Exit Payment**"), such Exit Payment shall be paid by the Supplier or any Subcontractor (as the case may be) and the Supplier shall be reimbursed by the Buyer.
- 5.4 The Supplier and any Subcontractors shall at all times be responsible for the following costs:
 - 5.4.1 any employer contributions relating to the costs of early retirement benefits arising on redundancy or as a result of business efficiency under Regulation 30(7) of the 2013 Regulations or otherwise;

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

shall be disregarded and excluded from the calculation. In the event of any dispute as to level of any cost that should be excluded from the calculation, the opinion of the Fund Actuary shall be final and binding.

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

- 5.11 Any Refund Amount agreed by the Buyer or in accordance with the Dispute Resolution Procedure as payable by the Supplier or any Subcontractor to the Buyer, shall be paid by the Supplier or any Subcontractor forthwith as the liability has been agreed. In the event the Supplier or any Subcontractor fails to pay any agreed Refund Amount, the Buyer shall demand in writing the immediate payment of the agreed Refund Amount by the Supplier and the Supplier shall make payment within seven (7) Working Days of such demand.
- 5.12 This Paragraph 5 shall survive termination of this Contract.

Annex D4: Other Schemes NOT APPLICABLE

Part E: Staff Transfer on Exit NOT APPLICABLE

1. Obligations before a Staff Transfer

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

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

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

1.1.3 the date which is twelve (12) Months before the end of the Contract Period; or

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

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

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

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

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

1.3 The Buyer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Subcontractor.

1.4 The Supplier warrants, for the benefit of The Buyer, any Replacement Supplier, and any Replacement Subcontractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

1.5 From the date of the earliest event referred to in Paragraphs 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees that it shall not assign any person to the provision of the Services who is not listed on the Provisional Supplier Staff List and shall, unless otherwise instructed by the Buyer (acting reasonably):

- 1.5.1 not replace or re-deploy any Supplier Staff listed on the Provisional Supplier Staff List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person they replace;
- 1.5.2 not make, promise, propose, permit or implement any material changes to the terms and conditions of (i) employment and/or (ii) pensions, retirement and death benefits (including not to make pensionable any category of earnings which were not previously pensionable or reduce the pension contributions payable) of the Supplier Staff (including any payments connected with the termination of employment);
- 1.5.3 not increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Staff save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.4 not introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Provisional Supplier Staff List;
- 1.5.5 not increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services);
- 1.5.6 not terminate or give notice to terminate the employment or contracts of any persons on the Provisional Supplier Staff List save by due disciplinary process;
- 1.5.7 not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor;
- 1.5.8 give the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor reasonable access to Supplier Staff and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Buyer, Replacement Supplier and/or Replacement Subcontractor in respect of persons expected to be Transferring Supplier Employees;
- 1.5.9 co-operate with the Buyer and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;
- 1.5.10 promptly notify the Buyer or, at the direction of the Buyer, any Replacement Supplier and any Replacement Subcontractor of any notice to terminate employment given by the Supplier or received from any persons listed on the Provisional Supplier Staff List regardless of when such notice takes effect;

- 1.5.11 not for a period of twelve (12) Months from the Service Transfer Date re-employ or re-engage or entice any employees, suppliers or Subcontractors whose employment or engagement is transferred to the Buyer and/or the Replacement Supplier (unless otherwise instructed by the Buyer (acting reasonably));
 - 1.5.12 not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;
 - 1.5.13 fully fund any Broadly Comparable pension schemes set up by the Supplier;
 - 1.5.14 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract (including identification of the Fair Deal Employees);
 - 1.5.15 promptly provide to the Buyer such documents and information mentioned in Paragraph 3.1.1 of Part D: Pensions which the Buyer may reasonably request in advance of the expiry or termination of this Contract; and
 - 1.5.16 fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Supplier relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract.
- 1.6 On or around each anniversary of the Start Date and up to four times during the last twelve (12) Months of the Contract Period, the Buyer may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within twenty (20) Working Days of receipt of a written request the Supplier shall provide such information as the Buyer may reasonably require which shall include:
- 1.6.1 the numbers of Supplier Staff engaged in providing the Services;
 - 1.6.2 the percentage of time spent by each Supplier Staff engaged in providing the Services;
 - 1.6.3 the extent to which each employee qualifies for membership of any of the Fair Deal Schemes (as defined in Part D: Pensions); and
 - 1.6.4 a description of the nature of the work undertaken by each Supplier Staff by location.
- 1.7 The Supplier shall provide all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and/or any Replacement Subcontractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll

arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement Subcontractor (as appropriate), in respect of each person on the Final Supplier Staff List who is a Transferring Supplier Employee:

- 1.7.1 the most recent month's 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 updated tax code as at the Service Transfer Date if the code has changed since it was previously have been provided;
 - 1.7.5 updated details of any voluntary deductions from pay as at the Service Transfer Date if changes have occurred since the details were previously provided;
 - 1.7.6 a copy of the personnel file and all other records regarding the service of the Transferring Supplier Employee;
 - 1.7.7 all information required to meet the minimum recording keeping requirements under the Working Time Regulations 1998 and the National Minimum Wage Regulations 2015; and
 - 1.7.8 updated bank/building society or other account details for payroll purposes if they have changed since they were previously provided.
- 1.8 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3 the Supplier agrees that following within twenty (20) Working Days of a request from the Buyer it shall and shall procure that each Sub-contractor shall use reasonable endeavours to comply with any [reasonable] request to align and assign Supplier Staff to any future delivery model proposed by the Buyer for Replacement Services within thirty (30) Working Days or such longer timescale as may be agreed.
- 1.9 Any changes necessary to this Contract as a result of alignment referred to in Paragraph 1.8 shall be agreed in accordance with the Variation Procedure.

2. Staff Transfer when the contract ends

- 2.1 The Buyer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier

and/or a Replacement Subcontractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations will apply. The Buyer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10 of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Subcontractor (as the case may be) and each such Transferring Supplier Employee

- 2.2 The Supplier shall, and shall procure that each Subcontractor shall, comply with all its obligations under the Employment Regulations and in particular obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (but excluding) the Service Transfer Date and shall perform and discharge, and procure that each Subcontractor shall perform and discharge, all its obligations in respect of any person identified in the Final Supplier Staff List arising in respect of the period up to (but excluding) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, pay for accrued but untaken holiday, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Statutory Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part to the period ending on (but excluding) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Subcontractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Subcontractor.
- 2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Buyer and/or the Replacement Supplier and/or any Replacement Subcontractor against any Employee Liabilities arising from or as a result of:
 - 2.3.1 any act or omission of the Supplier or any Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date.
 - 2.3.2 the breach or non-observance by the Supplier or any Subcontractor occurring before but excluding the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Subcontractor is contractually bound to honour;

- 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Subcontractor to comply with any legal obligation to such trade union, body or person arising before but excluding the Service Transfer Date;
 - 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before but excluding the Service Transfer Date; and
 - (b) in relation to any employee who is not identified in the Final Supplier Staff List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Supplier to the Buyer and/or Replacement Supplier and/or any Replacement Subcontractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before but excluding the Service Transfer Date;
 - 2.3.5 a failure of the Supplier or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (but excluding) the Service Transfer Date);
 - 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Subcontractor other than a Transferring Supplier Employee identified in the Final Supplier Staff List for whom it is alleged the Buyer and/or the Replacement Supplier and/or any Replacement Subcontractor may be liable by virtue of this Contract and/or the Employment Regulations; and
 - 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Subcontractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Buyer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnity in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to any act or omission of the Replacement Supplier and/or any Replacement Subcontractor whether occurring or having its origin before, on or after the Service Transfer Date, Including any Employee Liabilities:

- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to their terms and conditions of employment or working conditions proposed by the Replacement Supplier and/or any Replacement Subcontractor to occur in the period on or after the Service Transfer Date); or
 - 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Subcontractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 Subject to Paragraphs 2.6 and 2.7, if any employee of the Supplier who is not identified in the Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that their contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Subcontractor pursuant to the Employment Regulations then:
- 2.5.1 the Replacement Supplier and/or Replacement Subcontractor will, within five (5) Working Days of becoming aware of that fact, notify the Buyer and the Supplier in writing;
 - 2.5.2 the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within fifteen (15) Working Days of receipt of notice from the Replacement Supplier and/or Replacement Subcontractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law;
 - 2.5.3 if such offer of employment is accepted, or if the situation has otherwise been resolved by the Supplier or a Subcontractor, the Replacement Supplier and/or Replacement Subcontractor shall immediately release the person from its employment or alleged employment;
 - 2.5.4 if after the period referred to in Paragraph 2.5.2 no such offer has been made, or such offer has been made but not accepted, or the situation has not otherwise been resolved, the Replacement Supplier and/or Replacement Subcontractor may within 5 Working Days give notice to terminate the employment of such person;
- and subject to the Replacement Supplier's and/or Replacement Subcontractor's compliance with Paragraphs 2.5.1 to 2.5.4 the Supplier will indemnify the Replacement Supplier and/or Replacement Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Supplier's employees referred to in Paragraph 2.5 provided that the Replacement Supplier takes, or shall procure that the Replacement Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.6 The indemnity in Paragraph 2.5 shall not apply to:

- 2.6.1 any claim for:
 - (a) any contravention of the Equality Act 2010 (or predecessor/successor legislation); or
 - (b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Replacement Supplier and/or Replacement Subcontractor; or
- 2.6.2 any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Subcontractor neglected to follow a fair dismissal procedure.
- 2.7 The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than six (6) Months from the Service Transfer Date.
- 2.8 If at any point the Replacement Supplier and/or Replacement Subcontractor accepts the employment of any such person as is described in Paragraph 2.5, such person shall be treated as a Transferring Supplier Employee and Paragraph 2.5 shall cease to apply to such person.
- 2.9 The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of any person identified in the Final Supplier Staff List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
 - 2.9.1 the Supplier and/or any Subcontractor; and
 - 2.9.2 the Replacement Supplier and/or the Replacement Subcontractor.
- 2.10 The Supplier shall promptly provide the Buyer and any Replacement Supplier and/or Replacement Subcontractor, in writing such information as is necessary to enable the Buyer, the Replacement Supplier and/or Replacement Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Replacement Supplier and/or Replacement Subcontractor, shall promptly provide to the Supplier and each

Subcontractor in writing such information as is necessary to enable the Supplier and each Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

- 2.11 Subject to Paragraph 2.12, the Buyer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Subcontractor and its Subcontractors against any Employee Liabilities arising from or as a result of:
- 2.11.1 any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier and/or Replacement Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee.
 - 2.11.2 the breach or non-observance by the Replacement Supplier and/or Replacement Subcontractor on or after the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Supplier Employees identified in the Final Supplier Staff List; and/or
 - (b) any custom or practice in respect of any Transferring Supplier Employees identified in the Final Supplier Staff List which the Replacement Supplier and/or Replacement Subcontractor is contractually bound to honour;
 - 2.11.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Final Supplier Staff List arising from or connected with any failure by the Replacement Supplier and/or Replacement Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
 - 2.11.4 any proposal by the Replacement Supplier and/or Replacement Subcontractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Final Supplier Staff List on or after their transfer to the Replacement Supplier or Replacement Subcontractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Final Supplier Staff List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations or otherwise) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
 - 2.11.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Subcontractor to, or in respect of, any Transferring Supplier Employee identified in the Final Supplier Staff List on or before the

Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;

- 2.11.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Supplier Employee identified in the Final Supplier Staff List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and after the Service Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Supplier Employee identified in the Final Supplier Staff List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Supplier or Subcontractor, to the Replacement Supplier or Replacement Subcontractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and after the Service Transfer Date;
- 2.11.7 a failure of the Replacement Supplier or Replacement Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Final Supplier Staff List in respect of the period from (and including) the Service Transfer Date; and
- 2.11.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Final Supplier Staff List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Subcontractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.12 The indemnity in Paragraph 2.11 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Subcontractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Subcontractor (as applicable) to comply with its obligations under the Employment Regulations, or to the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Final Supplier Staff List in accordance with Paragraph 2.5 (and subject to the limitations set out in Paragraphs 2.6 and 2.7 above).

Annex E1: List of Notified Subcontractors NOT APPLICABLE

Annex E2: Staffing Information NOT APPLICABLE

EMPLOYEE INFORMATION (ANONYMISED)

Name of Transferor: [Insert name of Transferor]

Number of Employees in-scope to transfer: []

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

Emp No							
Emp No							

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							

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

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

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

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

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

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

Schedule 9 (Installation Works)

1. When this Schedule should be used

- 1.1 This Schedule is designed to provide additional provisions necessary to facilitate the provision Deliverables requiring installation by the Supplier.

2. How things must be installed

- 2.1 Where the Supplier reasonably believes, it has completed the Installation Works it shall notify the Buyer in writing. Following receipt of such notice, the Buyer shall inspect the Installation Works and shall, by giving written notice to the Supplier:
 - 2.1.1 accept the Installation Works, or
 - 2.1.2 reject the Installation Works and provide reasons to the Supplier if, in the Buyer's reasonable opinion, the Installation Works do not meet the requirements set out in the Award Form (or elsewhere in this Contract).
- 2.2 If the Buyer rejects the Installation Works in accordance with Paragraph 2.1.2, the Supplier shall immediately rectify or remedy any defects and if, in the Buyer's reasonable opinion, the Installation Works do not, within five (5) Working Days of such rectification or remedy, meet the requirements set out in the Award Form (or elsewhere in this Contract), the Buyer may terminate this Contract for material Default.
- 2.3 The Installation Works shall be deemed to be completed when the Supplier receives a notice issued by the Buyer in accordance with Paragraph 2.1 Notwithstanding the acceptance of any Installation Works in accordance with Paragraph 2.2), the Supplier shall remain solely responsible for ensuring that the Goods and the Installation Works conform to the specification in the Award Form (or elsewhere in this Contract). No rights of estoppel or waiver shall arise as a result of the acceptance by the Buyer of the Installation Works.
- 2.4 Throughout the Contract Period, the Supplier shall have at all times all licences, approvals and consents necessary to enable the Supplier and the Supplier Staff to carry out the Installation Works.

Schedule 10 (Performance Levels)

1. Definitions

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

"Critical KPI Failure"	has the meaning given to it in the Award Form;
"KPI Failure"	a failure to meet the KPI Performance Measure in respect of a Key Performance Indicator;
"KPI Performance Measure"	shall be as set out against the relevant Key Performance Indicator in the Annex to Part A of this Schedule;
"KPI Threshold"	shall be as set out against the relevant Key Performance Indicator in the Annex to Part A of this Schedule;
"Measurement Period"	in relation to a Key Performance Indicator, the period over which the Supplier's performance is measured as set out against the relevant Key Performance Indicator in the Annex to Part A of this Schedule;
"Performance Monitoring Reports"	has the meaning given in Paragraph 1.2 of Part B of this Schedule;
"Performance Review Meetings"	has the meaning given in Paragraph 1.3 of Part B of this Schedule;
"Service Credits"	any service credits specified in the Annex to Part A of this Schedule being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or more Key Performance Indicators; and
"Service Credit Cap"	has the meaning given to it in the Award Form.

2. What happens if you don't meet the Key Performance Indicators

- 2.1 The Supplier shall at all times provide the Deliverables to meet or exceed the KPI Performance Measure for each Key Performance Indicator.
- 2.2 The Supplier acknowledges that any KPI Failure shall entitle the Buyer to the rights set out in Part A of this Schedule including the right to any Service Credits and that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to meet any KPI Performance Measure.
- 2.3 The Supplier shall send Performance Monitoring Reports to the Buyer detailing the level of service which was achieved in accordance with the

provisions of Part B (Performance Monitoring) of this Schedule to enable the Buyer to assess the Supplier's performance against each Key Performance Indicator in each Measurement Period.

2.4 A Service Credit shall be the Buyer's exclusive financial remedy for a KPI Failure except where:

2.4.1 the Supplier has over the previous twelve (12) Month period exceeded the Service Credit Cap; and/or

2.4.2 the KPI Failure:

- a) exceeds the relevant KPI Threshold;
- b) has arisen due to a wilful Default by the Supplier;
- c) results in the corruption or loss of any Government Data (in which case the indemnity in Clause 18.6.4 and any or all of the other provisions of Clauses 18.4 and 18.5 and/or Clause 18.6 of the Core Terms may apply); and/or
- d) results in the Buyer being required to make a compensation payment to one or more third parties; and/or
- e) the Buyer is also entitled to or does terminate this Contract pursuant to Clause 14.4 of the Core Terms (*When the Buyer can end the contract*).

3. Critical KPI Failure

On the occurrence of a Critical KPI Failure:

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

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

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

Part A: Key Performance Indicators and Service Credits

1. Key Performance Indicators

If the level of performance of the Supplier:

1.1 is likely to or fails to meet any KPI Performance Measure; or

1.2 is likely to cause or causes a Critical KPI Failure to occur,

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

1.2.1 require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Buyer and to rectify or prevent a KPI Failure or Critical KPI Failure from taking place or recurring;

1.2.2 instruct the Supplier to comply with the Rectification Plan Process;

1.2.3 if a KPI Failure has occurred, deduct the applicable Service Credits payable by the Supplier to the Buyer; and/or

1.2.4 if a Critical KPI Failure has occurred, exercise its right to Compensation for Critical KPI Failure (including the right to terminate for Material Default and the consequences of termination in Clause 14.5.1 shall apply).

2. Service Credits

2.1 The Buyer shall use the Performance Monitoring Reports supplied by the Supplier to verify the calculation and accuracy of the Service Credits, if any, applicable to each Service Period.

2.2 Service Credits are a reduction of the amounts payable in respect of the Deliverables and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in the Annex to Part A of this Schedule.

Annex to Part A: Key Performance Indicators and Service Credits Table

Key Performance Indicators (KPIs)					
KPI details					
Key Performance Indicator Performance Criterion	Key Indicator	KPI Performance Measure	KPI Threshold	Service Credit for each Service Period	Measurement Period
Customer Service Level (CSL)	Order confirmation	Within 24 hrs	Less than 95% Target Level for 2 consecutive months	[Redacted-commercially sensitive]	Monthly, assessment frequency. Management Information to be provided within 10 working days of the end of the previous reporting period, for assessment by the Buyer within a further 10 working days.
Customer Service Level (CSL)	Delivery scheduling	Target 5 working days	Less than 95% Target Level for 2 consecutive months	[Redacted-commercially sensitive]	Monthly, assessment frequency. Management Information to be provided within 10 working days of the end of the previous reporting period, for assessment by the Buyer within a further 10 working days.

Customer Service Level (CSL)	Query Response	Within 24 hours (or 4 hours if urgent)	Less than 95% Target Level for 2 consecutive months	[Redacted-commercially sensitive]	Monthly, assessment frequency. Management Information to be provided within 10 working days of the end of the previous reporting period, for assessment by the Buyer within a further 10 working days.
Social Value	Committed Social Value delivery	Delivery of agreed Social Value in year	100%	[Redacted-commercially sensitive]	Annual, assessment frequency. Management Information to be provided within 10 working days of the end of the previous reporting period, for assessment by the Buyer within a further 10 working days.
Product Quality /Defect Level	Manufacturer service requests logged within 24hrs	99% across all products supplied	Less than 99% Target Level for 2 consecutive months	[Redacted-commercially sensitive]	Monthly, assessment frequency. Management Information to be provided within 10 working days of the end of the previous reporting period, for assessment by the Buyer within a further 10 working days.

Mapping of levels of performance under the KPI Performance Measures to ratings under regulation 39(5) of the Procurement Regulations 2024

Regulation 39(5) Rating	Level of performance against the KPI Performance Measure
Good	KPI Performance Measure
Approaching Target	0.01% - 1.00% below the KPI Performance Measure
Requires Improvement	1.01% - 2.00% below the KPI Performance Measure
Inadequate	2.01% - 3.00% below the KPI Performance Measure
Other	where performance of the Supplier cannot be described as 'Good', 'Approaching Target', 'Requires Improvement' or 'Inadequate' due to any other factor(s).

Part B: Performance Monitoring

1. Performance Monitoring and Performance Review

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

the Buyer's Representative and any other recipients agreed at the relevant meeting.

- 1.4 The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Buyer's Representative at each meeting.
- 1.5 The Supplier shall provide to the Buyer such documentation as the Buyer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.
- 1.6 The relevant table in the Annex to Part A of this Schedule describes how the levels of performance under the KPI Performance Measures will be mapped to the performance ratings prescribed under regulation 38(5) of the Procurement Regulations 2024. The mapping set out in that table will be applied by the Buyer when publishing relevant Transparency Information relating to the Performance Indicators and/or the Supplier's performance against the relevant KPIs pursuant to Section 52(3) and/or Section 71(2) of the Procurement Act 2023 and the associated Regulations.
- 1.7 The Supplier acknowledges and agrees that, each time the Buyer conducts an assessment of the Supplier's performance against a Key Performance Indicator, the Buyer may publish information as required by Law in relation to that assessment.

2. Satisfaction Surveys

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

Schedule 11 (Continuous Improvement)

1. Supplier's Obligations

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

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

Schedule 12 (Benchmarking)

1. Definitions

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

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

2. When you should use this Schedule

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

3. Benchmarking

3.1 How benchmarking works

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

3.2 Benchmarking Process

- 3.2.1 The benchmarker shall produce and send to the Buyer, for Approval, a draft plan for the Benchmark Review which must include:
 - (a) a proposed cost and timetable for the Benchmark Review;

- (b) a description of the benchmarking methodology to be used which must demonstrate that the methodology to be used is capable of fulfilling the benchmarking purpose; and
 - (c) a description of how the benchmarker will scope and identify the Comparison Group.
- 3.2.2 The benchmarker, acting reasonably, shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking.
- 3.2.3 The Buyer must give notice in writing to the Supplier within ten (10) Working Days after receiving the draft plan, advising the benchmarker and the Supplier whether it Approves the draft plan, or, if it does not Approve the draft plan, suggesting amendments to that plan (which must be reasonable). If amendments are suggested then the benchmarker must produce an amended draft plan and this Paragraph 3.2.3 shall apply to any amended draft plan.
- 3.2.4 Once both Parties have approved the draft plan then they will notify the benchmarker. No Party may unreasonably withhold or delay its approval of the draft plan.
- 3.2.5 Once it has received the approval of the draft plan, the benchmarker shall:
 - (a) finalise the Comparison Group and collect data relating to Comparable Rates. The selection of the Comparable Rates (both in terms of number and identity) shall be a matter for the benchmarker's professional judgment using:
 - (A) information from other service providers to the Buyer;
 - (B) survey information;
 - (C) information from "in-house" providers to the Buyer to the extent that the benchmarker considers that they are valid comparators;
 - (D) market intelligence;
 - (E) the benchmarker's own data and experience;
 - (F) relevant published information; and
 - (G) pursuant to Paragraph 3.2.6 below, information from other suppliers or purchasers on Comparable Rates;
 - (b) by applying the adjustment factors listed in Paragraph 3.2.7 and from an analysis of the Comparable Rates, derive the Equivalent Data;
 - (c) using the Equivalent Data, calculate the Upper Quartile; and
 - (d) determine whether or not each Benchmarked Rate is, and/or the Benchmarked Rates as a whole are, Good Value.
- 3.2.6 The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the benchmarker in order to undertake the benchmarking. The Supplier agrees to use its

reasonable endeavours to obtain information from other suppliers or purchasers on Comparable Rates.

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

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

3.3 Benchmarking Report

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

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

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

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

Schedule 14 (Business Continuity and Disaster Recovery)

1. Definitions

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

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

2. BCDR Plan

- 2.1 Within forty (40) Working Days of the Effective Date the Supplier shall prepare and deliver to the Buyer for the Buyer's written approval a plan (a **"BCDR Plan"**), which shall detail the processes and arrangements that the Supplier shall follow to:
- 2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Deliverables; and
 - 2.1.2 the recovery of the Deliverables in the event of a Disaster.
- 2.2 The BCDR Plan shall be divided into three sections:
- 2.2.1 Section 1 which shall set out general principles applicable to the BCDR Plan;
 - 2.2.2 Section 2 which shall relate to business continuity (the **"Business Continuity Plan"**); and
 - 2.2.3 Section 3 which shall relate to disaster recovery (the **"Disaster Recovery Plan"**).
- 2.3 Following receipt of the draft BCDR Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

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

- 3.1 Section 1 of the BCDR Plan shall:
- 3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
 - 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the provision of the Deliverables and any goods and/or services provided to the Buyer by a Related Supplier;
 - 3.1.3 contain an obligation upon the Supplier to liaise with the Buyer and any Related Suppliers with respect to business continuity and disaster recovery;
 - 3.1.4 detail how the BCDR Plan interoperates with any overarching disaster recovery or business continuity plan of the Buyer and any of its other Related Supplier in each case as notified to the Supplier by the Buyer from time to time;
 - 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multiple channels;
 - 3.1.6 contain a risk analysis, including:
 - (a) failure or disruption scenarios and assessments of likely frequency of occurrence;
 - (b) identification of any single points of failure within the provision of Deliverables and processes for managing those risks;
 - (c) identification of risks arising from an Insolvency Event of the Supplier, any Key Subcontractors and/or Supplier Group member;
 - (d) identification of risks arising from the interaction of the provision of Deliverables with the goods and/or services provided by a Related Supplier; and
 - (e) a business impact analysis of different anticipated failures or disruptions;
 - 3.1.7 provide for documentation of processes, including business processes, and procedures;
 - 3.1.8 set out key contact details for the Supplier (and any Subcontractors) and for the Buyer;
 - 3.1.9 identify the procedures for reverting to **"normal service"**;
 - 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss;
 - 3.1.11 identify the responsibilities (if any) that the Buyer has agreed it will assume in the event of the invocation of the BCDR Plan; and

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

4. Business Continuity (Section 2)

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

5. Disaster Recovery (Section 3)

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

6. Review and changing the BCDR Plan

- 6.1 The Supplier shall review the BCDR Plan:
 - 6.1.1 on a regular basis and as a minimum once every six (6) Months;
 - 6.1.2 within three (3) calendar Months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 7; and
 - 6.1.3 where the Buyer requests in writing any additional reviews (over and above those provided for in Paragraphs 6.1.1 and 6.1.2 of this Schedule) whereupon the Supplier shall conduct such reviews in accordance with the Buyer's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Buyer for the Buyer's approval. The costs of both Parties of any such additional reviews shall be met by

the Buyer except that the Supplier shall not be entitled to charge the Buyer for any costs that it may incur above any estimate without the Buyer's prior written approval.

- 6.2 Each review of the BCDR Plan pursuant to Paragraph 6.1 shall assess its suitability having regard to any change to the Deliverables or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan, and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within such period as the Buyer shall reasonably require.
- 6.3 The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Buyer a report (a **"Review Report"**) setting out the Supplier's proposals (the **"Supplier's Proposals"**) for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan.
- 6.4 Following receipt of the Review Report and the Supplier's Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the Supplier's Proposals. If the Parties are unable to agree Review Report and the Supplier's Proposals within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 6.5 The Supplier shall as soon as is reasonably practicable after receiving the approval of the Supplier's Proposals effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Deliverables.

7. Testing the BCDR Plan

- 7.1 The Supplier shall test the BCDR Plan:
 - 7.1.1 regularly and in any event not less than once in every Contract Year;
 - 7.1.2 in the event of any major reconfiguration of the Deliverables;
 - 7.1.3 at any time where the Buyer considers it necessary (acting in its sole discretion).
- 7.2 If the Buyer requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Buyer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Buyer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with and under the supervision of the Buyer and shall liaise with

the Buyer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Buyer.

- 7.4 The Supplier shall ensure that any use by it or any Subcontractor of "live" data in such testing is first approved with the Buyer. Copies of live test data used in any such testing shall be (if so required by the Buyer) destroyed or returned to the Buyer on completion of the test.
- 7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Buyer a report setting out:
 - 7.5.1 the outcome of the test;
 - 7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
 - 7.5.3 the Supplier's proposals for remedying any such failures.
- 7.6 Following each test, the Supplier shall take all measures requested by the Buyer to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at its own cost, by the date reasonably required by the Buyer.

8. Invoking the BCDR Plan

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

9. Circumstances beyond your control

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

Schedule 17 (Service Recipients)

1. When you should use this Schedule

- 1.1 This Schedule is required where Service Recipients want to join with the Buyer to efficiently contract collectively under a single Contract rather than as separate individual buyers under separate contracts.

2. Definitions

- 2.1 **"Service Recipients"** means a person named as such in Annex 1 to this Schedule which shall be incorporated into the Award Form.

3. Service Recipients benefits under this Contract

- 3.1 The Buyer has entered into this Contract both for its own benefit and for the benefit of the Service Recipients.
- 3.2 The Service Recipients who are to benefit under this Contract are identified in Annex 1 to this Schedule which shall be included into the Award Form.
- 3.3 Service Recipients shall have all of the rights granted to the Buyer under this Contract as if they had been parties to this Contract themselves. Accordingly, where the context requires in order to assure the Service Recipients rights and benefits under this Contract, and unless the Buyer otherwise specifies, references to the Buyer in this Contract (including those references to a Party which are intended to relate to the Buyer) shall be deemed to include a reference to the Service Recipients.
- 3.4 Each of the Service Recipients will be a third-party beneficiary for the purposes of the CRTPA and may enforce the relevant provisions of this Contract pursuant to CRTPA.
- 3.5 The Parties to this Contract may in accordance with its provisions vary, terminate or rescind this Contract or any part of it, without the consent of any Service Recipient.
- 3.6 The enforcement rights granted to Service Recipients under Paragraph 3.4 are subject to the following provisions:
 - 3.6.1 the Buyer may enforce any provision of this Contract on behalf of a Service Recipient;
 - 3.6.2 any claim from a Service Recipient under the CRTPA to enforce this Contract shall be brought by the Buyer if reasonably practicable for the Buyer and Service Recipient to do so;
 - 3.6.3 the Buyer will ensure that Service Recipients comply with the Dispute Resolution Procedure in respect of any Disputes that involve a Service Recipient; and
 - 3.6.4 the Supplier's limits and exclusions of liability in this Contract shall apply to any claim to enforce this Contract made by the Buyer on behalf of a Service Recipient and to any claim to enforce this Contract made by a Service Recipient acting on its own behalf.

- 3.7 Other terms and conditions applicable to the provision of the Deliverables to any Service Recipient are as follows:
 - 3.7.1 if a Service Recipient needs to comply with an obligation or responsibility of the Buyer to allow the Supplier to provide the Deliverables, the Buyer will remain responsible for this compliance, but compliance by the Service Recipient will be deemed to be compliance by the Buyer;
 - 3.7.2 to the extent that the Service Recipient receives the benefit of the Services, the term "Government Data" will be deemed to extend to any data of the Service Recipient;
 - 3.7.3 during the Contract Period, the Buyer and the Supplier may agree in writing to remove or add Service Recipients from the scope of this Contract and, as necessary, adjusting the Charges on an equitable basis, provided that such changes are in all cases compliant with Section 74 of the Procurement Act 2023.
- 3.8 If the Buyer and Supplier agree to remove or add a Service Recipient pursuant to Paragraph 3.7.3:
 - 3.8.1 the Buyer may request that the Supplier provide Termination Assistance; and
 - 3.8.2 the Supplier will, if requested by the Buyer as a result of any UK Government reorganisation, provide the Services to any new UK Government entity designated by the Buyer.
- 3.9 Notwithstanding that Service Recipients shall each receive the same Services from the Supplier the following adjustments will apply in relation to how this Contract will operate in relation to the Buyer and Service Recipients:
 - 3.9.1 Services will be provided by the Supplier to each Service Recipient and Buyer separately;
 - 3.9.2 the Supplier's obligation in regards to reporting will be owed to each Service Recipient and Buyer separately;
 - 3.9.3 the Buyer and Service Recipients shall be entitled to separate invoices in respect of the provision of Deliverables;
 - 3.9.4 the separate invoices will correlate to the Deliverables provided to the respective Buyer and Service Recipients;
 - 3.9.5 the Charges to be paid for the Deliverables shall be calculated on a per Service Recipient and Buyer basis and each Service Recipient and the Buyer shall be responsible for paying their respective Charges;
 - 3.9.6 the Key Performance Indicators and corresponding Service Credits will be calculated in respect of each Service Recipient and Buyer, and they will be reported and deducted against Charges due by each respective Service Recipient and Buyer; and
 - 3.9.7 such further adjustments as the Buyer and each Service Recipient may notify to the Supplier from time to time.

Annex 1 – Service Recipients

The Deliverables shall also be provided for the benefit of the following Service Recipients:

Name of Service Recipient	Services to be provided	Duration	Special Terms
<p>Customers of Karbon, its' current and any future subsidiaries and current and any future members of the Karbon Solutions Limited Cost Sharing Group. Membership of this Group currently comprises; Castles and Coasts Housing Association, Eden Housing Association, Mitre Housing Association, Keelman Homes, TCUK and Changing Lives.</p>	<p>As described in Appendix B: The Authority's detailed requirement In the ITT. The service is to supply Karbon (and its Customers) with a convenient route to furniture and appliance rental, which is of an excellent quality and service. The service is managed by Karbon who act as the lessor to the Customer of any items within the service. The tender will involve Karbon Home Comforts Limited, who will purchase the services, furniture, and appliances from the Supplier.</p>	<p>As per the Contract period in the ITT. The Contract will be for an initial 24-month period, with an option to extend for a further 24-month period subject to satisfactory contract performance and the Contracting Authority still having the need and funding for the Contract. The extension period will be in 12-month cycles. The total contract duration will not exceed 48 months.</p>	

Schedule 18 (Prompt Payment)

1. Definitions

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

"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; and

"Unconnected Sub-contractor" any third party with whom the Supplier enters into an Unconnected Sub-contract.

2. Visibility of Payment Practice

- 2.1 If this Contract has at the Effective Date an anticipated contract value in excess of £5 million per annum (including VAT) averaged over this Contract Period and without prejudice to Clause 4.6 and Clause 8.2.3, the Supplier shall:

- 2.1.1 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
- 2.1.2 pay all 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) within an average of forty-five (45) days or less after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and
- 2.1.3 include within the Supply Chain Information Report a summary of its compliance with this Paragraph 2.1, such data to be certified every six months by a director of the Supplier as being accurate and not misleading.

- 2.2 If any Supply Chain Information Report shows that in either of the last two six month periods the Supplier failed to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt, or the Supplier's average payment days is greater than forty-five (45) days after the day on

which the Supplier received an invoice (or otherwise had notice of an amount for payment), the Supplier shall provide to the Buyer within 15 Working Days of submission of the latest Supply Chain Information Report an action plan (the "**Action Plan**") for improvement. The Action Plan shall include, but not be limited to, the following:

- 2.2.1 (where relevant) 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;
 - 2.2.2 (where relevant) identification of the primary causes of failure to pay all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within an average forty-five (45) days or less after the day on which the Supplier received an invoice (or otherwise had notice of an amount for payment);
 - 2.2.3 actions to address each of the causes set out in Paragraph 2.2.1 and/or 2.2.2; and
 - 2.2.4 mechanism for and commitment to regular reporting on progress to the Supplier's Board.
- 2.3 Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Sub-contractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.
 - 2.4 The Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Sub-contractors or Unconnected Sub-contractors which is required to be submitted to the Buyer 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).
 - 2.5 If the Supplier notifies the Buyer (whether in a Supply Chain Report or otherwise) that the Supplier has failed to pay 95% or above of its Unconnected Sub-contractors within sixty (60) days after the day on which the Supplier receives an invoice or otherwise has notice of an amount for payment, or pay all 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) within an average of forty-five (45) days or less after the day on which the Supplier received an invoice (or otherwise had notice of an amount for payment), or the Buyer otherwise discovers the same, the Buyer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Schedule 21 (Variation Form)

This form is to be used in order to change a contract in accordance with Clause 28 of the Core Terms (Changing this Contract).

Contract Details	
This variation is between:	[insert name of Buyer] ("the Buyer") And [insert name of Supplier] ("the Supplier")
Contract name:	[insert name of contract to be changed] ("this Contract")
Contract reference number:	[insert contract reference number]
Details of Proposed Variation	
Variation initiated by:	[delete as applicable: Buyer/Supplier]
Variation number:	[insert variation number]
Date variation is raised:	[insert date]
Proposed variation	
Reason for the variation:	[insert reason]
An Impact Assessment shall be provided within:	[insert number] days
Impact of Variation	
Likely impact of the proposed variation:	[Supplier to insert assessment of impact]
Outcome of Variation	
Contract variation:	This Contract detailed above is varied as follows: <ul style="list-style-type: none"> • [Buyer to insert original Clauses or Paragraphs to be varied and the changed clause]

Financial variation:	Original Contract Value:	£ [insert amount]
	Additional cost due to Variation:	£ [insert amount]
	New Contract value:	£ [insert amount]

1. This Variation must be agreed and signed by both Parties to this Contract and shall only be effective from the date it is signed by the Buyer.
2. Words and expressions in this Variation shall have the meanings given to them in this Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Buyer

Signature

Date

Name (in Capitals)

Address

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

Date

Name (in Capitals)

Address

Schedule 22 (Insurance Requirements)

1. The insurance you need to have

- 1.1 The Supplier shall take out and maintain or procure the taking out and maintenance of the insurances as set out in Annex 1 to this Schedule and any other insurances as may be required by applicable Law (together the **"Insurances"**). The Supplier shall ensure that each of the Insurances is effective no later than the Effective Date in respect of those Insurances set out in the Annex to this Schedule and those required by applicable Law; and
- 1.2 The Insurances shall be:
 - 1.2.1 maintained in accordance with Good Industry Practice;
 - 1.2.2 (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time;
 - 1.2.3 taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
 - 1.2.4 maintained until the End Date except in relation to Professional Indemnity where required under the Annex Part C which shall be maintained for at least six (6) years after the End Date.
- 1.3 The Supplier shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Buyer shall be indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third party property damage arising out of or in connection with the Deliverables and for which the Supplier is legally liable.

2. How to manage the insurance

- 2.1 Without limiting the other provisions of this Contract, the Supplier shall:
 - 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to Deliverables as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
 - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
 - 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3. What happens if you aren't insured

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.

- 3.2 Where the Supplier has failed to purchase or maintain any of the Insurances in full force and effect, the Buyer may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances and recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

4. Evidence of insurance you must provide

The Supplier shall upon the Effective Date and within fifteen (15) Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Buyer, that the Insurances are in force and effect and meet in full the requirements of this Schedule.

5. Making sure you are insured to the required amount

- 5.1 The Supplier shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained 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 any matters that are not related to the Deliverables and/or this Contract, the Supplier shall, where such claim is likely to result in the level of cover available under any of the Insurances being reduced below the minimum limit of indemnity specified in this Schedule, promptly notify the Buyer and provide details of its proposed solution for maintaining the minimum limit of indemnity specified in this Schedule.

6. Cancelled Insurance

- 6.1 The Supplier shall notify the Buyer in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 6.2 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Buyer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

7. Insurance claims

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables, or this Contract for which it may be entitled to claim under any of the Insurances. In the event that the Buyer receives a claim relating to or arising out of this Contract or the Deliverables, the Supplier shall co-operate with the Buyer and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 7.2 Except where the Buyer is the claimant party, the Supplier shall give the Buyer notice within twenty (20) Working Days after any insurance claim in

excess of £5,000 relating to or arising out of the provision of the Deliverables or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Buyer) full details of the incident giving rise to the claim.

- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Buyer any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

Annex 1: Required Insurances

Part A: Third Party Public And Products Liability Insurance

1. Insured

The Supplier

2. Interest

2.1 To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

2.1.1 death or bodily injury to or sickness, illness or disease contracted by any person; and

2.1.2 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 Deliverables and in connection with this Contract.

3. Limit of indemnity

3.1 Not less than £1 million in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but £5 million in the aggregate per annum in respect of products and pollution liability (to the extent insured by the relevant policy).

4. Territorial limits

4.1 United Kingdom

5. Period of insurance

From the date of this Contract for the period of this Contract and renewable on an annual basis unless agreed otherwise by the Buyer in writing.

6. Cover features and extensions

Indemnity to principals clause under which the Buyer shall be indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third-party property damage arising out of or in connection with this Contract and for which the Supplier is legally liable.

7. Principal exclusions

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.

7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

- 7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended, unexpected and accidental occurrence.

8. Maximum deductible threshold

Not applicable.

Part B: United Kingdom Compulsory Insurances

The Supplier shall meet its insurance obligations under applicable Law in full, including, United Kingdom employers' liability insurance and motor third party liability insurance.

Part C: Additional Insurances

None.

Schedule 24 (Financial Difficulties)

1. Definitions

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

"Applicable Financial Indicators" the financial indicators from Part C of Annex 2 which are to apply to the Monitored Suppliers as set out in Part B of Annex 3;

"Credit Rating Threshold" the minimum credit rating level for each entity in the FDE Group as set out in Part A of Annex 2;

"Credit Reference Agencies" the credit reference agencies listed in Part B of Annex 1;

"Credit Score Notification Trigger" the minimum size of any downgrade in a credit score, set out in Part B of Annex 2, which triggers a Credit Score Notification Trigger Event;

"Credit Score Notification Trigger Event" any downgrade of a credit score which is equal to or greater than the Credit Score Notification Trigger;

"Credit Score Threshold" the minimum credit score level for each entity in the FDE Group as set out in Part B of Annex 2;

"Financial Distress Service Continuity Plan" a plan setting out how the Supplier will ensure the continued performance and delivery of the Deliverables in accordance with this Contract in the event that a Financial Distress Event occurs. This plan should include what the Buyer would need to put in place to ensure performance and delivery of the Deliverables in accordance with this Contract up to and including any Insolvency Event in respect of the relevant FDE Group entity;

"Financial Indicators" in respect of the Supplier, Key Sub-contractors and the Guarantor, means each of the financial indicators set out at Part C of Annex 2; and in respect of each Monitored Supplier, means those Applicable Financial Indicators;

"Financial Target Thresholds" the target thresholds for each of the Financial Indicators set out at Part C of Annex 2;

"Primary Metric"	[credit rating pursuant to Paragraph 3.3]/[credit score pursuant to Paragraph 4.3]/[financial indicators pursuant to Paragraph 5.4]
"Monitored Supplier"	those entities specified in Part B of Annex 3; and
"Rating Agencies"	the rating agencies listed in Part A of Annex 1.

2. When this Schedule applies

- 2.1 The Parties shall comply with the provisions of this Schedule in relation to the assessment of the financial standing of the FDE Group and the consequences of a change to that financial standing.
- 2.2 The terms of this Schedule shall survive under this Contract until the termination or expiry of this Contract.

3. Credit Ratings

- 3.1 The Supplier warrants and represents to the Buyer that as at the Effective Date the long term credit ratings issued for each entity in the FDE Group by each of the Rating Agencies are as set out in Part A of Annex 2.
- 3.2 The Supplier shall:
 - 3.2.1 regularly monitor the credit ratings of each entity in the FDE Group with the Rating Agencies; and
 - 3.2.2 promptly (and in any event within five (5) Working Days) notify the Buyer in writing if there is any downgrade in the credit rating issued by any Rating Agency for any entity in the FDE Group.
- 3.3 For the purposes of determining whether a Financial Distress Event has occurred, and for the purposes of determining relief under Paragraph 8 if credit rating is the Primary Metric, the credit rating of an FDE Group entity shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have given a credit rating level for that FDE Group entity which is below the applicable Credit Rating Threshold.

4. Credit Scores

- 4.1 The Supplier warrants and represents to the Buyer that as at the Effective Date the credit scores issued for each entity in the FDE Group by each of the Credit Reference Agencies are as set out in Part B of Annex 2.
- 4.2 The Supplier shall:
 - 4.2.1 regularly monitor the credit scores of each entity in the FDE Group with the Credit Reference Agencies; and
 - 4.2.2 promptly notify (or shall procure that its auditors promptly notify) the Buyer in writing if there is any Credit Score Notification Trigger

Event for any entity in the FDE Group (and in any event within five (5) Working Days).

- 4.3 For the purposes of determining whether a Financial Distress Event has occurred, and for the purposes of determining relief under Paragraph 8 if credit score is the Primary Metric, the credit score of an FDE Group entity shall be deemed to have dropped below the applicable Credit Score Threshold if any of the Credit Reference Agencies have given a credit score for that FDE Group entity which is below the applicable Credit Score Threshold.

5. Financial Indicators

- 5.1 The Supplier shall monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds at least at the frequency set out for each at Part C of Annex 2 (where specified) and in any event, on a regular basis and no less than once a year within one hundred and twenty (120) days after the accounting reference date
- 5.2 Subject to the calculation methodology set out at Annex 4 of this Schedule, the Financial Indicators and the corresponding calculations and thresholds used to determine whether a Financial Distress Event has occurred in respect of those Financial Indicators, shall be as set out in Appendix I: *Standard Financial Ratios of Assessing and Monitoring the Economic and Financial Standing of Bidders and Suppliers – May 2021* (as amended, supplemented or replaced from time to time) which as at the Effective Date can be found at:
- https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/987132/Assessing_and_monitoring_the_economic_and_financial_standing_of_suppliers_guidance_note_May_2021.pdf
- 5.3 Each report submitted by the Supplier pursuant to Paragraph 5.1 shall:
- 5.3.1 be a single report with separate sections for each of the FDE Group entities;
 - 5.3.2 contain a sufficient level of information to enable the Buyer to verify the calculations that have been made in respect of the Financial Indicators;
 - 5.3.3 include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;
 - 5.3.4 be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable.
- 5.4 For the purposes of determining whether a Financial Distress Event has occurred, and for the purposes of determining relief under Paragraph 8 if financial indicators are the Primary Metric, the Financial Indicator of an FDE Group entity shall be deemed to have dropped below the applicable Financial Target Threshold if:

- 5.4.1 a report submitted by the Supplier pursuant to Paragraph 5.1 shows that any FDE Group entity has failed to meet or exceed the Financial Target Threshold for any one of the Financial Indicators set out in Part C of Annex 2 of this Schedule;
- 5.4.2 a report submitted by the Supplier pursuant to Paragraph 5.1 does not comply with the requirements set out in Paragraph 5.3; or
- 5.4.3 the Supplier does not deliver a report pursuant to Paragraph 5.3 in accordance with the applicable monitoring and reporting frequency.

6. What happens if there is a financial distress event

- 6.1 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Buyer in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.
- 6.2 In the event of a Financial Distress Event then, immediately upon notification of the Financial Distress Event (or if the Buyer becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Buyer shall have the rights and remedies as set out in Paragraphs 6.4 to 6.6.
- 6.3 [In the event that a Financial Distress Event arises due to a Key Subcontractor notifying the Buyer that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute then, the Buyer shall not exercise any of its rights or remedies under Paragraph 6.4 without first giving the Supplier ten (10) Working Days to:
 - 6.3.1 rectify such late or non-payment; or
 - 6.3.2 demonstrate to the Buyer's reasonable satisfaction that there is a valid reason for late or non-payment.]
- 6.4 The Supplier shall (and shall procure that each Additional FDE Group Member shall):
 - 6.4.1 at the request of the Buyer meet the Buyer as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event) to review the effect of the Financial Distress Event on the continued performance of this Contract and delivery of the Deliverables in accordance this Contract; and
 - 6.4.2 where the Buyer reasonably believes (taking into account the discussions and any representations made under Paragraph 6.4.1) that the Financial Distress Event could impact on the continued performance of this Contract and delivery of the Deliverables in accordance with this Contract:

- (a) submit to the Buyer for its Approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event);
 - (b) use reasonable endeavours to put in place the necessary measures with each Additional FDE Group Member to ensure that it is able to provide financial information relating to that Additional FDE Group Member to the Buyer; and
 - (c) provide such financial information relating to FDE Group entity as the Buyer may reasonably require.
- 6.5 If the Buyer does not (acting reasonably) approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Buyer within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is either:
 - 6.5.1 Approved;
 - 6.5.2 referred, by notice sent by either Party to the other Party explaining why it thinks the Financial Distress Service Continuity Plan has not been Approved, to commercial negotiation led by senior representatives who have authority to agree the Financial Distress Service Continuity Plan (to be held within 28 days of the date of the notice); or
 - 6.5.3 finally rejected by the Buyer.
- 6.6 Following Approval of the Financial Distress Service Continuity Plan by the Buyer, the Supplier shall:
 - 6.6.1 on a regular basis (which shall not be less than Monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance this Contract and delivery of the Deliverables in accordance with this Contract;
 - 6.6.2 provide a written report of the results of each review and assessment carried out under Paragraph 6.6.1 to the Buyer;
 - 6.6.3 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 6.6.1, submit an updated Financial Distress Service Continuity Plan to the Buyer for its Approval, and the provisions of Paragraphs 6.5 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and
 - 6.6.4 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

- 6.7 Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Buyer and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under Paragraph 6.6.

7. When the Buyer can terminate for financial distress

- 7.1 The Buyer shall be entitled to terminate this Contract for Material Default if:
- 7.1.1 the Supplier fails to notify the Buyer of a Financial Distress Event in accordance with Paragraph 6.1;
 - 7.1.2 the Supplier fails to comply with any part of Paragraph 6.4;
 - 7.1.3 subject to Paragraph 7.2, the Buyer finally rejects a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 6.5.3;
 - 7.1.4 the senior representatives who have authority to agree the Financial Distress Service Continuity Plan (acting reasonably) do not meet within 28 days of the date of the notice of referral pursuant to Paragraph 6.5.2;
 - 7.1.5 the senior representatives who have authority to agree the Financial Distress Service Continuity Plan (acting reasonably) do not agree the Financial Distress Service Continuity Plan after it has been referred pursuant to Paragraph 6.5.2; and/or
 - 7.1.6 the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 6.6.4,

and the consequences of termination in Clause 14.5.1 shall apply.

- 7.2 A Material Default may only occur under Paragraph 7.1.3 after the expiry of the first five (5) Working Days period for the Supplier to submit a revised draft of the first draft of the Financial Distress Service Continuity Plan starting on and from the date on which the Buyer first notified the Supplier that Supplier must submit a revised draft of the first draft Financial Distress Service Continuity Plan.

8. What happens If your Primary Metric is still good

- 8.1 Without prejudice to the Supplier's obligations and the Buyer's rights and remedies under Paragraph 6, if, following the occurrence of a Financial Distress Event, the Supplier evidences to the Buyer's satisfaction that the Primary Metric shows that the Financial Distress Event no longer exists, then:
- 8.1.1 the Supplier shall be relieved automatically of its obligations under Paragraphs 6.4 to 6.6; and
 - 8.1.2 the Buyer shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 6.4.2(c)).

Annex 1 – Rating Agencies and Credit Reference Agencies

Part A: Rating Agencies

None

Part B: Credit Reference Agencies

Creditsafe

Annex 2 – Credit Ratings, Credit Scores and Financial Indicators

Part A: Credit Rating

The Supplier is required to have a credit score of 30 or above at all times.

Part B: Credit Score

Entity	Credit score	Credit Score Notification Trigger
Supplier	High Risk	Score of 30 or below
Supplier	Moderate Risk	Score of 31 to 50
Supplier	Low Risk	Score 51 to 70
Supplier	Very Low Risk	Score of 71 or above

Part C: Financial Indicators

<https://www.creditsafe.com/jp/en/books-help/ebook/grm-en/14-credit-score.html>

Annex 3 – Additional FDE Group Members and Monitored Suppliers

Part A: Additional FDE Group Members

Not applicable.

Part B: Monitored Suppliers

Not applicable.

Annex 4 – Calculation Methodology for Financial Indicators

Not applicable.

Schedule 25 (Rectification Plan)

Request for [Revised] Rectification Plan		
Details of the Notifiable Default:		
Deadline for receiving the [Revised] Rectification Plan:	[add date (minimum 10 days from request)]	
Signed by Buyer:		Date:
Supplier [Revised] Rectification Plan		
Cause of the Notifiable Default	[add cause]	
Anticipated impact assessment:	[add impact]	
Actual effect of Notifiable Default:	[add effect]	
Steps to be taken to rectification:	Steps	Timescale
	1.	[date]
	2.	[date]
	3.	[date]
	4.	[date]
	[...]	[date]
Timescale for complete Rectification of Notifiable Default	<input checked="" type="checkbox"/> Working Days	
Steps taken to prevent recurrence of Notifiable Default	Steps	Timescale
	1.	[date]
	2.	[date]
	3.	[date]
	4.	[date]

	[...]	[date]	
Signed by the Supplier:		Date:	
Review of Rectification Plan Buyer			
Outcome of review	[Plan Accepted] [Plan Rejected] [Revised Plan Requested]		
Reasons for rejection (if applicable)	[add reasons]		
Signed by Buyer		Date:	

Schedule 26 (Sustainability)

1. Definitions

"Modern Slavery Assessment Tool"	the modern slavery risk identification and management tool which can be found online at: https://supplierregistration.cabinetoffice.gov.uk/msat
"Supply Chain Map"	details of (i) the Supplier, (ii) all Subcontractors and (iii) any other entity that the Supplier is aware is in its supply chain that is not a Subcontractor, setting out at least: <ul style="list-style-type: none">(a) the name, registered office and company registration number of each entity in the supply chain;(b) the function of each entity in the supply chain; and(c) the location of any premises at which an entity in the supply chain carries out a function in the supply chain; and
"Waste Hierarchy"	prioritisation of waste management in the following order of preference as set out in the Waste (England and Wales) Regulation 2011: <ul style="list-style-type: none">(a) Prevention;(b) Preparing for re-use;(c) Recycling;(d) Other Recovery; and(e) Disposal.

Part A

1. Public Sector Equality Duty

1.1 In addition to legal obligations, where the Supplier is providing a Deliverable to which the Public Sector Equality duty applies, the Supplier shall support the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under this Contract in a way that seeks to:

1.1.1 eliminate discrimination, harassment or victimisation and any other conduct prohibited by the Equality Act 2010; and

1.1.2 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. Employment Law

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

3. Modern Slavery

3.1 The Supplier:

- 3.1.1 shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;
- 3.1.2 shall not require any Supplier Staff or Subcontractor Staff to lodge deposits or identity papers with the employer and shall be free to leave their employer after reasonable notice;
- 3.1.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
- 3.1.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;
- 3.1.5 shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- 3.1.6 shall have and maintain throughout the Contract Period its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Subcontractors anti-slavery and human trafficking provisions;
- 3.1.7 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 this Contract;
- 3.1.8 shall prepare and deliver to the Buyer, an annual slavery and human trafficking report (in respect of which a statement under section 54 of the Modern Slavery Act 2015 would be sufficient) setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with this Paragraph 3;
- 3.1.9 shall not use, nor allow its employees or Subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
- 3.1.10 shall not use or allow child or slave labour to be used by its Subcontractors;
- 3.1.11 shall report the discovery or suspicion of any slavery, trafficking, forced labour, child labour, involuntary prison labour or labour rights

abuses by it or its Subcontractors to the Buyer and Modern Slavery Helpline and relevant national or local law enforcement agencies;
and

- 3.1.12 if the Supplier is in Default under any of Paragraphs 3.1.1 to 3.1.11 (inclusive) of this Part A of Schedule 26 the Buyer may by notice:
- (a) require the Supplier to remove from performance of this Contract any sub-contractor, Supplier Staff or other persons associated with it whose acts or omissions have caused the Default; or
 - (b) immediately terminate this Contract and the consequences of termination set out in Clause 14.5.1 of the Core Terms shall apply.

4. Environmental Requirements

- 4.1 The Supplier must perform its obligations meeting in all material respects the requirements of all applicable Laws regarding the environment.
- 4.2 In performing its obligations under this Contract, the Supplier shall, where applicable to this Contract, to the reasonable satisfaction of the Buyer:
- 4.2.1 prioritise waste management in accordance with the Waste Hierarchy as set out in Law;
 - 4.2.2 be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Contract is taken by a licensed waste carrier to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the Law; and
 - 4.2.3 ensure that it and any third parties used to undertake recycling, disposal or other recovery as a consequence of this Contract do so in a legally compliant way, and can demonstrate that reasonable checks are undertaken to ensure this on a regular basis and provide relevant data and evidence of recycling, recovery and disposal.
- 4.3 In circumstances that a permit, licence or exemption to carry or send waste generated under this Contract is revoked, the Supplier shall cease to carry or send waste or allow waste to be carried by any Subcontractor until authorisation is obtained from the Environment Agency.
- 4.4 In performing its obligations under this Contract, the Supplier shall to the reasonable satisfaction of the Buyer (where: (i) the anticipated Charges in any Contract Year are above £5 million per annum (including VAT)); (ii) this is a public contract, other than a special regime contract under the Procurement Act 2023; and (iii) it is related to and proportionate to the contract in accordance with PPN 016), publish and maintain a credible Carbon Reduction Plan in accordance with PPN 016.
- 4.5 The Supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>.

5. Supplier Code of Conduct

- 5.1 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/1163536/Supplier_Code_of_Conduct_v3.pdf

The Buyer expects to meet, and expects its suppliers and subcontractors to meet, the standards set out in that Code.

6. Recruitment of Supplier Staff

Where, during the Contract Period, the Supplier or a Subcontractor need to hire Supplier Staff for a role based in the United Kingdom, the role should be published on the Governments' 'Find a Job' website and include the location at which Supplier Staff would be expected to perform the role.

7. Reporting

The Supplier shall comply with reasonable requests by the Buyer for information evidencing compliance with any of the requirements in Paragraphs 1 to 5 of this Part A above within fourteen (14) days of such request, provided that such requests are limited to two (2) per requirement per Contract Year.

Part B

1. Equality, Diversity and Inclusion – Further Requirements

- 1.1 The Supplier shall ensure that it fulfils its obligations under this Contract in a way that does not discriminate against individuals because of socio-economic background, working pattern or having parental or other caring responsibilities.

2. Environmental – Further Requirements

- 2.1 The Supplier must have a documented management system and controls in place to manage the environmental impacts of delivering the Deliverables.
- 2.2 The Supplier shall ensure that any Deliverables are designed, sourced and delivered in a manner which is environmentally and socially responsible.
- 2.3 In performing its obligations under this Contract, the Supplier shall to the reasonable satisfaction of the Buyer:
- 2.3.1 avoid consumable single use items (including packaging) unless otherwise agreed with the Buyer, and unless the use is primarily related to the management of the Supplier's own facilities or internal operations as opposed to the provision of Deliverables;
- 2.3.2 demonstrate that the whole life cycle impacts (including end of use) associated with the Deliverables that extend beyond direct

- operations into that of the supply chain have been considered and reduced;
- 2.3.3 minimise the consumption of resources and use them efficiently (including water and energy), working towards a circular economy including designing out waste and non-renewable resources, using re-use and closed loop systems;
 - 2.3.4 demonstrate protection of the environment including understanding and reduction of biosecurity risks (which include risks to plant and tree health from harmful pests and diseases), and reducing and eliminating hazardous/harmful substances to the environment and preventing pollution;
 - 2.3.5 enhance the natural environment and connecting communities with the environment;
 - 2.3.6 achieve continuous improvement in environmental (and social) performance.
- 2.4 The Supplier shall inform the Buyer within one Working Day in the event that a permit, licence or exemption to carry or send waste generated under this Contract is revoked.

3. Modern Slavery– Further Requirements

- 3.1 The Supplier shall comply with any request by the Buyer to complete the Modern Slavery Assessment Tool within sixty (60) days of such request.
- 3.2 The Supplier shall, if the Supplier or the Buyer identifies any occurrence of modern slavery connected to this Contract, comply with any request of the Buyer to follow the Rectification Plan Process to submit a remedial action plan which follows the form set out in Annex D of the Tackling Modern Slavery in Government Supply Chains guidance to PPN 009 (Tackling Modern Slavery in Government Supply Chains).
- 3.3 The Supplier shall comply with any request by the Buyer to provide a Supply Chain Map within fourteen (14) days of such request.
- 3.4 The Supplier shall comply with any request by the Buyer to provide a copy of any reports of any Subcontractor regarding any or all of workplace conditions, working or employment practices and recruitment practices within fourteen (14) days of such request.
- 3.5 The Supplier shall carry out due diligence to ensure workers in its business and its supply chains are not paying illegal or exploitative recruitment fees to secure employment, and where these fees are uncovered shall ensure that workers are remedied.
- 3.6 The following shall be added to the definition of "Audit" in Schedule 1 immediately after limb (k):
- 3.7 "(l) carry out an unannounced or semi-announced inspection of any Site and speak directly to any Supplier Staff in a confidential manner and in the native language of such Supplier Staff in respect of workforce conditions, working or employment practices and recruitment practices;"

- 3.8 For the purposes of an audit carried out pursuant to limb (l) of the definition of "Audit", in addition to any other rights under this Contract, the Buyer may instruct the Supplier to carry out such an audit of any Subcontractor by an independent third party and, if so instructed, the Supplier shall deliver a report to the Buyer within ninety (90) days of such instruction.][**Optional:** If the Supplier notifies the Buyer pursuant to Paragraph 3.1.11 it shall respond promptly to the Buyer's enquiries, co-operate with any investigation, and allow the Buyer to audit any books, records and/or any other relevant documentation in accordance with this Contract.
- 3.9 If the Supplier is in Default under any of Paragraphs 3.1 to 3.7 (inclusive) of this Part B of Schedule 26 the Buyer may by notice:
- 3.9.1 require the Supplier to remove from performance of this Contract any Sub-Contractor, Supplier Staff or other persons associated with it whose acts or omissions have caused the Default; or
 - 3.9.2 immediately terminate this Contract and the consequences of termination set out in Clause 14.5.1 of the Core Terms shall apply.

Schedule 29 (Key Supplier Staff)

1. Key Supplier Staff

- 1.1 The Annex 1 (Key Role) to this Schedule lists the key roles ("**Key Roles**") and names of the persons who the Supplier shall appoint to fill those Key Roles at the Start Date ("**Key Staff**").
- 1.2 The Supplier shall ensure that the Key Staff fulfil the Key Roles at all times during the Contract Period.
- 1.3 The Buyer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Staff.
- 1.4 The Supplier shall not and shall procure that any Subcontractor shall not remove or replace any Key Staff unless:
 - 1.4.1 requested to do so by the Buyer or the Buyer Approves such removal or replacement (not to be unreasonably withheld or delayed);
 - 1.4.2 the person concerned resigns, retires or dies or is on parental or long-term sick leave; or
 - 1.4.3 the person's employment or contractual arrangement with the Supplier or Subcontractor is terminated for material breach of contract by the employee.
- 1.5 The Supplier shall:
 - 1.5.1 notify the Buyer promptly of the absence of any Key Staff (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - 1.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
 - 1.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Staff and, except in the cases of death, unexpected ill health or a material breach of the Key Staff's employment contract, this will mean at least three (3) Months' notice;
 - 1.5.4 ensure that all arrangements for planned changes in Key Staff provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Deliverables; and
 - 1.5.5 ensure that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key Role and is fully competent to carry out the tasks assigned to the Key Staff whom they have replaced.

- 1.6 The Buyer may require the Supplier to remove or procure that any Subcontractor shall remove any Key Staff that the Buyer considers in any respect unsatisfactory. The Buyer shall not be liable for the cost of replacing any Key Staff.
- 1.7 The provisions of this Schedule 29 (*Key Supplier Staff*) are in addition to and not in substitution for the employment exit provisions of Schedule 7 (*Staff Transfer*).

Annex 1 – Key Roles

Key Role	Key Staff	Contact Details
Customer Account Manager	[Redacted-commercially sensitive]	[Redacted-commercially sensitive]
Sales Director	[Redacted-commercially sensitive]	[Redacted-commercially sensitive]
Customer Service Team Leader	[Redacted-commercially sensitive]	[Redacted-commercially sensitive]
Customer Service Manager	[Redacted-commercially sensitive]	[Redacted-commercially sensitive]
Customer Service Administrator	[Redacted-commercially sensitive]	[Redacted-commercially sensitive]
Customer Service Specialist	[Redacted-commercially sensitive]	[Redacted-commercially sensitive]

Schedule 32 (Background Checks)

1. Definitions

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

"Relevant Conviction" for the purposes of this Schedule 32 (*Background Checks*) any conviction listed in Annex 1 to this Schedule; and

"Relevant Role" an activity involved in the performance of this Contract in which the individual performing that role will, or is likely to, have access to children, vulnerable persons or other members of the public to whom the Buyer owes a special duty of care, as notified by the Buyer to the Supplier.

2. Relationship with other provisions in Contract

The provisions of this Schedule 32 (*Background Checks*) apply in addition to any other provisions of this Contract relating to the vetting of Supplier Staff.

3. Relevant Convictions and inappropriate records

3.1 The Supplier must not, and must ensure that Sub-contractors do not, engage a member of the Supplier Staff in a Relevant Role without Approval where that member of the Supplier Staff:

3.1.1 discloses that they have a Relevant Conviction or is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise); or

3.1.2 is found to have an inappropriate record following the completion of the checks required under Paragraph 3.2.

3.2 The Supplier must, and must ensure that Sub-contractors, in respect of each member of the Supplier Staff who performs a Relevant Role:

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

3.2.2 conduct thorough questioning regarding any Relevant Convictions; and

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

Annex 1 – Relevant Convictions

Any unspent cautions or convictions.

Schedule 20 (Processing Data)



Data Processing Agreement

54 North Homes Limited is a charitable Community Benefit Society registered with the Financial Conduct Authority in England and Wales (number 16826R). It is regulated by the Regulator of Social Housing (number L1019) and its registered office is 2 Alpha Court, Monks Cross Drive, Huntington, York, YO32 9WN (**54N**). 54N is a not-for-profit housing association.

Under the data protection legislation, 54N is required to put in place an agreement between 54N and any organisation processing personal data on its behalf.

This AGREEMENT sets out the arrangements to govern the processing of personal data by the company detailed in Section A (the **Partner**) on behalf of 54N.

54N and the Partner are parties to one or more existing agreements (collectively referred to as the **Existing Agreement**). The parties wish to enter into this Agreement to supplement and update the Existing Agreement for the purpose of data protection legislation compliance.

SECTION A – PARTNER DETAILS

Full legal name:	Furniture Resource Centre Limited
ICO Registration number (if applicable):	https://ico.org.uk/esdwebpages/search
Contract Manager:	[Redacted-commercially sensitive], Customer Account Manager, [Redacted-commercially sensitive]
Project Data Protection lead:	[Redacted-commercially sensitive], Customer Account Manager, [Redacted-commercially sensitive]
Partner Data Protection lead:	[Redacted-commercially sensitive], Customer Account Manager, [Redacted-commercially sensitive]
Postal address for Notices:	Furniture Resource Centre Limited 1 Cartwrights Farm Road, Speke, Liverpool, L24 1UY
Email address for Notices:	karbon@frcgroup.co.uk

SECTION B – 54N DETAILS

Contract Manager:	Paul Aitkin
Project Data Protection Lead:	Paul Aitkin, Group Commercial Manager • Business Development 07736978701
54N Data Protection Lead:	Jill Johnson, Senior Data Protection Business Partner, 0191 2238448.
Postal address for Notices:	54North Homes Limited. 2 Alpha Court, Monks Cross Drive, Huntington, York, YO32 9WN
Email address for Notices:	data.protection@karbonhomes.co.uk

SECTION C – AGREEMENT PARTICULARS

Effective date of this Agreement:	02/01/25
Existing Contract/SLA/Agreements in place	Existing contract in place.
Purposes of Processing:	<p>To supply Karbon Homes trading as Home Comforts Limited and its Customers with a convenient route to furniture and appliance rental. Including delivery and collection and installation.</p> <p>This Contract will be available to Customers of Karbon, its' current and any future subsidiaries (including 54 North) and current and any future members of the Karbon Solutions Limited Cost Sharing Group. Membership of this Group currently comprises; Castles and Coasts Housing Association, Eden Housing Association, Mitre Housing Association, Keelman Homes, TCUK and Changing Lives.</p>
Personal Data to be processed by the Partner, including in particular: <ol style="list-style-type: none"> 1) the subject matter of the personal data; 2) the purpose and nature of the processing; 3) the duration of the processing; 4) the type of personal data that will be processed; and 5) the categories of data subjects. 	<p><u>Current/Former/Prospective Tenant/Leaseholder/Occupant:</u> Name Address Phone Number Email address Availability</p> <p><u>Authorised person/NOK/POA:</u> Name Address Phone Number Email address Availability</p> <p><u>Current/Former/Prospective Staff/Support Worker:</u> Name Job Title Phone Number Email address Location Availability</p>
Special category Personal Data to be processed:	<p>If any of the following Special Categories of personal data are to be included you must seek further advice from the Data Protection Business Partner:</p> <p>UCB/ VIP/Red flag list Medical information Disability status Vulnerabilities</p>

Confidential Personal Data to be processed:	None
Data transfer method:	'Encrypted email'
Contract management meetings:	Monthly
Data retention review period:	6 monthly – how often they will look at what we have given them and then either retain or delete it
Data return/deletion date:	e.g. 6 years from the Effective Date OR When the Personal Data is no longer necessary for the purposes of the Agreement and no lawful basis for processing remains

SECTION D – ACCEPTANCE

In consideration of the mutual obligations of both parties under the Existing Agreement, 54N Homes signifies its agreement to Sections A, B, C, D and E of this Agreement by signing below and agrees to be bound by it:

Authorised signature:	
Print name:	Paul Aitkin
Date:	

In consideration of the mutual obligations of both parties under the Existing Agreement, the Partner signifies its agreement to Sections A, B, C, D and E of this Agreement by signing below and agrees to be bound by it:

Authorised signature:	
Print name:	
Date:	

SECTION E – TERMS AND CONDITIONS OF THE AGREEMENT

1. Definitions and Interpretation

1.1 The following definitions and rules of interpretation apply in this Agreement:

Agreement: means this Data Processing Agreement.

Business Day: means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Data Protection Legislation: means all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR, the Data Protection Act 2018 (DPA 2018), the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from

time to time which apply to a party relating to the use of personal data (including without limitation, the privacy of electronic communications).

Personal Data: means any information relating to an identified or identifiable living individual that is processed by the Partner on behalf of 54N for the Purposes of Processing.

Special Category Personal Data: shall have the meaning as in Article 9 of the UK GDPR.

Subject Access Request (SAR): means a request by a data subject to exercise their right for access to and copies of their Personal Data under Article 15 of the UK GDPR.

Sub-processor: means a natural or legal person engaged by the Partner when acting as a processor to carry out one or more processing activity of the Personal Data.

Third party: means any person other than the data subject, the controller, or the processor as defined within this Agreement.

UK GDPR: has the meaning given to it in section 3(1) (as supplemented by section 205(4)) of the DPA 2018.

Controller, processor, data subject, personal data breach and processing have the meanings as defined in the Data Protection Legislation.

- 1.2 Clause headings shall not affect the interpretation of this Agreement. References to clauses are to the clauses of this Agreement.
- 1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.5 Any words following the terms including, include, in particular or for example or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.6 A reference to writing or written includes email.
- 1.7 Subject to clause 19.2, in the case of conflict or ambiguity between the terms of this Agreement and the Existing Agreement, this Agreement shall take precedence in connection with the conflicting subject matter only.
- 1.8 This Agreement shall take effect from the date specified in Section C and shall be reviewed no less than annually.

2. Lawful processing of Personal Data

- 2.1 The parties agree and acknowledge that, for the purposes of this Agreement and the Data Protection Legislation, 54N is the controller and the Partner is the processor in relation to the Personal Data. 54N retains control of the Personal Data and remains responsible for its compliance obligations under the applicable Data Protection Legislation, including but not limited to providing any required notices and obtaining any required consents, and for the written processing instructions it gives to the Partner.

- 2.2 The Personal Data has been fairly and lawfully obtained for 54N's specified and lawful purposes.
- 2.3 The Personal Data shared under this Agreement is and will remain the property of 54N at all times.
- 2.4 54N will ensure the Personal Data is accurate in accordance with its data verification procedures.
- 2.5 54N confirms it has all necessary lawful bases, privacy notices, and valid consents (where applicable) in place to process the Personal Data and to allow lawful transfer of that data for the Purposes of Processing to the Partner.
- 2.6 Section C of this Agreement describes the subject matter, duration, nature and purpose of the processing and the Personal Data categories and data subject types in respect of which the Partner may process the Personal Data to fulfil the terms of this Agreement and the Existing Agreement.

3. **Partner's obligations – Article 28(3)(a) UK GDPR**

- 3.1 The Partner will process the Personal Data shared pursuant to this Agreement to the extent, and in such a manner, as is necessary for the Purposes of Processing stated in Section C above and in accordance with 54N's written instructions, unless the Partner is required to process the Personal Data by any laws applicable to the Partner (**Applicable Laws**). Where the Partner is relying on Applicable Laws as the basis for the processing of Personal Data, the Partner shall promptly notify 54N of this before performing the processing required by the Applicable Laws and give 54N an opportunity to object or challenge the requirement, unless those Applicable Laws prohibit the Partner from so notifying 54N. The Partner will not process the Personal Data for any other purpose or in a way that does not comply with this Agreement or the Data Protection Legislation. The Partner must promptly notify 54N if, in its opinion, 54N's instructions do not comply with the Data Protection Legislation (Article 28(3)(h) UK GDPR).
- 3.2 The Partner must comply promptly with any written instructions from 54N requiring the Partner to amend, transfer, delete or otherwise process the Personal Data, or to stop, mitigate or remedy any unauthorised processing.
- 3.3 The Partner shall assist 54N, with meeting 54N's compliance obligations under the Data Protection Legislation, taking into account the nature of the Partner's processing and the information available to the Partner, including in relation to data subject rights, security, breach notifications, data protection impact assessments and reporting to and consulting with the Commissioner, supervisory authorities or regulators (Article 28(3)(f) UK GDPR).
- 3.4 The Partner must promptly notify 54N of any changes to the Data Protection Legislation that may reasonably be interpreted as adversely affecting the Partner's performance of this Agreement or the Existing Agreement.

4. **Cross-border transfers of Personal Data – Article 28(3)(a) UK GDPR**

- 4.1 The Partner shall not transfer or otherwise process any Personal Data outside of the UK without obtaining 54N's prior written consent. Where such consent is granted, the Partner may only process, or permit the processing, of the Personal Data outside the UK under the following conditions:

- 4.1.1 the Partner is processing the Personal Data in a territory which is subject to adequacy regulations under the Data Protection Legislation and that the territory provides adequate protection for the privacy rights of individuals; or
 - 4.1.2 the Partner participates in a valid cross-border transfer mechanism under the Data Protection Legislation, so that the Partner (and, where appropriate, 54N) can ensure that appropriate safeguards are in place to ensure an adequate level of protection with respect to the privacy rights of individuals as required by Article 46 of the UK GDPR.
- 4.2 If any Personal Data transfer between 54N and the Partner requires execution of standard contractual clauses (**SCCs**) and/or an international data transfer agreement/addendum ("**IDTA**") in order to comply with the Data Protection Legislation, the parties will complete all relevant details in, and execute, the SCCs and/or IDTA and take all other actions required to legitimise the transfer.
5. **Need to know - Article 28(3)(b) UK GDPR**
 - 5.1 The Personal Data will be processed by the Partner and its employees in accordance with 54N's documented instructions only.
 - 5.2 The parties will ensure that access to the Personal Data is limited to those employees who need access to the Personal Data to meet the Partner's obligations under this Agreement and, in the case of any access by any employee, is limited to such parts of the Personal Data as is strictly necessary for performance of that employee's duties.
 - 5.3 The Partner shall ensure that all employees are informed of the confidential nature of the Personal Data; are obliged to keep the Personal Data confidential; have undertaken training on the Data Protection Legislation relating to handling Personal Data and how it applies to their particular duties; and are aware of the Partner's duties and obligations under the Data Protection Legislation and this Agreement. The Partner shall take reasonable steps to ensure the reliability, integrity and trustworthiness of any of the Partner's employees who have access to the Personal Data.
 - 5.4 The Partner will maintain the confidentiality of the Personal Data and will not disclose the Personal Data to third parties unless 54N or this Agreement specifically authorises the disclosure, or as required by domestic law, court or regulator (including the Commissioner). If a domestic law, court or regulator (including the Commissioner) requires the Partner to process or disclose the Personal Data to a third party, the Partner must first inform 54N of such legal or regulatory requirement and give 54N the requirement, unless the domestic law prohibits the giving of such notice.
6. **Security of Personal Data – Article 28(3)(c) UK GDPR**
 - 6.1 The Partner shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by 54N, to protect against unauthorised or unlawful processing, access, disclosure, copying, modification, storage, reproduction, display or distribution of the Personal Data and against accidental loss, destruction, alteration, disclosure or damage of the Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the Personal Data to be protected.
 - 6.2 Such technical and organisational measures must have regard to the state of technological development and the cost of implementing any measures. Those

measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it.

- 6.3 54N's Personal Data and any other material bearing or incorporating any of the Personal Data will be kept separate from all documents and other records of the Partner. The Personal Data will be kept at the usual place of business of the Partner.

7. **Sub-processors – Article 28(3)(d) UK GDPR**

- 7.1 The Partner agrees that it will not share the Personal Data with any third party nor engage any third party as a Sub-processor of the Personal Data without 54N's prior written consent (which will not be unreasonably withheld or delayed in the event of the sharing of the data or the engagement of the third party (as the case may be) being reasonably required by the Partner for the Purposes of Processing). If 54N provides prior written consent for the Partner to engage a third party as a Sub-processor of the Personal Data, the Partner shall enter into a written agreement with that third party incorporating terms which are substantially the same as those set out in this Agreement and which terminates automatically on termination of this Agreement for any reason (Article 28(2) UK GDPR). The Partner shall inform 54N of any intended changes concerning the addition or replacement of a Sub-processor with access to Personal Data and give 54N the opportunity to object to such changes, unless the Partner is prevented from so notifying 54N under any Applicable Laws. Any breach of this condition will be considered a material breach of this Agreement for which 54N reserves the right to terminate this Agreement with immediate effect in accordance with clause 11.

- 7.2 As between 54N and the Partner, the Partner shall remain fully liable for all acts and omissions of any third party as a Sub-processor with whom Personal Data is shared by the Partner pursuant to this Agreement (Article 28(4) UK GDPR).

8. **Subject Access Requests – Article 28(3)(e) UK GDPR**

- 8.1 Where a data subject submits a SAR to 54N for access to Personal Data processed under this Agreement, 54N shall respond to that request in accordance with the Data Protection Legislation.
- 8.2 The Partner agrees to assist 54N promptly in responding to any SAR from a data subject. As the controller of the Personal Data, 54N shall take overall responsibility for ensuring that the data subject can gain access to all Personal Data easily.
- 8.3 When a SAR is received that includes Personal Data shared with the Partner (that has not been yet or otherwise destroyed under this Agreement) 54N's Contracts Manager shall liaise with the Partner's Contracts Manager to arrange inclusion of this data, where necessary.
- 8.4 Where a data subject submits a SAR direct to the processor, i.e. the Partner, the Partner shall notify 54N within 3 business days. 54N shall manage the request as controller. The Partner shall provide 54N with full co-operation and assistance in relation to any request made by a data subject to have access to their Personal Data.

9. Data Subject Rights – Article 28(3)(e) UK GDPR

- 9.1 Data subjects will be fully informed about the Personal Data that is processed about them and of the information that is shared by the parties.
- 9.2 They will be able to gain access to information held about them, and to correct any factual errors that may have been made in line with the Data Protection Legislation. If information is found to be inaccurate, it is the responsibility of the party discovering the inaccuracy to notify the other party.
- 9.3 The Partner will promptly comply with any 54N request or instruction requiring the Partner to amend, transfer, delete or otherwise process the Personal Data, or to stop, mitigate or remedy any unauthorised processing.

10. Personal Data Breach – Article 28(3)(f) UK GDPR

- 10.1 The Partner will promptly and without undue delay and in any event notify 54N within 48 hours if any 54N Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable (Article 33(2) UK GDPR). Where possible, the Partner will restore such Personal Data at its own expense.
- 10.2 The Partner shall notify 54N immediately and in any event within 48 hours of becoming aware of any accidental, unauthorised or unlawful processing of 54N's Personal Data.
- 10.3 The Partner shall notify 54N immediately and in any event within 48 hours of becoming aware of any other confirmed or suspected personal data breach involving 54N's data.
- 10.4 If a personal data breach occurs or is occurring, or the Partner becomes aware of a breach of any of its obligations under this Agreement or any Data Protection Legislation, the Partner will, at no additional cost to 54N:
 - 10.4.1 promptly conduct its own audit to determine the cause;
 - 10.4.2 produce a written report that includes detailed plans to remedy any deficiencies identified by the audit;
 - 10.4.3 provide 54N with a copy of the written audit report; and
 - 10.4.4 remedy any deficiencies identified by the audit.
- 10.5 Where the Partner becomes aware of any Personal Data being lost or destroyed, damaged, corrupted, or unusable and/or of any accidental, unauthorised or unlawful processing of the Personal Data, or, of any other confirmed or suspected personal data breach, the Partner shall, without undue delay, provide 54N with the following information:
 - 10.5.1 a description of the nature of the confirmed or suspected personal data breach, including the categories and approximate number of both data subjects and Personal Data records concerned;
 - 10.5.2 the likely consequences; and
 - 10.5.3 the description of the measures taken, or proposed to be taken to address the confirmed or suspected personal data breach, including measures to mitigate its possible adverse effects.

- 10.6 Immediately following any confirmed or suspected personal data breach, the parties will co-ordinate with each other to investigate the matter. The Partner will reasonably co-operate with 54N at no additional cost to 54N, in 54N's handling of the matter, including but not limited to:
- 10.6.1 assisting with any investigation;
 - 10.6.2 providing 54N with physical access to any facilities and operations affected;
 - 10.6.3 facilitating interviews with the Partner's employees, former employees and others involved in the matter including, but not limited to, its officers and directors;
 - 10.6.4 making available all relevant records, logs, files, data reporting and other materials required to comply with all Data Protection Legislation or as otherwise reasonably required by 54N; and
 - 10.6.5 taking reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from a personal data breach or accidental, unauthorised or unlawful processing of the Personal Data.
- 10.7 The Partner will not inform any third party of any accidental, unauthorised or unlawful processing of all or part of the Personal Data and/or a personal data breach without first obtaining 54N's written consent, except when required to do so by domestic law.
- 10.8 The Partner agrees that 54N has the sole right to determine:
- 10.8.1 whether to provide notice of the accidental, unauthorised or unlawful processing and/or the personal data breach to any data subjects, the Commissioner, supervisory authorities, regulators, law enforcement agencies or others, as required by law or regulation or in 54N's discretion, including the contents and delivery method of the notice; and
 - 10.8.2 whether to offer any type of remedy to affected data subjects, including the nature and extent of such remedy.
- 10.9 The Partner will cover all reasonable expenses associated with the performance of the obligations under this section 7 unless the matter arose from 54N's specific written instructions, negligence, wilful default or breach of this Agreement, in which case 54N will cover all reasonable expenses.
- 10.10 The Partner will also reimburse 54N for actual reasonable expenses that 54N incurs when responding to an incident of accidental, unauthorised or unlawful processing and/or a personal data breach to the extent that the Partner caused such, including all costs of notice and any remedy.
- 11. Data Return and Destruction – Article 28(3)(g) UK GDPR**
- 11.1 On termination of this Agreement or completion of the Purposes of Processing the Partner shall, at the written request of 54N, delete or return all Personal Data from its systems and securely shred and destroy any Personal Data held in printed format in accordance with clause 13.2.

- 11.2 The Partner will certify in writing that it has destroyed the Personal Data within seven days after it completes the destruction.
- 11.3 Personal Data shall not be retained for longer than is necessary for the Purposes of Processing. The Partner must review the need to continue to hold the Personal Data in accordance with the Data Retention Review Period, and must return it or destroy it on the Data Return/Deletion Date as specified in Section C. The Partner shall confirm to 54N when it has returned or destroyed Personal Data pursuant to this Agreement.
- 12. Audit – Article 28(3)(h) UK GDPR**
- 12.1 The Partner will permit 54N and its third-party representatives to audit the Partner's compliance with its obligations under this Agreement, on at least fourteen days' notice, during the term of this Agreement. The Partner will give 54N and its Third party representatives all necessary assistance to conduct such audits. The assistance may include, but is not limited to:
- 12.1.1 physical access to, remote electronic access to, and copies of its records and any other information held at the Partner's premises (but not for the avoidance of doubt at any Sub-processor's premises) or on systems storing Personal Data relating to this Agreement;
 - 12.1.2 access to and meetings with any of the Partner's personnel reasonably necessary to provide all explanations and perform the audit effectively; and
 - 12.1.3 inspection of all records and the infrastructure, electronic data or systems, facilities, equipment or application software used to store, process or transport Personal Data in relation to this Agreement.
- 12.2 54N shall not be required to provide notice of such an audit if 54N reasonably believes that a personal data breach has occurred or is occurring, or the Partner is in breach of any of its obligations under this Agreement or the Data Protection Legislation.
- 12.3 At least once a year, the Partner will conduct site audits of its Personal Data processing practices and the information technology and information security controls for all facilities and systems used in complying with its obligations under this Agreement, including, but not limited to, obtaining a network-level vulnerability assessment performed by a recognised third-party audit firm based on recognised industry best practices.
- 12.4 On 54N's written request, the Partner shall make all of the relevant audit reports available to 54N for review and 54N will treat such audit reports as confidential.
- 12.5 The Partner shall promptly address any exceptions noted in the audit reports with the development and implementation of a corrective action plan by the Partner's management.
- 12.6 The ongoing effectiveness of this Agreement will be assessed through the regular Contract Management meetings, to be held with the regularity specified in Section C.
- 13. Termination of Data Sharing**
- 13.1 This Agreement shall continue in force until terminated in accordance with this clause or by the mutual agreement of the parties following an annual review.

- 13.2 Without affecting any other right or remedy available to it, 54N may, on giving of 30 days' notice, notify the Partner that it wishes to terminate this Agreement. In the event of termination, the Partner will delete or return all Personal Data from its systems and securely shred and destroy any Personal Data held in printed format unless required by the Applicable Laws to store the Personal Data. If any Applicable Law requires the Partner to retain any documents or materials which the Partner would otherwise be required to return or destroy, the Partner will notify 54N in writing of that retention requirement, giving details of the documents or materials that it must retain, the legal basis for retention, and establishing a specific timeline for destruction once the retention requirement ends, unless the Partner is prohibited from so notifying 54N under any Applicable Laws. The Partner will certify in writing that it has destroyed the Personal Data within seven days after it completes the destruction.
- 13.3 Without affecting any other right or remedy available to it 54N may terminate this Agreement with immediate effect by giving written notice to the Partner if the Partner:
- 13.3.1 commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 (fourteen) days after being notified in writing to do so;
 - 13.3.2 repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with the Partner's intention or ability to give effect to the terms of the Agreement;
 - 13.3.3 suspends, or threatens to suspend, payments of its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
 - 13.3.4 suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - 13.3.5 changes control (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 13.4 Termination of the Existing Agreement shall result in automatic termination of this Agreement and the arrangements for data return or secure deletion/destruction will apply in that event.
14. **Records**
- 14.1 The Partner shall maintain complete, up-to-date and accurate records and information to demonstrate its compliance with the terms of this Agreement, including but not limited to, the access, control and security of the Personal Data, approved Sub-processors and other third parties with which the Personal Data is shared, the processing purposes, categories of processing, any transfers of Personal Data to a third country and related safeguards and a general description of the technical and organisational security measures implemented to protect the Personal Data.
- 14.2 The Partner shall ensure that its records are sufficient to enable 54N to verify the Partner's compliance with its obligations under this Agreement and the Partner shall provide 54N with copies of its records on request.

15. **Warranties**

15.1 The Partner warrants and represents that:

- 15.1.1 its employees, Sub-processors, agents and any other person or persons accessing the Personal Data on its behalf have received the required training on the Data Protection Legislation;
- 15.1.2 anyone operating on its behalf will process the Personal Data in compliance with the Data Protection Legislation and other laws, enactments, regulations, orders, standards and other similar instruments;
- 15.1.3 it has no reason to believe that the Data Protection Legislation prevents it from providing any of the Existing Agreement contracted services; and
- 15.1.4 considering the current technology environment and implementation costs, it will take appropriate technical and organisational measures to prevent the unauthorised or unlawful processing of Personal Data and the accidental loss or destruction of, or damage to, Personal Data, and ensure an appropriate level of security.

16. **Indemnity**

- 16.1 The Partner agrees to indemnify 54N and to keep 54N indemnified and defend at its own expense against all costs, claims, damages or expenses including legal fees incurred by 54N due to any failure by the Partner or its employees, authorised Sub-processors, third parties or agents to comply with any of its obligations under this Agreement or the Data Protection Legislation. 54N shall use reasonable endeavours to mitigate its costs, claims, damages or expenses as aforesaid.

17. **Assignment and Other Dealings**

- 17.1 The Partner shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of 54N.

18. **Counterparts**

- 18.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

19. **Limitation of Liability**

- 19.1 The Partner shall not be liable for costs, claims, damages or expenses as aforesaid to the extent that the same were not suffered or incurred as a consequence of the failure by the Partner or its employees, authorised Sub-processors, third parties or agents to comply with any of its obligations under this Agreement or the Data Protection Legislation. The parties further agree that the Partner's maximum liability under the terms of clause 16 shall not exceed the Liability Cap indicated in Section C.

- 19.2 Any limitation or exclusion of the Partner's liability under the Existing Agreement shall not apply in relation to compliance with this Agreement and the Data Protection Legislation.
20. **Third Party Rights**
- 20.1 This Agreement does not give rise to any rights under the Contracts (Rights of Third parties) Act 1999 to enforce any term of this Agreement.
21. **Variation**
- 21.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
22. **Waiver**
- 22.1 No failure or delay by a party to exercise any right or remedy provided under this Agreement 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.
23. **Severance**
- 23.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Agreement is deemed deleted under this clause the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
24. **Changes to the Data Protection Legislation**
- 24.1 If during the term of this Agreement the Data Protection Legislation change in a way that the Agreement is no longer adequate for the purpose of governing lawful data processing exercises, 54N will review the Agreement in light of the changes.
25. **No Partnership or Agency**
- 25.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
26. **Entire Agreement**
- 26.1 This Agreement constitutes the entire agreement between the parties in relation to its subject matter only and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

26.2 Each party agrees that in entering into this Agreement, it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

26.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

27. **Further Assurance**

27.1 Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

28. **Force Majeure**

28.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for four weeks, the party not affected may terminate its involvement in this Agreement by giving fourteen days' written notice to the affected party.

29. **Rights and Remedies**

29.1 The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

30. **Notices**

30.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:

30.1.1 delivered by hand or by pre-paid first-class post or other next business day delivery service; or

30.1.2 sent by email

to the contact details set out in Sections A and B.

30.2 Any notice or communication shall be deemed to have been received:

30.2.1 if delivered by hand, on signature of a delivery receipt;

30.2.2 if sent by pre-paid first-class post or other next business day delivery service, at 9.00 am on the second Business Day after posting; and

30.2.3 if sent by email, at the time of transmission.

30.3 This clause 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.

31. **Governing Law**

31.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

32. **Jurisdiction**

32.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

33. **Agreement**

33.1 In consideration of the mutual obligations of both parties under the Existing Agreement, we undertake to implement and adhere to this Agreement and to ensure that our organisation's procedures are consistent with this Agreement.

Schedule 20 (Processing Data)



Data Processing Agreement

Karbon Homes Limited is a charitable Community Benefit Society registered with the Financial Conduct Authority in England and Wales (number RS007529) and its registered office is Number Five, Gosforth Park Avenue, Gosforth Business Park, Newcastle upon Tyne, NE12 8EG (**Karbon**). Karbon is a not-for-profit housing association.

Under the data protection legislation, Karbon is required to put in place an agreement between Karbon and any organisation processing personal data on its behalf.

This AGREEMENT sets out the arrangements to govern the processing of personal data by the company detailed in Section A (the **Partner**) on behalf of Karbon.

Karbon and the Partner are parties to one or more existing agreements (collectively referred to as the **Existing Agreement**). The parties wish to enter into this Agreement to supplement and update the Existing Agreement for the purpose of data protection legislation compliance.

SECTION A – PARTNER DETAILS

Full legal name:	Furniture Resource Centre Limited
ICO Registration number (if applicable):	https://ico.org.uk/esdwebpages/search
Contract Manager:	[Redacted-commercially sensitive], Customer Account Manager, [Redacted-commercially sensitive]
Project Data Protection lead:	[Redacted-commercially sensitive], Customer Account Manager, [Redacted-commercially sensitive],
Partner Data Protection lead:	[Redacted-commercially sensitive], Customer Account Manager, [Redacted-commercially sensitive],
Postal address for Notices:	Furniture Resource Centre Limited 1 Cartwrights Farm Road, Speke, Liverpool, L24 1UY
Email address for Notices:	karbon@frcgroup.co.uk

SECTION B – KARBON DETAILS

Contract Manager:	Paul Aitkin
Project Data Protection Lead:	Paul Aitkin, Group Commercial Manager • Business Development 07736978701
Karbon Data Protection Lead:	Jill Johnson, Senior Data Protection Business Partner, 0191 2238448.
Postal address for Notices:	Karbon Homes Limited, Number Five, Gosforth Park Avenue, Gosforth Business Park, Newcastle upon Tyne, NE12 8EG.
Email address for Notices:	data.protection@karbonhomes.co.uk

SECTION C – AGREEMENT PARTICULARS

Effective date of this Agreement:	02/01/2026
Existing Contract/SLA/Agreements in place	Existing contract in place.
Purposes of Processing:	<p>To supply Karbon (Enterprise Durham Partnership ('EDP')/Karbon Homes trading as Home Comforts Limited) and its Customers with a convenient route to furniture and appliance rental. Including delivery and collection and installation.</p> <p>This Contract will be available to Customers of Karbon, its' current and any future subsidiaries and current and any future members of the Karbon Solutions Limited Cost Sharing Group. Membership of this Group currently comprises; Castles and Coasts Housing Association, Eden Housing Association, Mitre Housing Association, Keelman Homes, TCUK and Changing Lives.</p>
Personal Data to be processed by the Partner, including in particular: <ol style="list-style-type: none"> 1) the subject matter of the personal data; 2) the purpose and nature of the processing; 3) the duration of the processing; 4) the type of personal data that will be processed; and 5) the categories of data subjects. 	<p><u>Current/Former/Prospective Tenant/Leaseholder/Occupant:</u> Name Address Phone Number Email address Availability</p> <p><u>Authorised person/NOK/POA:</u> Name Address Phone Number Email address Availability</p> <p><u>Current/Former/Prospective Staff/Support Worker:</u> Name Job Title Phone Number Email address Location Availability</p>
Special category Personal Data to be processed:	<p>If any of the following Special Categories of personal data are to be included you must seek further advice from the Data Protection Business Partner:</p> <p>UCB/ VIP/Red flag list Medical information Disability status Vulnerabilities</p>

Confidential Personal Data to be processed:	None
Data transfer method:	'Encrypted email'
Contract management meetings:	Monthly.
Data retention review period:	6 monthly – how often they will look at what we have given them and then either retain or delete it
Data return/deletion date:	6 years from the Effective Date OR When the Personal Data is no longer necessary for the purposes of the Agreement and no lawful basis for processing remains.

SECTION D – ACCEPTANCE

In consideration of the mutual obligations of both parties under the Existing Agreement, Karbon Homes signifies its agreement to Sections A, B, C, D and E of this Agreement by signing below and agrees to be bound by it:

Authorised signature:	
Print name:	Paul Aitkin
Date:	

In consideration of the mutual obligations of both parties under the Existing Agreement, the Partner signifies its agreement to Sections A, B, C, D and E of this Agreement by signing below and agrees to be bound by it:

Authorised signature:	
Print name:	
Date:	

SECTION E – TERMS AND CONDITIONS OF THE AGREEMENT

1. Definitions and Interpretation

1.1 The following definitions and rules of interpretation apply in this Agreement:

Agreement: means this Data Processing Agreement.

Business Day: means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Data Protection Legislation: means all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR, the Data Protection Act 2018 (DPA 2018), the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from

time to time which apply to a party relating to the use of personal data (including without limitation, the privacy of electronic communications).

Personal Data: means any information relating to an identified or identifiable living individual that is processed by the Partner on behalf of Karbon for the Purposes of Processing.

Special Category Personal Data: shall have the meaning as in Article 9 of the UK GDPR.

Subject Access Request (SAR): means a request by a data subject to exercise their right for access to and copies of their Personal Data under Article 15 of the UK GDPR.

Sub-processor: means a natural or legal person engaged by the Partner when acting as a processor to carry out one or more processing activity of the Personal Data.

Third party: means any person other than the data subject, the controller, or the processor as defined within this Agreement.

UK GDPR: has the meaning given to it in section 3(1) (as supplemented by section 205(4)) of the DPA 2018.

Controller, processor, data subject, personal data breach and processing have the meanings as defined in the Data Protection Legislation.

- 1.2 Clause headings shall not affect the interpretation of this Agreement. References to clauses are to the clauses of this Agreement.
- 1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.5 Any words following the terms including, include, in particular or for example or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.6 A reference to writing or written includes email.
- 1.7 Subject to clause 19.2, in the case of conflict or ambiguity between the terms of this Agreement and the Existing Agreement, this Agreement shall take precedence in connection with the conflicting subject matter only.
- 1.8 This Agreement shall take effect from the date specified in Section C and shall be reviewed no less than annually.

2. Lawful processing of Personal Data

- 2.1 The parties agree and acknowledge that, for the purposes of this Agreement and the Data Protection Legislation, Karbon is the controller and the Partner is the processor in relation to the Personal Data. Karbon retains control of the Personal Data and remains responsible for its compliance obligations under the applicable Data Protection Legislation, including but not limited to providing any required notices and obtaining any required consents, and for the written processing instructions it gives to the Partner.

- 2.2 The Personal Data has been fairly and lawfully obtained for Karbon's specified and lawful purposes.
- 2.3 The Personal Data shared under this Agreement is and will remain the property of Karbon at all times.
- 2.4 Karbon will ensure the Personal Data is accurate in accordance with its data verification procedures.
- 2.5 Karbon confirms it has all necessary lawful bases, privacy notices, and valid consents (where applicable) in place to process the Personal Data and to allow lawful transfer of that data for the Purposes of Processing to the Partner.
- 2.6 Section C of this Agreement describes the subject matter, duration, nature and purpose of the processing and the Personal Data categories and data subject types in respect of which the Partner may process the Personal Data to fulfil the terms of this Agreement and the Existing Agreement.

3. **Partner's obligations – Article 28(3)(a) UK GDPR**

- 3.1 The Partner will process the Personal Data shared pursuant to this Agreement to the extent, and in such a manner, as is necessary for the Purposes of Processing stated in Section C above and in accordance with Karbon's written instructions, unless the Partner is required to process the Personal Data by any laws applicable to the Partner (**Applicable Laws**). Where the Partner is relying on Applicable Laws as the basis for the processing of Personal Data, the Partner shall promptly notify Karbon of this before performing the processing required by the Applicable Laws and give Karbon an opportunity to object or challenge the requirement, unless those Applicable Laws prohibit the Partner from so notifying Karbon. The Partner will not process the Personal Data for any other purpose or in a way that does not comply with this Agreement or the Data Protection Legislation. The Partner must promptly notify Karbon if, in its opinion, Karbon's instructions do not comply with the Data Protection Legislation (Article 28(3)(h) UK GDPR).
- 3.2 The Partner must comply promptly with any written instructions from Karbon requiring the Partner to amend, transfer, delete or otherwise process the Personal Data, or to stop, mitigate or remedy any unauthorised processing.
- 3.3 The Partner shall assist Karbon, with meeting Karbon's compliance obligations under the Data Protection Legislation, taking into account the nature of the Partner's processing and the information available to the Partner, including in relation to data subject rights, security, breach notifications, data protection impact assessments and reporting to and consulting with the Commissioner, supervisory authorities or regulators (Article 28(3)(f) UK GDPR).
- 3.4 The Partner must promptly notify Karbon of any changes to the Data Protection Legislation that may reasonably be interpreted as adversely affecting the Partner's performance of this Agreement or the Existing Agreement.

4. **Cross-border transfers of Personal Data – Article 28(3)(a) UK GDPR**

- 4.1 The Partner shall not transfer or otherwise process any Personal Data outside of the UK without obtaining Karbon's prior written consent. Where such consent is granted, the Partner may only process, or permit the processing, of the Personal Data outside the UK under the following conditions:

- 4.1.1 the Partner is processing the Personal Data in a territory which is subject to adequacy regulations under the Data Protection Legislation and that the territory provides adequate protection for the privacy rights of individuals; or
 - 4.1.2 the Partner participates in a valid cross-border transfer mechanism under the Data Protection Legislation, so that the Partner (and, where appropriate, Karbon) can ensure that appropriate safeguards are in place to ensure an adequate level of protection with respect to the privacy rights of individuals as required by Article 46 of the UK GDPR.
- 4.2 If any Personal Data transfer between Karbon and the Partner requires execution of standard contractual clauses (**SCCs**) and/or an international data transfer agreement/addendum ("**IDTA**") in order to comply with the Data Protection Legislation, the parties will complete all relevant details in, and execute, the SCCs and/or IDTA and take all other actions required to legitimise the transfer.
5. **Need to know - Article 28(3)(b) UK GDPR**
 - 5.1 The Personal Data will be processed by the Partner and its employees in accordance with Karbon's documented instructions only.
 - 5.2 The parties will ensure that access to the Personal Data is limited to those employees who need access to the Personal Data to meet the Partner's obligations under this Agreement and, in the case of any access by any employee, is limited to such parts of the Personal Data as is strictly necessary for performance of that employee's duties.
 - 5.3 The Partner shall ensure that all employees are informed of the confidential nature of the Personal Data; are obliged to keep the Personal Data confidential; have undertaken training on the Data Protection Legislation relating to handling Personal Data and how it applies to their particular duties; and are aware of the Partner's duties and obligations under the Data Protection Legislation and this Agreement. The Partner shall take reasonable steps to ensure the reliability, integrity and trustworthiness of any of the Partner's employees who have access to the Personal Data.
 - 5.4 The Partner will maintain the confidentiality of the Personal Data and will not disclose the Personal Data to third parties unless Karbon or this Agreement specifically authorises the disclosure, or as required by domestic law, court or regulator (including the Commissioner). If a domestic law, court or regulator (including the Commissioner) requires the Partner to process or disclose the Personal Data to a third party, the Partner must first inform Karbon of such legal or regulatory requirement and give Karbon the requirement, unless the domestic law prohibits the giving of such notice.
6. **Security of Personal Data – Article 28(3)(c) UK GDPR**
 - 6.1 The Partner shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by Karbon, to protect against unauthorised or unlawful processing, access, disclosure, copying, modification, storage, reproduction, display or distribution of the Personal Data and against accidental loss, destruction, alteration, disclosure or damage of the Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the Personal Data to be protected.
 - 6.2 Such technical and organisational measures must have regard to the state of technological development and the cost of implementing any measures. Those

measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it.

- 6.3 Karbon's Personal Data and any other material bearing or incorporating any of the Personal Data will be kept separate from all documents and other records of the Partner. The Personal Data will be kept at the usual place of business of the Partner.

7. **Sub-processors – Article 28(3)(d) UK GDPR**

- 7.1 The Partner agrees that it will not share the Personal Data with any third party nor engage any third party as a Sub-processor of the Personal Data without Karbon's prior written consent (which will not be unreasonably withheld or delayed in the event of the sharing of the data or the engagement of the third party (as the case may be) being reasonably required by the Partner for the Purposes of Processing). If Karbon provides prior written consent for the Partner to engage a third party as a Sub-processor of the Personal Data, the Partner shall enter into a written agreement with that third party incorporating terms which are substantially the same as those set out in this Agreement and which terminates automatically on termination of this Agreement for any reason (Article 28(2) UK GDPR). The Partner shall inform Karbon of any intended changes concerning the addition or replacement of a Sub-processor with access to Personal Data and give Karbon the opportunity to object to such changes, unless the Partner is prevented from so notifying Karbon under any Applicable Laws. Any breach of this condition will be considered a material breach of this Agreement for which Karbon reserves the right to terminate this Agreement with immediate effect in accordance with clause 11.

- 7.2 As between Karbon and the Partner, the Partner shall remain fully liable for all acts and omissions of any third party as a Sub-processor with whom Personal Data is shared by the Partner pursuant to this Agreement (Article 28(4) UK GDPR).

8. **Subject Access Requests – Article 28(3)(e) UK GDPR**

- 8.1 Where a data subject submits a SAR to Karbon for access to Personal Data processed under this Agreement, Karbon shall respond to that request in accordance with the Data Protection Legislation.
- 8.2 The Partner agrees to assist Karbon promptly in responding to any SAR from a data subject. As the controller of the Personal Data, Karbon shall take overall responsibility for ensuring that the data subject can gain access to all Personal Data easily.
- 8.3 When a SAR is received that includes Personal Data shared with the Partner (that has not been yet or otherwise destroyed under this Agreement) Karbon's Contracts Manager shall liaise with the Partner's Contracts Manager to arrange inclusion of this data, where necessary.
- 8.4 Where a data subject submits a SAR direct to the processor, i.e. the Partner, the Partner shall notify Karbon within 3 business days. Karbon shall manage the request as controller. The Partner shall provide Karbon with full co-operation and assistance in relation to any request made by a data subject to have access to their Personal Data.

9. Data Subject Rights – Article 28(3)(e) UK GDPR

- 9.1 Data subjects will be fully informed about the Personal Data that is processed about them and of the information that is shared by the parties.
- 9.2 They will be able to gain access to information held about them, and to correct any factual errors that may have been made in line with the Data Protection Legislation. If information is found to be inaccurate, it is the responsibility of the party discovering the inaccuracy to notify the other party.
- 9.3 The Partner will promptly comply with any Karbon request or instruction requiring the Partner to amend, transfer, delete or otherwise process the Personal Data, or to stop, mitigate or remedy any unauthorised processing.

10. Personal Data Breach – Article 28(3)(f) UK GDPR

- 10.1 The Partner will promptly and without undue delay and in any event notify Karbon within 48 hours if any Karbon Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable (Article 33(2) UK GDPR). Where possible, the Partner will restore such Personal Data at its own expense.
- 10.2 The Partner shall notify Karbon immediately and in any event within 48 hours of becoming aware of any accidental, unauthorised or unlawful processing of Karbon's Personal Data.
- 10.3 The Partner shall notify Karbon immediately and in any event within 48 hours of becoming aware of any other confirmed or suspected personal data breach involving Karbon's data.
- 10.4 If a personal data breach occurs or is occurring, or the Partner becomes aware of a breach of any of its obligations under this Agreement or any Data Protection Legislation, the Partner will, at no additional cost to Karbon:
 - 10.4.1 promptly conduct its own audit to determine the cause;
 - 10.4.2 produce a written report that includes detailed plans to remedy any deficiencies identified by the audit;
 - 10.4.3 provide Karbon with a copy of the written audit report; and
 - 10.4.4 remedy any deficiencies identified by the audit.
- 10.5 Where the Partner becomes aware of any Personal Data being lost or destroyed, damaged, corrupted, or unusable and/or of any accidental, unauthorised or unlawful processing of the Personal Data, or, of any other confirmed or suspected personal data breach, the Partner shall, without undue delay, provide Karbon with the following information:
 - 10.5.1 a description of the nature of the confirmed or suspected personal data breach, including the categories and approximate number of both data subjects and Personal Data records concerned;
 - 10.5.2 the likely consequences; and

- 10.5.3 the description of the measures taken, or proposed to be taken to address the confirmed or suspected personal data breach, including measures to mitigate its possible adverse effects.
- 10.6 Immediately following any confirmed or suspected personal data breach, the parties will co-ordinate with each other to investigate the matter. The Partner will reasonably co-operate with Karbon at no additional cost to Karbon, in Karbon's handling of the matter, including but not limited to:
 - 10.6.1 assisting with any investigation;
 - 10.6.2 providing Karbon with physical access to any facilities and operations affected;
 - 10.6.3 facilitating interviews with the Partner's employees, former employees and others involved in the matter including, but not limited to, its officers and directors;
 - 10.6.4 making available all relevant records, logs, files, data reporting and other materials required to comply with all Data Protection Legislation or as otherwise reasonably required by Karbon; and
 - 10.6.5 taking reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from a personal data breach or accidental, unauthorised or unlawful processing of the Personal Data.
- 10.7 The Partner will not inform any third party of any accidental, unauthorised or unlawful processing of all or part of the Personal Data and/or a personal data breach without first obtaining Karbon's written consent, except when required to do so by domestic law.
- 10.8 The Partner agrees that Karbon has the sole right to determine:
 - 10.8.1 whether to provide notice of the accidental, unauthorised or unlawful processing and/or the personal data breach to any data subjects, the Commissioner, supervisory authorities, regulators, law enforcement agencies or others, as required by law or regulation or in Karbon's discretion, including the contents and delivery method of the notice; and
 - 10.8.2 whether to offer any type of remedy to affected data subjects, including the nature and extent of such remedy.
- 10.9 The Partner will cover all reasonable expenses associated with the performance of the obligations under this section 7 unless the matter arose from Karbon's specific written instructions, negligence, wilful default or breach of this Agreement, in which case Karbon will cover all reasonable expenses.
- 10.10 The Partner will also reimburse Karbon for actual reasonable expenses that Karbon incurs when responding to an incident of accidental, unauthorised or unlawful processing and/or a personal data breach to the extent that the Partner caused such, including all costs of notice and any remedy.
- 11. **Data Return and Destruction – Article 28(3)(g) UK GDPR**
 - 11.1 On termination of this Agreement or completion of the Purposes of Processing the Partner shall, at the written request of Karbon, delete or return all Personal Data from

its systems and securely shred and destroy any Personal Data held in printed format in accordance with clause 13.2.

- 11.2 The Partner will certify in writing that it has destroyed the Personal Data within seven days after it completes the destruction.
- 11.3 Personal Data shall not be retained for longer than is necessary for the Purposes of Processing. The Partner must review the need to continue to hold the Personal Data in accordance with the Data Retention Review Period, and must return it or destroy it on the Data Return/Deletion Date as specified in Section C. The Partner shall confirm to Karbon when it has returned or destroyed Personal Data pursuant to this Agreement.
- 12. Audit – Article 28(3)(h) UK GDPR**
- 12.1 The Partner will permit Karbon and its third-party representatives to audit the Partner's compliance with its obligations under this Agreement, on at least fourteen days' notice, during the term of this Agreement. The Partner will give Karbon and its Third party representatives all necessary assistance to conduct such audits. The assistance may include, but is not limited to:
- 12.1.1 physical access to, remote electronic access to, and copies of its records and any other information held at the Partner's premises (but not for the avoidance of doubt at any Sub-processor's premises) or on systems storing Personal Data relating to this Agreement;
 - 12.1.2 access to and meetings with any of the Partner's personnel reasonably necessary to provide all explanations and perform the audit effectively; and
 - 12.1.3 inspection of all records and the infrastructure, electronic data or systems, facilities, equipment or application software used to store, process or transport Personal Data in relation to this Agreement.
- 12.2 Karbon shall not be required to provide notice of such an audit if Karbon reasonably believes that a personal data breach has occurred or is occurring, or the Partner is in breach of any of its obligations under this Agreement or the Data Protection Legislation.
- 12.3 At least once a year, the Partner will conduct site audits of its Personal Data processing practices and the information technology and information security controls for all facilities and systems used in complying with its obligations under this Agreement, including, but not limited to, obtaining a network-level vulnerability assessment performed by a recognised third-party audit firm based on recognised industry best practices.
- 12.4 On Karbon's written request, the Partner shall make all of the relevant audit reports available to Karbon for review and Karbon will treat such audit reports as confidential.
- 12.5 The Partner shall promptly address any exceptions noted in the audit reports with the development and implementation of a corrective action plan by the Partner's management.
- 12.6 The ongoing effectiveness of this Agreement will be assessed through the regular Contract Management meetings, to be held with the regularity specified in Section C.

13. Termination of Data Sharing

- 13.1 This Agreement shall continue in force until terminated in accordance with this clause or by the mutual agreement of the parties following an annual review.
- 13.2 Without affecting any other right or remedy available to it, Karbon may, on giving of 30 days' notice, notify the Partner that it wishes to terminate this Agreement. In the event of termination, the Partner will delete or return all Personal Data from its systems and securely shred and destroy any Personal Data held in printed format unless required by the Applicable Laws to store the Personal Data. If any Applicable Law requires the Partner to retain any documents or materials which the Partner would otherwise be required to return or destroy, the Partner will notify Karbon in writing of that retention requirement, giving details of the documents or materials that it must retain, the legal basis for retention, and establishing a specific timeline for destruction once the retention requirement ends, unless the Partner is prohibited from so notifying Karbon under any Applicable Laws. The Partner will certify in writing that it has destroyed the Personal Data within seven days after it completes the destruction.
- 13.3 Without affecting any other right or remedy available to it Karbon may terminate this Agreement with immediate effect by giving written notice to the Partner if the Partner:
- 13.3.1 commits a material breach of any term of this Agreement which breach is irreparable or (if such breach is remediable) fails to remedy that breach within a period of 14 (fourteen) days after being notified in writing to do so;
 - 13.3.2 repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with the Partner's intention or ability to give effect to the terms of the Agreement;
 - 13.3.3 suspends, or threatens to suspend, payments of its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
 - 13.3.4 suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - 13.3.5 changes control (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 13.4 Termination of the Existing Agreement shall result in automatic termination of this Agreement and the arrangements for data return or secure deletion/destruction will apply in that event.

14. Records

- 14.1 The Partner shall maintain complete, up-to-date and accurate records and information to demonstrate its compliance with the terms of this Agreement, including but not limited to, the access, control and security of the Personal Data, approved Sub-processors and other third parties with which the Personal Data is shared, the processing purposes, categories of processing, any transfers of Personal Data to a third country and related safeguards and a general description of the technical and organisational security measures implemented to protect the Personal Data.

14.2 The Partner shall ensure that its records are sufficient to enable Karbon to verify the Partner's compliance with its obligations under this Agreement and the Partner shall provide Karbon with copies of its records on request.

15. Warranties

15.1 The Partner warrants and represents that:

15.1.1 its employees, Sub-processors, agents and any other person or persons accessing the Personal Data on its behalf have received the required training on the Data Protection Legislation;

15.1.2 anyone operating on its behalf will process the Personal Data in compliance with the Data Protection Legislation and other laws, enactments, regulations, orders, standards and other similar instruments;

15.1.3 it has no reason to believe that the Data Protection Legislation prevents it from providing any of the Existing Agreement contracted services; and

15.1.4 considering the current technology environment and implementation costs, it will take appropriate technical and organisational measures to prevent the unauthorised or unlawful processing of Personal Data and the accidental loss or destruction of, or damage to, Personal Data, and ensure an appropriate level of security.

16. Indemnity

16.1 The Partner agrees to indemnify Karbon and to keep Karbon indemnified and defend at its own expense against all costs, claims, damages or expenses including legal fees incurred by Karbon due to any failure by the Partner or its employees, authorised Sub-processors, third parties or agents to comply with any of its obligations under this Agreement or the Data Protection Legislation. Karbon shall use reasonable endeavours to mitigate its costs, claims, damages or expenses as aforesaid.

17. Assignment and Other Dealings

17.1 The Partner shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of Karbon.

18. Counterparts

18.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

19. Limitation of Liability

19.1 The Partner shall not be liable for costs, claims, damages or expenses as aforesaid to the extent that the same were not suffered or incurred as a consequence of the failure

by the Partner or its employees, authorised Sub-processors, third parties or agents to comply with any of its obligations under this Agreement or the Data Protection Legislation. The parties further agree that the Partner's maximum liability under the terms of clause 16 shall not exceed the Liability Cap indicated in Section C.

- 19.2 Any limitation or exclusion of the Partner's liability under the Existing Agreement shall not apply in relation to compliance with this Agreement and the Data Protection Legislation.

20. **Third Party Rights**

- 20.1 This Agreement does not give rise to any rights under the Contracts (Rights of Third parties) Act 1999 to enforce any term of this Agreement.

21. **Variation**

- 21.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

22. **Waiver**

- 22.1 No failure or delay by a party to exercise any right or remedy provided under this Agreement 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.

23. **Severance**

- 23.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Agreement is deemed deleted under this clause the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

24. **Changes to the Data Protection Legislation**

- 24.1 If during the term of this Agreement the Data Protection Legislation change in a way that the Agreement is no longer adequate for the purpose of governing lawful data processing exercises, Karbon will review the Agreement in light of the changes.

25. **No Partnership or Agency**

- 25.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

26. **Entire Agreement**

- 26.1 This Agreement constitutes the entire agreement between the parties in relation to its subject matter only and supersedes and extinguishes all previous agreements,

promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

26.2 Each party agrees that in entering into this Agreement, it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

26.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

27. **Further Assurance**

27.1 Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

28. **Force Majeure**

28.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for four weeks, the party not affected may terminate its involvement in this Agreement by giving fourteen days' written notice to the affected party.

29. **Rights and Remedies**

29.1 The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

30. **Notices**

30.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:

30.1.1 delivered by hand or by pre-paid first-class post or other next business day delivery service; or

30.1.2 sent by email

to the contact details set out in Sections A and B.

30.2 Any notice or communication shall be deemed to have been received:

30.2.1 if delivered by hand, on signature of a delivery receipt;

30.2.2 if sent by pre-paid first-class post or other next business day delivery service, at 9.00 am on the second Business Day after posting; and

30.2.3 if sent by email, at the time of transmission.

30.3 This clause 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.

31. **Governing Law**

31.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

32. **Jurisdiction**

32.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

33. **Agreement**

33.1 In consideration of the mutual obligations of both parties under the Existing Agreement, we undertake to implement and adhere to this Agreement and to ensure that our organisation's procedures are consistent with this Agreement.

Tender Response Form

Furniture Supply and Services
for Karbon Homes

Tender Reference: 202505-GS107
JULY 2025

[Redacted-commercially sensitive]

FRC Group & Karbon Homes - Order Process Flowchart

[Redacted-commercially sensitive]

FRC Implementation Plan – Karbon Homes Contract

[Redacted-commercially sensitive]

Invitation to Tender

Furniture Supply and
Services for Karbon Homes

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1. Deadline for responding to this document and Contract summary

Item	Details
FTS Reference / Date of publication	03/07/2025
Contract Description	The purpose of this invitation to tender is for Karbon Homes the Authority to appoint an experienced and competent Contractor to deliver furniture supply and services.
Insurance requirements	Public Liability £5m Employers Liability £10m Product Liability £5m Professional Indemnity Insurance £5m
Procurement Method	Open Procedure with single lot requirement as detailed in within this ITT.
Period of contract	This Contract will be for a period of two years with optional 2 x 12-month extensions.
Queries / clarification	All queries must be raised before 17:00 on 15th JULY 2025 through the messaging section within the e-Sourcing portal, MultiQuote.
Submission instructions	<p>Electronically via the e-Sourcing system, MultiQuote. Suppliers must submit one copy of their tender electronically, with any additional documents required or requested. Documents must be compatible with Microsoft Office or Adobe/PDF.</p> <p>Should you require technical support with either portal please email them directly at:</p> <ul style="list-style-type: none"> • Email: support@elcom.com • Phone: 020 3920 8054 <p>Tenders must be submitted using the above portals. Tenders submitted via postal, or email methods will not be accepted.</p>
Date/time for Tender return:	Submission including upload of all documentation must be completed before 12:00 noon on 1st August 2025
Procurement Team member	Pippa Ford – Senior Procurement Specialist
Contract Owner	Paul Aitkin - Group Commercial Manager

2. Introductions

- 2.1. This Procurement is being conducted in accordance with the Procurement Act (Act) using the Open Procedure. This document describes how the Procurement will be conducted, including details of the associated Procurement timetable, participation and award criteria and how to respond to this opportunity. Suppliers are strongly encouraged to read this document before preparing their submission.
- 2.2. This document has been prepared to assist Suppliers in deciding whether to participate in this Procurement. Please read this document carefully, as failure to comply with this document may result in exclusion from the Procurement and/or the rejection of any submission.
- 2.3. This document should be read in conjunction with the Tender Notice and any other Procurement documents which have been made available at this stage of the Procurement.
- 2.4. The Authority reserves the right to issue updated versions of this document to Suppliers as and when the need arises, together with any changes to the Procurement or any other new information.
- 2.5. Please read and ensure compliance with the Procurement conditions to participation contained in Appendix A.
- 2.6. Common terms and expressions shall have the meanings ascribed to them in the glossary in Appendix D.
- 2.7. All references to a 'section' are to a section in the Act unless otherwise stated.
- 2.8. All references to a 'paragraph', 'appendix' or 'annex' are to a paragraph, appendix or annex of this document unless otherwise stated.
- 2.9. All references to dates and times within this document shall be interpreted in accordance with the United Kingdom time zones applicable at the date of the Procurement (i.e. GMT/BST). All submitted prices MUST be submitted in British Pound Sterling (GBP) and MUST exclude VAT.

3. Introduction to the Authority

At Karbon we build, manage and look after affordable homes for people across the North. And then we go further, we give them the strong foundations they need to crack on with life.

Our three strategic aims:

- To provide as many good quality homes as we can
- To deliver excellent service to our customers
- To shape strong, sustainable places for our communities

Our footprint covers the North East of England and Yorkshire, with almost 35,000 homes across diverse communities.

Some customers just need an affordable home, or a way onto the property ladder. Others might need a bit more – financial advice, community services, sheltered accommodation or training that can lead to a new job. Whatever people need to feel more secure, confident and happy with where they're at, we work our heart out to provide it.

By combining a sound business head with a strong social heart and staying true to our values, we hope to build strong foundations for even more people.

To find out more, visit [Karbon Homes: Providing a strong foundation for life](#)

Where we Operate ...



4. Preliminary market engagement

As this is a contract renewal, we are confident with our understanding of our requirements and in our understanding of the market. Therefore, no premarket engagement was undertaken for this Contract.

5. The Procurement process and Contract terms

- 5.1. The Authority invites Suppliers to provide a submission as per this ITT to establish a contract for furniture supply and related services.
- 5.2. The Contract will be for an initial 24-month period, with an option to extend for a further 24-month period subject to satisfactory contract performance and the Contracting Authority still having the need and funding for the Contract. The extension period will be in 12-month cycles. The total contract duration will not exceed 48 months.

The Authority have decided this contract cannot be split into lots. Suppliers can provide a submission providing you have the capability and capacity to deliver all the requirements as detailed in Annex 2 Tender Response document.

- 5.3. This Contract is being offered under The Cabinets Offices' Mid-Tier/ Model Services Terms and Conditions which will govern any resultant Contract.
- 5.4. The total estimated value of the Contract, excluding VAT, is approximately £12.6m over the full Contract period. This is an indicative amount for information only and no guarantee of future Contract value or volumes should be assumed.
- 5.5. This ITT contains the information and instructions the Supplier needs to submit a Tender.

5.6. e-Sourcing Portal

All queries should be raised through the e-procurement portal, MultiQuote available at <https://suppliers.multiquote.com/Page/Login.aspx>

- 5.7. Other than members of The Authority's Procurement team, no employee of the Contracting Authority has the authority to give any information or make any representation (express or implied) about this ITT or any other matter relating to the Contract.
- 5.8. The Authority reserves the right to issue extra documentation at any time during the Tendering process, to clarify any issue or amend any aspect of the ITT. Any extra documentation that the Contracting Authority may issue will form part of the ITT. Also, it will add to and/or supersede any part of the ITT to the extent indicated.
- 5.9. Suppliers must obtain at their own expense all the information that they need for the preparation of their Tender.
- 5.10. Under the contract Suppliers must adhere to all policies referenced within the tender documents. Suppliers are advised to satisfy themselves that they understand all the rules of the Contract before submitting their Tender, where applicable.
- 5.11. The Tender must be received in line with the relevant instructions no later than the time and date indicated in the procurement timetable.

- 5.12. The Authority reserves the right to make no award at all in response to this ITT and/or to cancel the Tender process at any point.
- 5.13. The Authority may ask for further information at any point prior to entry into the Contract with a Supplier to satisfy itself that the supplier continues to qualify. Failure to provide any such information as part of this ITT document may lead to a Supplier being disqualified from further consideration in regard to this procurement exercise.
- 5.14. The Authority reserves the right to disqualify any Supplier if it becomes aware that the Supplier did not fully meet the requirements at the time their Tender was submitted or if the Supplier's circumstances change prior to contract commencement.
- 5.15. The Authority reserves the right to terminate any agreement, should the Successful Supplier's circumstances change, and they no longer fully meet the qualifying requirements, as set out in the Tender.
- 5.16. The Authority reserves the right (but is not obliged) to accept any Tender or part of any Tender submitted pursuant to this Invitation to Tender Document. The Authority will not be bound to accept any Tender and reserves the right at their absolute discretion to accept or not accept any Tender submitted and/or to abandon this procurement at any time.
- 5.17. For the avoidance of doubt, The Authority shall have no liability whatsoever to any Supplier should they elect not to accept any Tender or to abandon this procurement at any time.

6. Procurement timetable

- 6.1. The procurement timetable is set out below. Deadlines for the submission of responses to the Authority are shown in bold. Failure to meet these deadlines will result in a Supplier's submission not being considered unless there are exceptional mitigating circumstances such as a technical failure in connection with the Portal.

Stage/Activity	Indicative Date
UK4 Tender notice - Issue of Invitation to Tender	03/07/25
Clarification period closes ("Tender Clarifications Deadline")	15/07/25 17:00
Target date for responses to clarifications	18/07/25 17:00
Deadline for submission of Tenders ("Tender Submission Deadline")	01/08/25 12:00 noon
Evaluation of Tenders (Inclusive of all stages of the evaluation process)	Mid-August
UK 6 Contract Award notice - Intention to award notification issued to successful and unsuccessful suppliers and commencement of "Standstill" Period.	Early September
UK 7 Contract Details - Confirm Contract award	Mid-September
Estimated service "Commencement Date"	01/10/25

- 6.2. Please note that the Authority reserves the right, in its absolute discretion, to amend the Procurement Timetable or extend any time period in connection with the Procurement. Any changes to the Procurement Timetable will be notified simultaneously to the Suppliers.

7. Key dependencies and contract management structure

7.1. Requirements and Specification

The Authority's requirement for this Procurement project has been written with input from Procurement, Finance, Risk and Governance, Health and Safety and Business Development teams.

7.2. Evaluation Panel

The evaluation panel for this tender will consist of members from the Contracting Authority's Procurement, Business Development, Health and Safety, Compliance and Karbon Customers.

7.3. Declaration of Interests Process

Prior to the start of the Procurement process all Stakeholders are required to complete and have approved a Declaration of Interests form. The management and monitoring of the of these records is the responsibility of the Authority Procurement Manager, and the Head of Legal Services.

7.4. Final Decision and Board/Executive team approval

The Authority will need to obtain formal approval from its Board/Executive team prior to awarding the Agreement. Following this approval, Authority will then be able to begin placing purchase orders with the successful Supplier.

7.5. The contract dispute hierarchy

In the event of a contractual dispute between the Supplier(s) and the Authority, the order of the documents listed below will be used to resolve the situation.

- 1st Annex 1 – Terms and conditions of contract
- 2nd Annex 2 – Tender response document
- 3rd Annex 3 – TOM's Social Value documents
- 4th Annex 4 – Contractors Code of Conduct
- 5th Annex 5 – Data Processing Agreement
- 6th Annex 6 – Commercial Schedule
- 7th Annex 9 - Procurement Specific Questionnaire
- 8th Annex 10 – Furniture Supply & Service Process Flow Charts
- 9th Annex 11 – Karbon Furniture Service Emergency Response

8. How to respond to this opportunity

- 8.1. Tenders must be submitted as set out in this ITT and returned to the Authority via the e-Sourcing Portal no later than the deadline date.
- 8.2. Only one Tender is allowed from each Potential Supplier. If a Potential Supplier submits more than one Tender; the Contracting Authority will evaluate the one with the latest time of submission and disregard the other(s).
- 8.3. Responses to this ITT will be evaluated in line with the selection process and criteria as detailed in Sections 10 award criteria and 11 the assessment process.
- 8.4. Tender submissions should answer all questions and requirements as accurately as possible in accordance with the guidance provided in this ITT.
- 8.5. Your tender response should describe clearly and concisely how you would fulfil the requirements laid out in this ITT, paying close attention to the following points:
 - 8.5.1. Responses must not exceed the pre-set margins and space allocation and word count, if applicable.
 - 8.5.2. If additional attachments are NOT requested, please do not attach as they will not be considered as part of your tender response and will not count towards the score awarded for any element.
 - 8.5.3. Where a question requires the upload of a document then only the requested supporting document should be submitted as part of your response and all attachments should bear your company name. Documents submitted in any other format will not be accepted.
- 8.6. For each quality assessment question, please ensure that no more material is provided than is required to answer the question. In particular, please avoid the following:
 - 8.6.1. Additional information outside the scope of the question.
 - 8.6.2. Cross-referencing your answers from one response to another, even where there is commonality.
 - 8.6.3. Details about your organisation that have not been requested and do not add clarity to the response, including publicity material of any kind, including, but not limited to, brochures or web references.
 - 8.6.4. Use of all acronyms or abbreviations, if used, these must be fully explained; or
 - 8.6.5. Exceeding the maximum word count allowed for the responses.
- 8.7. Only information entered into the appropriate answer boxes or in additional documents supplied as requests will be taken into consideration for the purposes of evaluating the tender. Tenders should be completed using standard software and documents should be returned in the same file format in which they were issued.
- 8.8. The Authority is unable to use any previous knowledge of your organisation to influence decisions. Marks awarded for qualitative submissions will be based upon the level of detail and relevance to the question. Unless the supplier has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with The Authority, or a prior concession contract, which led to early termination of that prior contract, damages, or other comparable

sanctions E.g., contract terminated due to supplier default, for example material non-fulfilment of goods and/or services.

- 8.9. Where possible, Suppliers should utilise file compression software when submitting their Tender.
- 8.10. Failure to furnish the required information, make a satisfactory response to any question, or supply documentation referred to in responses, within the specified timescale, may mean that a tender submission will not be successful.
- 8.11. Suppliers shall not change the format of the tender document and must complete all sections of the Tender Response where appropriate to the stage of the tender, without modifying the forms, questions, or format of the questions. Non-compliance with this requirement may lead to rejection of the Supplier from the tender process.
- 8.12. The Tender (including price) should remain valid for a minimum period of 90 days from the submission deadline date.
- 8.13. All submitted prices MUST be submitted in British Pound Sterling (GBP) and MUST exclude VAT.
- 8.14. All prices are to be set-fixed for a period of 12 months.
- 8.15. Beyond the period stipulated in 8.14 above, the Successful Supplier will have the ability to propose to vary the price, by giving the Contracting Authority not less than 3 months written notice in advance of such variation effective at the end of the initial period providing that:
 - 8.15.1. Such variation shall not exceed the Consumer Price Index (CPI) or Retail Price Index (RPI) for all items, whichever is the lower, at the time of the increase and should not preclude the possibility of any reductions in charges; and
 - 8.15.2. Any notice of variation under this clause will be limited to one request in any twelve (12) month period.
 - 8.15.3. Additional information in reference to CPI / RPI guidance is provided at: <https://www.ons.gov.uk/economy/inflationandpriceindices>
 - 8.15.4. In the event that any proposed price variations exceed CPI / RPI, the Contracting Authority reserves the right to terminate the contract.
- 8.16. In exceptional circumstances where the pricing provision may not be applicable under this contract, the Successful Supplier must, within reasonable time, seek approval from The Authority prior to completing services and issuing an invoice for payment. If approval is not sought prior, The Authority reserve the right to reject the invoice for payment.
- 8.17. If Suppliers believe that they are unable to submit a Tender through the electronic system, or, if Suppliers need help or further information to be able to use the e-Tendering portal, they must contact a member of The Authority's Procurement Team no later than six calendar days before the submission date for the Tender. This is to allow for any technical queries to be investigated and resolved.

9. Requests for clarification

- 9.1. Any requests for clarification relating to the Procurement must be submitted via the Portal, no later than the deadline in the Procurement Timetable at Section 6 above to allow the Authority sufficient time to respond prior to the closing date for receipt of submissions. The Authority will endeavour to respond to requests for clarification submitted in accordance with these requirements as soon as possible.
- 9.2. The Authority reserves the right not to answer any requests for clarification submitted after the deadline set out in the Procurement Timetable above or submitted via any means other than the Portal.
- 9.3. If Suppliers identify a technical issue with the Portal, they should contact the portal helpdesk without delay via:

 Phone: 020 3920 8054
 Email: support@elcom.com
- 9.4. Where the Authority considers any requests for clarification to be relevant to the proper functioning of the Procurement, it will transmit to all other Suppliers (without reference to the identity of the Supplier which submitted the clarification question) the clarification question raised and the Authority's response, except for those deemed confidential as provided below.
- 9.5. If a Supplier considers that its request for clarification should be treated as confidential and not disclosed to other Suppliers, it must communicate this and the reason why to the Authority at the time of the submission of that clarification request. The Authority will advise the Supplier in advance of providing the clarification response if it considers that all or any part of the request for clarification cannot be treated as confidential and will provide an opportunity for the Supplier to withdraw such aspects of the request for clarification.
- 9.6. In such circumstances, the Supplier may either submit an amended request for the clarification to be treated as confidential, which would be considered by the Authority in the same manner as the original request or raise a new request to be treated as a non-confidential request for clarification.
- 9.7. It is the responsibility of each Supplier to monitor all clarifications issued by the Authority. The Authority accepts no liability for any Supplier's failure to keep abreast of clarifications issued.

10. Award criteria

10.1. The Authority will award this tender based on the criteria below:

Criteria	Weighting (%)
Quality	50%
Commercial Schedule	40%
Social Value	10%

10.2. Quality will be assessed as follows:

Criteria	Weighting
Service Implementation	2%
Service Delivery	18%
Product & Service Quality	15%
Customer Satisfaction	5%
Customer Communication	5%
Environmental Sustainability	5%
Total	50%

10.3. The Commercial Schedule will be assessed as below:

Criteria	Weighting
Contract cost	40%
Total	40%

10.4. The Social Value Schedule will be assessed as below:

Criteria	Weighting
Submissions <u>must</u> commit to delivering a minimum of 1% of the equivalent SV to that of their own total commercial value, and/or submit a method statement.	Pass/Fail
Method statement and calculator assessment	10%
Total	10%

11. The assessment process

11.1. The Authority will check each Tender submission initially for compliance with all requirements of the ITT. The Tender evaluation will be based upon three stages.

- 11.1.1. Stage 1; Tender Response Form, Stage 1 will be evaluated on a pass/fail basis and in accordance with this ITT. In instances where a submission is rejected at this point, the Supplier will automatically be disqualified and will not progress to the next stage
- 11.1.2. Stage 2; Tender Response Form, Stage 2. Submissions which have met the minimum standards will be shortlisted to the ITT stage and evaluated in accordance with the evaluation assessment process as described below and as set out in Section 10 Award Criteria.
- 11.1.3. Stage 3; PSQ Part 1 & 2 & 3, the top three ranked suppliers' PSQ will be downloaded and evaluated on a pass/fail basis and in accordance with this ITT. In instances where a PSQ submission is rejected at this point, the Supplier will automatically be disqualified and will not progress to the final award.

The Authority reserves the right to seek clarification from any or all the Suppliers during the evaluation period. This may be in writing or by means of a clarification meeting. This is to help the Contracting Authority consider the Tenders.

The Authority reserves the right to enter into detailed negotiations to suitably tailor the submissions put forward by any or all of the suppliers before entering into the Contract. At all times the award criteria will be that of best value and therefore the Authority does not commit itself to accepting the lowest, or any, bid.

11.2. PSQ evaluation

It is mandatory for a Supplier to complete all of the following for all relevant procurements:

- All questions unless the question has been marked as Not Used.
- The formal declarations relating to the information submitted must be signed by an authorised person.

Responses to the PSQ questions will be evaluated in accordance with the Scoring Method as detailed below.

Part 1 Scoring Method	
Question 1 to 5 Preliminary questions	
Question 6 core supplier information	
Information Only	<ul style="list-style-type: none"> • The data provided is for information only and will not be scored / assessed but if the information requested is not provided the tender response will be judged to be non-compliant unless there is an acceptable reason for its omission.
Pass	<ul style="list-style-type: none"> • The information / evidence has been assessed and judged to be acceptable.

Fail	<ul style="list-style-type: none"> • No information / evidence has been provided. • The standard of the information / evidence provided is unacceptable. • The information / evidence has been assessed and does not comply with the minimum acceptable standard.
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Part 2A Scoring Method	
Questions 7 to 10 Associated persons	
Pass	<ul style="list-style-type: none"> • Where applicable a full list of Associated persons has been provided.
Fail	<ul style="list-style-type: none"> • No information / evidence has been provided. • The standard of the information / evidence provided is unacceptable.

Part 2B Scoring Method	
Questions 11 and 12 Intended sub-contractors	
Pass	<ul style="list-style-type: none"> • Where applicable a full list of intended Sub-contractors has been provided.
Fail	<ul style="list-style-type: none"> • No information / evidence has been provided. • The standard of the information / evidence provided is unacceptable.

Part 3A Scoring Method	
Question 13 Financial Capacity Conditions of Participation	
Pass	<ul style="list-style-type: none"> • The information has been provided, and the Supplier has a financial turnover of more than 60% of the value of the contract or total lots/s bidding for. • Should the information fail to meet this requirement, the information / evidence has been assessed, and approved by a member of The Authority's Executive team.
Fail	<ul style="list-style-type: none"> • No information / evidence has been provided. • The standard of the information / evidence provided is unacceptable. • The information has been provided, and the Supplier has a financial turnover of less than 60% of the value of the contract or Lot/s.
Question 14 Guarantor	
Any additional guarantor would be subject to the same check under this PSQ	
Question 15 Levels of insurance cover	

Pass	<p>There is a legal requirement for certain employers to hold Employer's (Compulsory) Liability Insurance of £5 million as a minimum. See the Health and Safety Executive website for more information: http://www.hse.gov.uk/pubns/hse39.pdf.</p> <ul style="list-style-type: none"> • The information has been provided, and the Supplier Insurances held, or a commitment to obtaining the minimum insurance cover mentioned. • The information / evidence has been assessed, and approval has been sort and approved by a member of Karbon's Executive team.
Fail	<ul style="list-style-type: none"> • No information / evidence has been provided. • The standard of the information / evidence provided is unacceptable.
Question 16 Legal Capacity Conditions of Participation Not Used	
Question 17 UK General Data Protection Regulation	
Question 18 Technical ability	
Question 19 Experience of sub-contractor management	
Question 20 Organisational standards Not Used	
Question 21 Health and safety	
Pass	<ul style="list-style-type: none"> • The information / evidence has been assessed and judged to be acceptable. • The information / evidence has been assessed, and approval has been sort and approved by a member of Karbon's Executive team.
Fail	<ul style="list-style-type: none"> • No information / evidence has been provided. • The standard of the information / evidence provided is unacceptable.

Part 3B Scoring Method	
Question 22 to 25 Payment in Contracts NOT USED question for contracts above £5m per annum	
<p>The key issue to be assessed via conditions of participation is whether a supplier that intends to use a supply chain to deliver the contract has effective payment systems in place to ensure the reliability of that supply chain. 5. Under this measure, a bidding supplier should be deselected if it fails to meet the conditions of participation. This includes taking into account the self-declarations, an assessment of its systems, and recent payment performance. A bidding supplier should also be deselected if it is unable to verify its self-declarations with the required evidence.</p> <p>Question 22 is for information only and will not be scored. If the answer to this question is 'No', the supplier is not required to answer the remaining questions.</p> <p>Questions 23 to 30 Will be assessed on a pass/fail basis based on self-declarations by the supplier.</p> <p>Question 24 When applicable the supplier has paid public sector contracts at least 95% of invoices within 30 days, which is considered an appropriate measure of overall payment promptness.</p> <p>Question 25 confirmation at the potential supplier has paid their supply chain can pay at least 95% (at least 90% if an action plan is provided) of invoices within 60 days, which is considered an appropriate measure of overall payment promptness.</p>	

Questions 26 to 29 Carbon Reduction Plan NOT USED question for contracts above £5m per annum

Potential suppliers are asked to confirm their commitment towards achieving Net Zero by 2050 by providing a Carbon Reduction Plan (PPN 06/21), using the Carbon Reduction questions to ensure the necessary environmental management measures are in place.

Question 30 Modern Slavery Act 2015

Commercial organisations in any sector that supply goods or services, carry on a business or part of a business in the UK, and have an annual turnover of at least £36 million (“relevant commercial organisations”) are required to prepare a slavery and human trafficking statement by Section 54 of the Modern Slavery Act 2015[footnote 5]. Which sets out various requirements relating to the content, format and publication of the statement. The standard selection questions and SQ template ask potential suppliers who are subject to this requirement to confirm that they have published a statement and to confirm that it meets the requirements of Section 54.

Failure to publish a statement or failure to comply with the requirements of Section 54 is likely to results in a supplier be excluded, unless it can provide sufficient self-cleaning evidence. Such evidence could include a statement or documents providing an explanation as to why not and/or assurances that it will be included before contract award

Questions 23 to 30

Pass	<ul style="list-style-type: none"> • The information / evidence has been assessed and judged to be acceptable. • The information / evidence has been assessed, and approval has been sort and approved by a member of Karbon’s Executive team.
Fail	<ul style="list-style-type: none"> • No information / evidence has been provided. • The standard of the information / evidence provided is unacceptable.

Additional Questions Scoring Method

Pass	<ul style="list-style-type: none"> • The information / evidence has been assessed and judged to be acceptable.
Fail	<ul style="list-style-type: none"> • No information / evidence has been provided. • The standard of the information / evidence provided is unacceptable. • The information / evidence has been assessed and does not comply with the minimum acceptable standard.

11.3. Quality Evaluation

Each scored question will be scored using the 0-10 scale shown within the table below and then applied to the weighting for that question. An example is given below:

Question 1a has a quality weighting of 4, with a maximum score of 10 and if the score received was 6, the weighted score will be calculated as follows:

(Marks awarded ÷ marks available) x weighting

Therefore: (6 ÷ 10) x 4 = 2.40

- 11.4. All quality questions / method of working statement questions will be given a score ranging from zero to ten. The following scoring guidelines will be used in the evaluation of Tenders:

Score	Scoring Guidelines
0	Nil or wholly inadequate response. Response fundamentally fails to demonstrate an ability to meet the requirement.
2	Response provided but is only partially relevant and poor. Some elements of the requirement are addressed but the response contains significant lack of detail/explanation to demonstrate how the requirement will be fulfilled.
4	Response is mostly relevant and acceptable. While the response addresses a basic understanding of the requirement, there is a lack of detail on how the requirement will be fulfilled.
6	Response is relevant and good overall. The response is sufficiently detailed to demonstrate a good understanding of the requirements and provides details on how these will be fulfilled in most circumstances.
8	Response is completely relevant and very good overall. The response is detailed and demonstrates a very good understanding of the requirement and provides details on how these will be fulfilled.
10	Response is completely relevant and excellent overall. The response is comprehensive, unambiguous and demonstrates a thorough understanding of the requirements and provides details of how these will be met in full.

11.5. Social Value Evaluation

- 11.5.1. The Suppliers Social Value (SV) submission will be evaluated as per the two elements in the award criteria in section 10 Award Criteria.
- 11.5.2. Stage one is pass/fail. Submissions must commit to delivering a minimum of 1% of the equivalent SV to that of their own total commercial value. Submissions that fail to deliver the minimum threshold **and/or** do not submit a method statement will not pass and will not progress to stage two, achieving a score of zero for this section of the award criteria.
- 11.5.3. Stage two is the assessment of the method statement; this will be scored using the 0-10 scale shown within the table below and then applied to the 10% weighting at this point.

11.5.4. The awarded score will be divided by the maximum score available (10) and then multiplied by the weighted criteria to create the total percentage score.

The method statement assessment has a quality weighting of 10%, with a maximum score of 10 and if the score received was 6, the weighted score will be calculated as follows:

(Marks awarded ÷ marks available) x weighting.

Therefore: (6 ÷ 10) x 10 = 6

Score	Scoring Guidelines
10	<p>Outstanding</p> <p>Response is completely relevant and excellent overall. The response is comprehensive, unambiguous and demonstrates a thorough understanding of the requirements and provides details of how these will be met in full.</p> <ul style="list-style-type: none"> • Social value pledged in the calculator is: • Directly related to the contract • Proportionate to the contract value • 1% or greater than the contract value <p>The Method Statement:</p> <p>Provides clear & comprehensive delivery information for all measures pledged. Covers all required elements of the question for each measure pledged against (see question bullet points for the list of required elements)</p> <p>Contains specific targeted activity & where relevant proposes key partners for delivery. Where appropriate links to the skills of the bidder/their sector and/or links to Karbon’s social value/community work</p> <p>Provides a high level of certainty that the bidder will deliver their social value commitments</p>
8	<p>Good – Response is completely relevant and very good overall. The response is detailed and demonstrates a very good understanding of the requirement and provides details on how these will be fulfilled.</p> <p>Social value pledged in the calculator is:</p> <ul style="list-style-type: none"> • Directly related to the contract • Proportionate to the contract value • 1% or greater than the contract value <p>The Method Statement:</p> <ul style="list-style-type: none"> • Provides clear & comprehensive delivery information for all measures pledged • Covers <u>all</u> required elements of the question for <u>each measure</u> pledged against (see question bullet points for the list of required elements)

	<ul style="list-style-type: none"> Provides confidence that the bidder will deliver their social value commitments <p>Response is relevant and good. The response addresses all requirements and is sufficiently detailed to demonstrate a good understanding and provides details on how the requirements will be fulfilled but includes some ambiguity or minor inconsistencies as to how social value offers made will be delivered. The response provides confidence that the bidder will deliver their social value commitments.</p>
6	<p>Satisfactory – Response is relevant and good overall. The response is sufficiently detailed to demonstrate a good understanding of the requirements and provides details on how these will be fulfilled in most circumstances.</p> <p>Social value pledged in the calculator is:</p> <ul style="list-style-type: none"> Directly related to the contract Proportionate to the contract value 1% or greater than the contract value <p>The Method Statement:</p> <ul style="list-style-type: none"> Provides clear delivery information for the majority (but not all) measures pledged Covers the required elements of the question for the majority (but not all) measures pledged against (see question bullet points for the list of required elements) Provides some confidence that the bidder will deliver their social value commitments, however there is a lack of detail and/or minor inconsistencies for some measures pledged.
4	<p>Poor - Response is mostly relevant and acceptable. While the response addresses a basic understanding of the requirement, there is a lack of detail on how the requirement will be fulfilled.</p> <p>Social value pledged in the calculator is:</p> <ul style="list-style-type: none"> Directly related to the contract Proportionate to the contract value 1% or greater than the contract value <p>The Method Statement:</p> <ul style="list-style-type: none"> Provides some delivery information, however it is lacking in detail and clarity making it difficult to understand how the majority of the measures pledged against will be delivered Fails to cover the required elements of the question for the majority of measures pledged against (see question bullet points for the list of required elements) The response provides reservations that the bidder will deliver the social value commitment.
2	<p>Inadequate - Inadequate</p> <p>Response provided but is only partially relevant and poor. Some elements of the requirement are addressed but the response contains</p>

	<p>significant lack of detail/explanation to demonstrate how the requirement will be fulfilled.</p> <p>Social value pledged in the calculator is:</p> <ul style="list-style-type: none"> • Not clear that all social value pledged is directly related to the contract and/or the social value is not proportionate to the contract value <p>The Method Statement:</p> <ul style="list-style-type: none"> • Fails to provide delivery information for the majority of measures pledged & the delivery information provided lacks detail and clarity • Fails to cover the required elements of the question for the majority of measures pledged against (see question bullet points for the list of required elements) • Provides information linked to wider CSR/ESG/Charitable Giving etc rather than delivery information for social value on this contract • Provides significant reservations that the bidder has thought through the social value commitment & will be able to deliver on the commitments made.
0	<p>Nil or wholly inadequate response. Response fundamentally fails to demonstrate an ability to meet the requirement.</p> <p>Social value pledged in the calculator is :</p> <ul style="list-style-type: none"> • Less than 1% of the contract value <p>The Method Statement:</p> <ul style="list-style-type: none"> • No response submitted or the social value is not directly related to the contract.

11.6. Commercial Evaluation

- 11.6.1. To allow Potential Suppliers to provide their costs, a Commercial Schedule is supplied within Annex 6.
- 11.6.2. Further information regarding the Commercial Schedule and instructions as to how it should be priced are provided within the Pricing Instructions contained within Tender response document of the tender pack.
- 11.6.3. Every item within the Commercial Schedule is to be priced, those items not costed will be deemed to be included. If an item is identified as excluded by a Potential Supplier, this may lead to your tender being rejected.
- 11.6.4. To support the stated aims of the Karbon Solutions Cost Sharing Group, under the terms of this Contract, the successful Supplier will not be permitted to sell the same goods or service to Customers of Group members at a lower cost. Please refer to point 1 in Appendix B for a list of the Groups' membership.
- 11.6.5. All costs submitted as part of this tender are to be exclusive of VAT, which will be applied at the correct rate.

- 11.6.6. Where the pricing of a Tender is abnormally low the Contracting Authority reserves the right to reject the Tender as non-compliant and reject it in accordance with the requirements for further investigation under section 19 of the Act.
- 11.6.7. Tender prices will be scored on a comparative basis, the Contracting Authority will give the lowest compliant tender all the available marks. All other Tenders will be compared against that lowest Tender using the formula:
- 11.6.8. $(\text{Lowest Cost} \div \text{Highest Cost}) \times \% \text{ Weighting}$
- 11.6.9. This is further explained within the example below:

If the lowest cost received was £25 and another cost of £45 was received by another Potential Supplier and the total weighing value was 60%, the result would be calculated as follows:

$$(\text{£}25 \div \text{£}45) \times 0.6 = 0.33 \text{ (total 33\%)}$$

Therefore, the lowest Potential Supplier of £25 would score 60% whereas the Bid of £45 would receive a weighting of 33%.

Appendix A: Conditions to Participation

Procedural requirements

1. This document together with all other associated documents provided to Suppliers in connection with this Procurement contain procedural requirements which Suppliers must follow. Failure to comply with or follow any procedural requirement may result in the exclusion of the Supplier from the Procurement at the Authority's sole discretion.

Central Digital Platform

2. Suppliers that wish to participate in this Procurement are responsible for ensuring that the Central Digital Platform contains complete, accurate and up-to-date information about their organisation and any Associated Suppliers which are relevant for the purposes of this Procurement. Suppliers must notify the Authority immediately if it is unable to register on the Central Digital Platform and/or provide accurate and up-to-date information via the Central Digital Platform.

Transparency

3. Suppliers should note that, in accordance with general transparency obligations and procurement law obligations under the Act, the Authority routinely publishes details of its procurement processes and awarded contracts. This includes, but is not limited to, the contract value, the identity of the successful Supplier, compliance with payment obligations and contract performance. Compliance with these obligations may involve the Authority taking steps without consultation with Suppliers. Where required under the Act, a copy of the contract will be published (subject to making any reasonable and proportionate redactions permitted under the Act).
4. Where required, the Authority will disclose on a confidential basis any information it receives from Suppliers during the Procurement to any third party engaged by the Authority for the specific purpose of assessing or assisting the Authority in assessing the Supplier's submission. In providing such information the Supplier consents to such disclosure.

Modifying the Procurement

5. Neither the Tender Notice, this document nor any information given as part of the Procurement shall be regarded as a commitment or representation on the part of the Authority (or any other person) to enter into a contractual agreement.
6. The Authority reserves the right to cancel the Procurement at any point and/or to choose not to award any contract and or lot, as a result of this Procurement. Where lotting has been used any decision by the Authority not to award a lot, does not prevent the Authority from awarding the remaining lots.
7. Suppliers will remain responsible for all costs and expenses incurred by them, their staff, and their advisers or by any third party acting under their instructions in connection with this Procurement. For the avoidance of doubt, the Authority is not liable for any costs or expenditure resulting from any cancellation or amendment of this Procurement.

8. The Authority reserves the right at any time:
 - a. to issue amendments, modifications or additional information to any documentation which forms part of this Procurement, including the conditions to participation contained in this Appendix A
 - b. to require a Supplier to clarify their proposal(s) and/or tender submission in writing and/or provide additional information – failure by a Supplier to respond adequately may result in their tender submission being rejected
 - c. to alter the Procurement Timetable for this Procurement including the right to award different lots at different times where applicable.
 - d. to rewind and re-run any part of the Procurement on the same or alternative basis
 - e. to amend the Procurement as described herein, including the number of stages and the number of Suppliers to be selected at any stage

Confidentiality and publicity

9. Save to the extent made publicly available by the Authority, the information in this document (together with all attachments and any other information communicated to Suppliers during the Procurement) is made available on the condition that it is treated as confidential information by the Supplier and is not disclosed, copied, reproduced, distributed or passed to any other person at any time except in order to comply with legal obligations or for the purpose of enabling a submission to be made to the Authority, provided that such person has given an undertaking prior to the receipt of the relevant information (and for the benefit of the Authority) to keep such information confidential.
10. Suppliers must not take part in any publicity activities with any part of the media about this Procurement without obtaining the express prior written agreement of the Authority. When requesting prior written agreement, Suppliers are required to detail the proposed media coverage including format and content of any publicity.

Non-disclosure agreement Not Used

Freedom of information and environmental information

11. The Authority is not subject to the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR). However, the Authority may choose to abide by this legislation and may disclose information in response to a request made pursuant to the FOIA or the EIR.
12. In respect of any information submitted by a Supplier that it considers to be commercially sensitive, the Supplier should:
 - a. clearly identify which information is considered commercially sensitive and complete the table contained within section 7 of Annex 2 Tender Response
 - b. explains the potential implications of disclosure of such information
 - c. provides an estimate of the period of time for which the Supplier considers that such information will remain commercially sensitive

13. The Authority will endeavour to:

- a. holds confidential all information submitted by a Supplier that it identifies as being commercially sensitive
- b. consults with a Supplier about commercially sensitive information before making a decision on any FOIA requests and EIR requests received

14. Suppliers should note, however, that the final decision on any FOIA request and EIR request rests with the Authority, subject to applicable law. Even where information is identified as commercially sensitive, unless an exemption/exception provided for under the FOIA/EIR is applicable, the Authority will be obliged to disclose that information in response to a request. Accordingly, the Authority cannot guarantee that any information marked 'commercially sensitive' will not be disclosed.

Requirements on sub-contractors and consortium

15. If requested to do so by the Authority, a Supplier will be required to enter into a legal arrangement with other members of a consortium or with any parties which are relied on in order to satisfy the conditions of participation relating to this Procurement (in accordance with section 72 of the Act). Acceptance of this request shall be considered a mandatory requirement and failure to accept the same may result in the Supplier's exclusion from the Procurement.

Parent company guarantee or other securities

16. The Authority reserves the right to require a parent company guarantee or alternative equivalent form of security should the Supplier be successful in this Procurement.

17. Where the Supplier's parent company is incorporated outside the United Kingdom, the Authority will require a legal opinion from an independent firm of lawyers practising in that jurisdiction (at the Supplier's own cost and expense) as to the capacity/authority of the parent company to enter into the parent company guarantee and the enforceability of the terms of the parent company guarantee in the relevant overseas jurisdiction.

18. Notwithstanding the above, the Authority may specify minimum contractual financial security requirements as appropriate having regard to the financial assessment undertaken during this Procurement. Where the Authority specifies any financial security requirements, acceptance of the requirements shall be considered a mandatory condition and failure to accept the same may result in the Supplier's exclusion from the Procurement.

Non-collusion, non-canvassing

19. Any attempt by a Supplier or their advisers to influence the Procurement in any way may result in the exclusion of the Supplier, without prejudice to any other civil or legal remedies available to the Authority and without prejudice to any criminal liability that such conduct by a Supplier may attract.

20. Specifically, Suppliers must not directly or indirectly at any time:

- a. devise or amend the content of their submissions in accordance with any agreement or arrangement with any other person, other than in good faith with a person who is a

proposed partner, subcontractor, consortium member insurance provider or provider of finance

- b. enters into any agreement or arrangement with any other person as to the form or content of any other submission or offer to pay any sum of money or valuable consideration to any person to effect changes to the form or content of any other submission
- c. enters into any agreement or arrangement with any other person that has the effect of prohibiting or excluding that person from submitting a response in this Procurement
- d. canvasses any employees, members or agents of the Authority in relation to this Procurement
- e. attempts to obtain information from any of the employees, members or agents of the Authority or their advisors concerning another Supplier or submission
- f. carries out any other co-operation or collusion with another Supplier or any other person which the Authority considers capable of undermining fair competition

21. Suppliers are required to complete and return Annex 2 Tender response (section 4 Certificate of non-collusion and non-canvassing) noting that the Authority will be entitled to rely on the information provided in the certificate.

Conflicts of interest

22. Suppliers are responsible for ensuring that no actual, potential or perceived conflicts of interest (within the meaning of the Act) exist between themselves and the Authority or its advisers. Suppliers must notify the Authority immediately of any actual, potential or perceived conflict of interest.

23. In the event of any actual, potential or perceived conflict of interest, the Authority shall in its absolute discretion decide on the appropriate course of action. The Authority reserves the right to:

- a. exclude any Supplier that fails to notify the Authority of an actual, potential or perceived conflict of interest, or where an actual conflict of interest exists
- b. request further information from any Supplier and require any Supplier to take reasonable steps to mitigate a conflict of interest. This may include requiring any Supplier to enter into a specific conflict of interest agreement with the Authority. Failure to do so may result in the Supplier being excluded from participating in, or progressing as part of, the Procurement process

24. The Authority strongly encourages Suppliers to contact the Authority as soon as possible using the Portal should it have any concerns regarding actual, potential or perceived conflicts of interest.

Conflict assessments

25. The Authority confirms that, prior to the issue of the Tender Notice in this Procurement, a conflict assessment has been prepared in accordance with the Act.

Intellectual property

26. Suppliers are reminded that all intellectual property rights, including copyright, in the documents and materials supplied by the Authority and/or its advisers in this Procurement, in whatever format, belong to the Authority, its advisers or the relevant owner/licensor. Suppliers shall not copy, reproduce, distribute or otherwise make available any part of these documents to any third party (except for the purpose of preparing a submission) without the prior written consent of the Authority. All documentation supplied by the Authority in relation to this Procurement must be returned or destroyed on demand, without any copies being retained by Suppliers.

Ethical walls agreement Not Used

Anti-competitive behaviour

27. Suppliers are reminded of their obligations under applicable competition laws. The Authority may require evidence from Suppliers that their arrangements are not anti-competitive and reserves the right to require any Supplier to comply with any reasonable measures which may be needed to verify that no anti-competitive arrangements are in place.

28. Any evidence of anti-competitive behaviour may result in a Supplier being disqualified from the Procurement. The Authority also reserves the right to refer any suspected breaches of applicable competition laws to the relevant authorities including, but not limited to, the Competition and Markets Authority and the Serious Fraud Office.

29. Suppliers should note that anti-competitive behaviour may result in the Supplier being excluded from bidding for contracts under Schedule 7, Paragraph 7 of the Act. Where a relevant decision has been made by the Competition and Markets Authority under the Competition Act 1998, the Supplier may also be excluded from bidding for contracts under Schedule 6, paragraph 41 and may be added to the debarment list and/or be liable for civil and/or criminal penalties.

Contract

30. A tender submission is an offer to enter into a contract on the terms of the contents of the submission. Notification of an award decision does not constitute acceptance by the Authority. Any document submitted by a Supplier shall only have contractual effect when it is contained within an executed written contract.

31. The Supplier's final tender submission must remain valid for acceptance for a period of 90 days from the date of its submission or until any procurement challenge/s have been resolved.

Supplier withdrawal

32. Suppliers may withdraw from the Procurement at any time before the final tender submission deadline by providing written notification to the Authority via the Portal.

Modifying your tender

33. Suppliers may modify their submitted final tenders prior to the submission deadline. (The Authority will not open (final tenders until after the submission deadline set out in the Procurement Timetable.)

Supplier eligibility

34. Suppliers are reminded that the eligibility requirements in this document, Tender Notice and all other associated tender documents apply to the Procurement at all times.

35. The Authority reserves the right to require any Supplier to provide such further information as the Authority may require (and for the avoidance of doubt, the Authority may make multiple requests), including, but not limited to, the economic and financial standing of the Supplier at any stage of the Procurement and prior to the notification of the award decision and/or the award of the contract.

36. The Authority must be notified in writing via the Portal promptly of any changes in the information that the Supplier has provided in its response to this Procurement (including but not limited to arrangements in relation to any Associated Suppliers) at any point before the entry into the Contract so that the Authority may assess whether the Supplier continues to satisfy the relevant conditions of participation and should continue to qualify for participation in the Procurement. For the avoidance of doubt, the Authority reserves the right to take such action as it deems appropriate in the light of its assessment of the updated information, including (but not limited to) excluding the Supplier concerned from the Procurement.

Supplier warranties

37. In responding to this invitation, the Supplier warrants, represents and undertakes to the Authority that:

- a. it understands and has complied with the conditions set out in this document
- b. all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Authority by the Supplier, its staff or agents in connection with or arising out of the Procurement are true, complete and accurate in all respects, both as at the date communicated and as at the date of the submission of the response to this document
- c. it has made its own investigations and undertaken its own research and due diligence, and has satisfied itself in respect of all matters (whether actual or contingent) relating to the invitation and has not submitted its response in reliance on any information, representation or assumption which may have been made by or on behalf of the Authority (with the exception of any information which is expressly warranted by the Authority)
- d. it has full power and authority to respond to this document and to perform the obligations in relation to the contract and will, if requested, promptly produce evidence of such to the Authority

38. Suppliers should note that the potential consequences of providing incomplete, inaccurate or misleading information include that:

- a. the Authority may exclude the Supplier from participating in this Procurement
- b. the Supplier may be excluded from bidding for contracts under Schedule 7, Paragraph 13 of the Act
- c. the Authority may rescind any resulting contract under the Misrepresentation Act 1967 and may sue the Supplier for damages
- d. if fraud or fraudulent intent can be proved, the Supplier may be prosecuted and convicted of the offence of fraud by false representation under section 2 of the Fraud Act 2006, which can carry a sentence of up to 10 years or a fine (or both) – if there is a conviction, then the Supplier may be excluded from bidding for contracts under Schedule 6, Paragraph 15 of the Act and may be added to the debarment list

Third parties

39. Nothing in these terms is intended to confer any rights on any third party under the Contracts (Rights of Third Parties) Act 1999. This does not affect any right or remedy of any person which exists or is available apart from that Act.

Applicable law

40. The laws of England and Wales are applicable to this Procurement.

41. Suppliers must agree to submit to the exclusive jurisdiction of the Courts of England and Wales in relation to any dispute arising out of or in connection with this Procurement.

Appendix B: The Authority's detailed requirement

1 Introduction to the requirement

This specification sets out the requirements of Enterprise Durham Partnership ('EDP')/Karbon Homes trading as Home Comforts Limited for their furniture supply and services. The furniture service has been offered for over 10 years in differing formats through different supply routes by Karbon Homes, its subsidiaries and its former legacy organisations. The service is currently utilised by c.2,500 Karbon customers and has recently undergone a period of review. This tender will look to ensure that the new service is procured in an effective way that meets the needs of Karbon and its Customers. This Contract will be available to Customers of Karbon, its' current and any future subsidiaries and current and any future members of the Karbon Solutions Limited Cost Sharing Group. Membership of this Group currently comprises; Castles and Coasts Housing Association, Eden Housing Association, Mitre Housing Association, Keelman Homes, TCUK and Changing Lives.

The service is managed by Karbon who act as the lessor to the Customer of any items within the service. The tender will involve EDP, who will purchase the services, furniture, and appliances from the Supplier.

2 Background to the requirement

The purpose of the service is to supply Karbon (and its Customers) with a convenient route to furniture and appliance rental, which is of an excellent quality and service.

The service is offered to Customers who without it would struggle to afford to set up home. Customers pay a weekly rental charge for items and as such they remain the property of Karbon. Customers are able to return items when they are no longer needed at any time and have non- working items replaced, avoiding further outlay.

3 The requirements

3.1 Current Supply and Service Model

The service is managed by EDP and works on the principal of purchase of the items by EDP from the Supplier and lease to Karbon Homes, on to the Customer.

3.2 Customer Model

Items are offered to the Customer, usually at start of tenancy if it is a service that meets their needs. Items are selected from a core range (reflected in the Commercial Schedule), with some restrictions. The likely route will be for Customers to be offered items as follows:

Customer Option Level	Typical no. of items	Type of Items
1	1 item	Beds &/or Appliances
2	Up to 3 items	Beds, Appliances or Soft Furnishings
3	Up to 6 items	Beds, Appliances or Soft Furnishings

It is anticipated that the majority of new Customers to the service will select Option 2.

Customers are able to return any items at any time when they are no longer needed, either as a full termination and collection of items, or as a partial return.

When the Customer leaves the Karbon property the items are returned and should a Customer move from one Karbon property to another, there will be a return and reissue of items. Customers are offered a replacement service for any goods not working. It is anticipated an element of replacement of non-working pack items already in existence will be included in this tender, and this has been factored into the value projection.

There is currently also a cyclical replacement activity of 4 years for all electrical and selected other items and any existing items reaching this timeframe will be replaced and requested from the Supplier where applicable. Notwithstanding any changes in legislation, we reserve the right to review this timescale having given the Supplier adequate notice in writing.

3.3 **Supplier Requirement**

The Supplier will be responsible for:

- the procurement of the items to EDP,
- the delivery of items to the Customer,
- the installation of the items (where necessary). For example, Suppliers will be required to install washing machines on delivery and disconnect any returned/replaced items. Depending on EDP/Karbon's requirements, the Suppliers may also be required to install new electrical cookers on delivery and disconnect any non-working/ returned cookers and Suppliers are asked to price for this in the Commercial Schedule (Annex 6); and
- the collection of items no longer needed by the Customer and the replacement of items not working including delivery and installation (where relevant).

3.4 Please note that where the Supplier collects item(s) no longer needed by the Customer, if the items are deemed to still be in working condition, EDP will engage with the Supplier to agree a viable reuse/recycle route. Where there is inherent monetary or social value left in the item, that value will remain the property of EDP, unless otherwise agreed by EDP/Karbon.

3.5 Customers will receive new items as part of the Service; however, we want to work with the Supplier to ensure a sustainable life cycle for any items procured and will ask for details of environmental sustainability/waste minimisation routes via the Supplier in the Tender Response Form.

3.6 We plan to work with Customers to understand issues arising through an element of 'low level' diagnostic calls at point of fault reporting and to also educate Customers from point of order on preventative actions/maintenance of appliances. The Supplier will be expected to support EDP/ Karbon on this, with the supply of relevant product information/videos where needed.

3.7 The planned service process flow charts can be found in Annex 10 of the ITT and illustrate the expectations for service/task delivery from the supplier together with the Furniture Service Requirements table below.

- 3.8 Whilst EDP works with Karbon to ensure Customer requests are received at the earliest point, due to the needs of Karbon customers, the service level expectations are also outlined below.
- 3.9 The Supplier will be responsible for, as a minimum, the following agreed service: The overall maximum service level is to be agreed at 7 working days from receipt of request (Day 1). The only exception to this would be where it is agreed by EDP/Karbon in writing as it relates to the specific circumstances of the customer including, but not limited to, new build delays, delay to tenancy start/end etc.
- 3.10 **Furniture Service Requirements**

From point of request to fulfilment of service and completion of associated actions.

Category	Tasks	Maximum Target Timescales
Service Admin	1. Supplier Acknowledgement of Requests from Nominated Coordinator	Within 2 working days from point of receipt
	2. Processing and scheduling in of any requests to earliest date within KPI / service timescales	
	3. Relevant & timely communication with customer of delivery / installation date with am/pm slot confirmed and customer agreement of date – confirmation back to Nominated Coordinator	
	4. Issue of weekly schedule of planned activity to Nominated Coordinator	Weekly, day of issue to be agreed
	5. Issue of daily schedule of planned activity including any installs to Nominated Coordinator	Daily, time of issue to be agreed
	6. Nominated Coordinator notified of all failed to respond and unconfirmed appointments	Daily, time of issue to be agreed
Service	7. Items delivered in full, to agreed product specification with labelling added (unique item number label)	Day of delivery
	8. Delivering/collecting items on day of choice, in line with agreed KPI's regarding lead times	Day of delivery
	9. Delivering to room of use of Customer	Day of delivery
	10. Removing packaging from new items and taking away	Day of delivery
	11. Disconnection and removal of obsolete items and installation where appropriate of new items (e.g. Washing Machines, Electric Cookers tbc)	Day of delivery
	12. Obtaining proof of delivery / removal from Karbon Customer	Day of delivery
	13. Confirmation of deliveries/collections/exchanges completed and timely communication to Nominated Coordinator of any non-deliveries / issues arising. This will include where items are not able to be collected due to contaminant/soiling.	Within 1 working day of delivery date

Product & Service Quality	14. Specific item details are supplied in a timely manner including makes models, serial number, warranty details so EDP can register (if applicable) etc	Within 1 week of delivery
	15. Items are added to the WEEE / PAT register (if applicable)	At point of delivery
	16. Faults – detail to be provided, visual images will be needed for more major faults, as well as product detail	As issue arises, detail within 5 working days maximum
	17. Any faults reported during the manufacturers' warranty period must be acknowledged and reported to the relevant manufacturer. When a manufacturer cannot resolve an issue within 10 working days, the position must be reported to the Nominated Coordinator not later than the 10 th working day, and arrangements made with the customer for the appliance to be replaced with a suitable alternative.	Within 1 working day to Nominated Coordinator Within 2 working days to the manufacturer
	18. The manufacturer must undertake a repair or facilitate a replacement appliance at the earliest opportunity.	Within 10 working days of the reported incident.
	19. When 18 above cannot be achieved the supplier must arrange alternative provision.	Within 15 working days of the reported fault.
	20. Complaints –Maximum timescale relates to major complaints. Response time – minor 2 working days, major 5 working days	As issues arise, detail within 5 working days maximum
	21. Emergency Response – refer to Karbon Furniture Service Emergency Response, Annex 11 of the ITT.	
	22. Cyclical Replacement – Monthly process information supplied by the Nominated Coordinator for planning and scheduling of the replacement items.	Monthly
	23. Concessions – should there be the need to substitute any product for a suitable alternative, the request to be in writing, with product details and length of time to be used.	Request as applicable, 2 working days notification of request
24. General Queries – relating to products, customer etc.	Within 2 working days maximum of query request	

3.11 Weekly & Monthly Reporting (see Section 12 below)

4 Future Service Requirements

- 4.1 Some elements of the service may change during the life of the contract so that we can offer a better service to our Customers. This may include, but not be limited to, the need to change the products we offer to Customers. The Supplier will work with EDP/Karbon during the contract term to facilitate any new product requests or changes to be made to the core list in the Commercial Schedule. Should EDP/Karbon require additional or different products which have not originally been priced for, the Supplier and EDP/Karbon will enter negotiations to agree a reasonable price. To ensure this price is in line with the market value, EDP/Karbon may carry out a benchmarking exercise.
- 4.2 A full repair service is not currently required under this Contract and will not be scored as part of the essential service offer however, as this may be a future need, we wish to understand if Suppliers have the capability to offer this service. Suppliers will be asked to confirm if they can provide this service in the Tender Response Form.
- 4.3 Karbon is a growing organisation and as such the demand for the service is likely to increase both in terms of volume and expansion of our geographical footprint. Karbon require a Supplier that can support this growth.

5 Standards

- 5.1 The Service shall be provided in accordance with the requirements of Karbon procedures and protocols as outlined in the ITT and any regulatory body, related to the supply or quality of the products and service operation including, but not limited to:
- Accreditation for Electrical Installation – EICR
 - Waste Electronic and Electrical Equipment (WEEE) Regulations 2006
 - Health and Safety at Work Act 1974
 - Karbon's Contractor Code of Conduct
- 5.2 Products supplied must also conform to all relevant standards including, but not limited to:
- The Furniture and Furnishings (Fire Safety) Regulations 1988 (amended 1989, 1993 and 2010)
 - Electrical Equipment (Safety) Regulations 2016
 - Relevant BS Standards for individual product categories
- 5.3 The Supplier will carry out the Services in line with the following Karbon Values:

- We are Reliable - We use our knowledge and experience to be effective and efficient and make sound well-informed business decisions with integrity.
- We are Thoughtful - We work hard to understand the needs and aspirations of others and are mindful of our impact on people, communities and the environment.
- We are Dynamic - We continually learn, improve and innovate so we are able to respond to change and be the best we can be.
- We are Bold - We go forward with confidence and are passionate, proactive and influential in building a better future.
- We are Inspiring - We believe in people and create the conditions for them to succeed and unlock their own potential.

6 Constraints

- 6.1 To support the stated aims of the Karbon Solutions Cost Sharing Group, under the terms of this Contract, the successful Supplier will not be permitted to sell the same goods and service to Customers of Group members at a lower cost. Please refer to point 1 in this appendix for a list of the Groups' membership.

7 Data protection

- 7.1 Potential Suppliers shall at all times:
- comply with the Data Protection Act 2018 (the **DPA**).
 - process any personal data supplied only in accordance with Karbon's written instructions (unless required by law to act without such instructions).
 - ensure that people processing the data are subject to a duty of confidence.
 - take appropriate measures to ensure the security of processing.
 - only engage a sub-processor with the prior written consent of the data controller and a written contract.
 - assist the data controller in providing subject access and allowing data subjects to exercise their rights under the DPA.
 - assist the controller in meeting its DPA obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments.
 - delete or return all personal data to the controller as requested at the end of the contract.
 - submit to audit and inspections, provide the controller with whatever information it needs to ensure that they are both meeting their article 28 obligations, and tell the controller immediately if it is asked to do something infringing the DPA or other data protection law of the EU or a member state: and
 - indemnify Karbon and keep Karbon indemnified against loss, destruction or procuring of data contrary to the DPA by the provider, its servants, or agents.

- 7.2 The successful supplier will be required to sign a Data Processing Agreement. A copy of the agreement has been included within Annex 5 of the tender pack.

8 Safeguarding

- 8.1 Karbon regards the safeguarding of children, young people, and vulnerable adults as paramount within all its activities whether this involves direct or indirect contact.
- 8.2 Staff, board members, volunteers and Karbon's partners may meet these vulnerable groups as part of the regular housing, repairs, and neighbourhood management functions, or during Karbon's care and support role. Karbon has robust policies and procedures in place regarding safeguarding children, young people, and vulnerable adults. They give clear direction on how Karbon will provide a safe environment for these customers whilst carrying out its work, and how Karbon is committed to report any abuse which may be evident to the organisation or is disclosed to Karbon to the relevant authorities. Karbon would also aim to prevent abuse wherever possible.
- 8.3 Karbon will challenge those who do not uphold its values or go against its principles regarding safeguarding and would reconsider its continued relationship with any such person or organisation. Karbon is committed not only to meeting its legal and moral obligations concerning safeguarding, but going beyond these, turning good practice into excellent practice.
- 8.4 Providers are required to confirm their commitment to these principles by completing and signing the Safeguarding Commitment which appears at Annex 2- Tender response document.

9 Social value

- 9.1 Karbon are a Charitable Community Benefit Society and actively seek to work with Suppliers who would partner with us to further our charitable and social responsibility aims.
- 9.2 Social Value will contribute to 10% of the quality criteria for this tender.
- 9.3 Karbon wishes for potential suppliers to consider contributing to our Social Value agenda as part of the Services delivered under this agreement. We have included a social value commitment within the tender documents, please refer to Annex 3 – TOM's Social Value documents.

10 Accepting and declining orders

- 10.1 Following a written request, the Contractor will notify Karbon (taking into account all relevant circumstances in relation to the subject matter and nature of an Order) either that it accepts or declines the order.

- 10.2 If the Contractor notifies Karbon that it declines to accept an order, then Karbon may offer that Order to an alternative Contractor.

11 Contract implementation

- 11.1 Karbon consider that the implementation/mobilisation period for the contract, regardless of its size or nature, is of critical importance to ensure its success. We will engage with the successful supplier prior to the contract commencement to collaboratively work through the details of the contract.
- 11.2 Key areas to be considered/agreed between both parties prior to contract commencement may include:
- (a) Key contacts and lines of communication
 - (b) Performance indicators and how they will be managed and consequences of failing to meet the requirements
 - (c) Timeframes and programming
 - (d) Customer liaison
 - (e) Efficiency/continuous improvements
 - (f) Reporting requirements
 - (g) Risk management/agreeing the risk register
 - (h) Project performance
 - (i) Pricing structure and agreement
 - (j) The agreement of any potential variations before commencement
 - (k) Data management
 - (l) Payment terms

12 Management Information

- 12.1 Karbon will require the supplier to provide management information on a monthly basis to assist with the monitoring of service levels against the key performance indicators and to assist with continuous improvement of the Service. The information required will include, but will not be limited to the following:

Management Information	Description
Customer Service Level	Overall service level, mitigation of issues
Management information	Management information Pack Vol/Items Reporting, £ Spend by activity.
Product & Service Quality	Defects, faults – including any Complaints.

13 Contract performance management & KPIs

- 13.1 Due to the value of the contract exceeding £5 million there is a requirement under Section 52(3) and Section 71(2) of the Procurement Act 2023 and the associated Regulations to set a minimum of three key performance indicators, to assess performance and to publish this information at least once a year. These will be agreed with the successful contractor prior to the award of contract.
- 13.2 The successful supplier must provide Karbon with a dedicated named contact and their contact details for the management of this agreement. This person must have the required authority to be able to resolve issues with the account or contract, should they arise.
- 13.3 Karbon will provide a dedicated contract manager. Any communications regarding the contract must be directed to this nominated contact.
- 13.4 The successful supplier will be required to attend contract review meetings with Karbon. The frequency of these meetings will be agreed between all parties at the pre-start meeting. The successful supplier will be required to provide reporting information regarding the contract for review.
- 13.5 Performance will be monitored at the contract management meetings. Karbon will issue an improvement notice for inferior performance or if areas of concern are raised with regards to Health & Safety, reputation or potential costs arising from the successful supplier's performance. If 3 improvement notices are issued within a 12-month period, Karbon reserve the right to remove the successful supplier from the contract. This is at the discretion of Karbon.
- 13.6 If a serious breach of contract occurs with regards to Health & Safety, reputation or potential costs arising from the successful supplier's performance, Karbon reserve the right to temporarily put the successful supplier on hold until an investigation has been completed. Karbon reserve the right to issue a final warning or remove the successful supplier from the contract/framework following completion of the investigation.

- 13.7 Service levels detailed in this section 13, are the minimum standard required for services/goods that the contract manager will accept. If this level of service/performance consistently deviates below this standard, sub the level that was agreed in the specification and pre-start meeting, service credits/penalties will come in to force and will be authorised by Karbon (contract manager) as a way of prompting the successful supplier to increase standards to achieve the agreed service level.
- 13.8 The option of service credits/penalties can be negotiated and accepted prior to contract commencement to agree an acceptable performance standard and to seek to improve the service value and quality of the goods through value re-engineering.
- 13.9 Where any of the service levels agreed previously by both parties are not met, the successful supplier shall pay to Karbon (as an adjustment to charges) the service credits set out below. Both parties specifically acknowledge that such service credits are a genuine attempt to pre estimate losses due to a reduction in service given and do not in any way form a penalty. Service credits shall only apply for failure to meet the service levels directly attributable to the successful supplier. Karbon reserves the right to implement this action.
- 13.10 The Supplier will measure their performance through a range of KPI's agreed by Karbon reporting the information monthly to the nominated Karbon representative in the required format. Any variances in agreed KPI's must be explained by way of narrative including details of corrective action and timescales for improvement. If performance drops below the service credit level specified in the table below in any one month, a service credit should be applied to the invoice for the following month. The Supplier will be expected to attend a quarterly review meeting as a minimum to discuss performance and effect any improvement plans. At the request of Karbon further meetings may be required and the Supplier should be in attendance. Specific KPI's will be agreed post contract award and prior to commencement of the Service.

Measures may include but will not be limited to the following (as per the Performance measurement, reporting & KPIs question in Annex 2):

Key Performance Indicator- KPI	Description	Minimum Target Level	Reporting Period	Service Credit Threshold	Service Credit Weighting
Customer Service Level (CSL)	No. of actions completed in agreed timeframe from request to completion.	Target 5 working days (7 working days max.) 95% min. target level	Monthly	Less than 95% maximum Customer Service Level for 2 consecutive months	5% of monthly invoice following threshold being met.
Product Quality /Defect Level	No. of products that are in working order and not defective due to fault.	99% across all products supplied	Monthly	n/a	n/a

Delivered items/Non-Delivered Items	No. of products delivered.	100%	Weekly	n/a	n/a
Customer Satisfaction (CSAT)	Customer Satisfaction Surveys (detail to be defined).	90%	Quarterly	n/a	n/a

13.11 Action Plan

13.11.1 In the event that the successful supplier's actual score falls below the target score for one or more service elements, then in addition to the reporting requirements, the successful supplier shall prepare a remedial action plan ("Action Plan") to return performance to target score levels. The action plan shall include, but not be limited to:

- Details of the specific action(s) to be taken
- Dates by when action(s) will be complete
- Risks or issues associated with the remedial plan.

13.11.2 The successful supplier's action plan will be submitted to Karbon no later than the FIRST FRIDAY OF EACH CALENDAR MONTH covering the previous months performance.

13.11.3 The successful supplier's action plan will be subject to Karbon's agreement and acceptance. If the parties are unable to reach agreement on a mutually acceptable action plan, then Karbon may reject the successful supplier's action plan and elect to treat the supplier's failure to achieve their target score as unsatisfactory performance.

13.12 Karbon reserve the right to amend the KPIs throughout the duration of the contract, in agreement with the successful supplier.

13.13 Consistent inferior performance may result in a reduction of orders until such time as the issues are addressed to the satisfaction of Karbon.

13.14 Failure to continuously meet the KPI targets may result in an improvement notice being issued and/or suspension from the contract, this is at the discretion of Karbon.

13.15 Scoring Methodology for KPIs:

Each element shown above shall have associated with it:

A. A Performance Target (total number or percentage).

OR

B. A target numeric score indicating full attainment of performance ("Target Score").

OR

C. An actual numeric score indicating actual attainment of performance ("Actual Score").

13.15.1 **Levels of performance under the KPI Performance Measures to ratings under regulation 39(5) of the Procurement Regulations 2024** shall be applied to each element based on the following:

Regulation 39(5) Rating	Level of performance against the KPI Performance Measure
Good	KPI Performance Measure
Approaching Target	0.01% - 1.00% below the KPI Performance Measure
Requires Improvement	1.01% - 2.00% below the KPI Performance Measure
Inadequate	2.01% - 3.00% below the KPI Performance Measure
Other	where performance of the Supplier cannot be described as 'Good', 'Approaching Target', 'Requires Improvement' or 'Inadequate' due to any other factor(s).

14 Supplier relationship management

- 14.1 The successful supplier's performance and relationship will also be managed in line with Karbon's Supplier Relationship Management framework.
- 14.2 Following contract award, the successful supplier will be assessed against Karbon's segmentation criteria and placed into one of the below tiers:
- Strategic Partner
 - Core
 - Transactional
- 14.3 This segmentation will form the basis of the relationship management between Karbon and the successful supplier. Karbon Homes reserve the right to change the status of the segmentation throughout the contract duration.
- 14.4 Elements of the Supplier Relationship Management which may apply to this contract include:
- Tier 1 - Strategic Partner**
 Build a partnership and improve customer experience.
 Collaborate, align, and share information on future priorities and opportunities.
 Ensure executive alignment and relationships are developed.
 Explore potential opportunities for innovation.

Actively monitor and maintain the relationship, ensuring appropriate risk mitigation.

Tier 2 - Core

Challenge cost and explore potential opportunities.

Understand and monitor Supplier capability.

Embed continuous improvement.

Build an understanding of the risk mitigation controls and continually review.

Undertake regular market testing to ensure contracts are still competitive.

Understand key areas of risk and implement effective controls.

Tier 3 - Transactional

Maintain day to day requirements and exchange information as needed

Implement efficient ordering and invoicing processes that are appropriate for the items being acquired, to minimise transactional overhead.

- 14.5 Karbon will classify the successful supplier as Tier 1 - Strategic Partner. As part of our Supplier Relationship Management model, we will work with the successful supplier on the below stated frequency to complete relevant due diligence checks and maintain relevant records applicable to the contract.

Requirement	Tier 1 -C Strategic Partner	Tier 2 - Core	Tier 3 - Transactional
Anti-Bribery and Corruption	Annually	Annually	
Environmental	Annually	Annually	
Equality, Diversity, and	Annually	Annually	
H&S Review	Annually	Annually	Annually
Insurance Certificates	Annually	Annually	Annually
Modern Slavery Act	Annually	As required	
Prompt Payment Status	Annually	Annually	Annually
Quality Assurance	Annually	Annually	
Safeguarding (inc. DBS)	Annually	Annually	Annually
SLAs and KPIs	Monthly	Monthly	Quarterly
Meetings - Operational	Monthly	Quarterly	Annually
Meetings - Strategic	Bi-annually		
Financial Assessment	Annually	Annually	Annually
Financial Monitoring	As required	As	
Monitor and record variations	As required	As required	As required
Monitor and record innovations	As required	As	
Data Protection Agreement in	As required	As	As required
NDA in place	As required	As	As required

Business Continuity plan in place	Annually	Annually	Annually (if required)
Disaster Recovery plan in place	Annually	Annually	Annually (if required)
Contingency plan in place	Annually		
Exit plan in place	Annually	Annually	As required

- 14.6 Karbon Homes reserve the right to request meetings to be held either virtually or in person. Physical meetings may be held at Karbon’s head office, located at Number 5, Gosforth Park Avenue, Newcastle Upon Tyne, NE12 8EG, or at any other sites owned by Karbon.
- 14.7 Karbon reserves the right to include/add any additional checks to each of the tiers listed above as required throughout the contract duration.

15 Exit planning and service transfer arrangements

- 15.1 This section describes provisions that should be included in the exit plan, the duties, and responsibilities of the service provider to Karbon leading up to and covering the expiry or termination (howsoever arising) (including partial termination) of this Contract and the transfer of service provision to a replacement service provider.
- 15.2 The objectives of the exit planning and service transfer arrangements are to ensure a smooth transition of the availability of the services from the service provider to a replacement service provider at the termination (howsoever arising) (including partial termination) or expiry of this Contract.
- 15.3 The service provider agrees to indemnify and keep Karbon fully indemnified for itself and on behalf of any replacement service provider in respect of any claims, costs (including reasonable legal costs), demands, and liabilities arising from the provision of incorrect information provided to Karbon by the service provider, to the extent that any such claim, cost, demand or liability directly and unavoidably arises from the use of the incorrect information in a manner that can reasonably be assumed to be proper in bidding for or providing services similar to the Services.
- 15.4 **Assistance on Expiry or Termination**
In the event this Contract expires or is terminated the service provider shall, where so requested by Karbon, aid Karbon to migrate the provision of the Services to a replacement service provider.

16 Definitions

The following expressions shall have the meaning hereby ascribed to them:

“Customer” means persons living within a property owned or managed by Karbon Homes who uses, or will use, the Services in the future.

“EDP” means Enterprise Durham Partnership a Subsidiary company of Karbon Homes Limited and the procurer of the Furniture Service.

“Karbon” or “Karbon Homes” means Karbon Homes Group, including all current and future subsidiaries.

“Nominated Coordinator” – means EDP’s contact manager with the responsibility for the delivery of the services under this contract and will be the Supplier’s main point of contact at EDP.

“Provider” means the organisation awarded the contract to provide the service specified.

“Resident” means persons living within a property owned or managed by Karbon Homes.

“Staff” unless otherwise specified, means employees of the Provider working in locations specified in this contract.

“Stakeholder” means any person with a vested interest in the service provision.

“Supplier” means the organisation appointed to provide the service specified following the Procurement exercise.

Appendix C: Supplier Management, Service Levels, and KPIs

Please see Appendix B: The Authority's detailed requirement.

Appendix D: Glossary

Defined term	Definition
Act	means the Procurement Act 2023.
Associated Suppliers	means a Supplier who is associated with another Supplier if either (a) the Suppliers are submitting a tender together, or (b) the Authority is satisfied that the Suppliers will enter legally binding arrangements to the effect that the Supplier will sub-contract the performance of all or part of the Contract to the other, or the other Supplier will guarantee the performance of all or part of the Contract by the Supplier (as set out in section 22(9) of the Act).
Authority	means Karbon Homes Ltd
Central Digital Platform	means the online system defined by regulation 5(2) of the Procurement Regulations 2024 (SI 2024 No. 692).
Open Procedure	means the open as defined by section 20 of the Act.
Contract	means the contract to be entered into by the Authority with the successful Supplier.
Key Performance Indicators or KPIs	means the key performance indicators (KPIs) set out in Appendix C.
Portal	means the MultiQuote portal used by the Authority for the purposes of this Procurement and which can be accessed here: https://suppliers.multiquote.com/Page/Login.aspx
Procurement	This Open Procedure procurement process.
Procurement Timetable	The timetable for this Procurement as set out in this document.
Service Credits	means the service credits set out in Appendix C.
Service Levels	means the service levels set out in Appendix C
Supplier or Suppliers	means a supplier or suppliers (as the case may be) participating in the Procurement
Tender Notice	means the tender notice with reference to the information published on the Central Digital Platform, detail of which are contained in the Deadline for responding to this document and Contract summary above.

Appendix E Change Control

1. Change Control Principles

- 1.1. Where the EMPLOYER or the SUPPLIER identifies a need to vary this Agreement or the scope, content or manner of provision of the Services, the EMPLOYER may at any time request, and the SUPPLIER may at any time recommend, such Change only in accordance with the Change Control Procedure as set out herein.
- 1.2. The Change Control Procedure shall cover:
 - (A) Operational Changes, which may require a variation to the way in which the Services are provided, but do not require a variation to this Agreement.
 - (B) Contract Changes, which require a variation to this Agreement, shall be given effect by the Contract Change Control Procedure as set out in paragraph 3 of this Appendix E (Change Control).
- 1.3. The Change Control Procedure does not cover requests by the EMPLOYER or the EMPLOYER's Customers that will be delivered through the normal delivery of Services provided by the SUPPLIER under this Agreement that do not involve changes to the Services or the delivery of those Services.
- 1.4. Neither the EMPLOYER nor the SUPPLIER shall unreasonably withhold its agreement to any Change.
- 1.5. Except as provided in paragraph 2 of this Appendix E (Change Control), until such time as a Change is formally agreed in accordance with the Change Control Procedure the SUPPLIER shall continue to supply the Services pursuant to this Agreement as if the request or recommendation had not been made unless otherwise agreed in writing.
- 1.6. Any discussions which may take place between the EMPLOYER and the SUPPLIER in connection with a request or recommendation for a Change before the authorisation of a resultant Change hereto shall be without prejudice to the rights of either Party.
- 1.7. Any work undertaken by the SUPPLIER, its Subcontractors or agents which has not been authorised in accordance with the Change Control Procedure as set out in this Appendix E (Change Control) shall be undertaken entirely at the expense and liability of the SUPPLIER unless otherwise agreed in advance in writing by the EMPLOYER.

2. Operational Change Control Procedure

- 2.1. Where a Change does not involve an amendment to this Agreement the Change will be agreed when the representatives of the Parties as specified in Table 2 below have each given their consent to the Change by the signing of the Change Request Form and the completed Change Request Impact Assessment, or the electronic equivalents thereof.

- 2.2. Timescales for the processing of a Change and its associated Change Request Impact Assessment will vary according to the category of the Change, in accordance with Table 1 below.
- 2.3. Prior approval of the EMPLOYER to a Change under the Operational Change Procedure shall not be required where urgent action is required by the SUPPLIER to correct a problem or failure which may pose immediate risk to the Services or the business of the EMPLOYER or the SUPPLIER's ability to meet its obligations under General Terms and Conditions of the Contract.

3. Contract Change Control Procedure

- 3.1. Where a Change involves a proposed Change to this Agreement which is agreed between the Parties in accordance with paragraph 6 of this Change Control Notice (CCN), a copy of the proposed Change accompanied by a completed pro forma (the form of which shall be as reproduced in Annex A to this Appendix E (Change Control), shall constitute a proposed Contract Change Note. Each CCN shall be uniquely identified by a number which shall be provided by the EMPLOYER.
- 3.2. Two copies of each CCN shall be submitted by the requesting Party to the other Party. This shall take place not less than twenty (20) Working Days (or such other period as may be agreed between the Parties) prior to the requested date for the start of implementation of the relevant Contract Change.
- 3.3. Subject to the agreement reached in accordance with paragraph 3.1 above remaining valid, the receiving party shall sign both copies of the CCN within five (5) Working Days of receipt (or such other period as may be agreed between the Parties) and return both copies to the originating Party. Following signature by the originating Party (which must take place within five (5) Working Days of receipt of both copies signed by the receiving party) one copy of the fully executed CCN shall be returned to the receiving Party. Execution of the CCN shall be in accordance with the levels of EMPLOYER set out in Table 2 below.
- 3.4. A CCN signed by both Parties shall constitute an amendment to this Agreement.

4. Requesting a Change

- 4.1. At any time during the Term of this Agreement approved representatives of the EMPLOYER, the EMPLOYER's Customers or the SUPPLIER may request a Change by formally logging a Change Request via the SUPPLIER Service Desk / Contract Manager. Any such Change Request be submitted in the form substantially as set out in Annex B to this Appendix E (Change Control) and shall provide full details of the requested Change.
- 4.2. All Change Requests shall be registered with the SUPPLIER's Service Desk / Contract Manager.

5. Change Request Impact Assessments

- 5.1. The SUPPLIER shall upon receipt of a Change Request investigate the likely impact of the requested Change on this Agreement (if any) and the scope, content, or manner of provision of the Services.
- 5.2. The timescales set out in Table 1 below defines the period within which the SUPPLIER shall complete the Change Request Impact Assessment, taking account of the business priority of the Change Request and the type of service to which it relates.
- 5.3. Within the period defined in Table 1 below, or other period that may be agreed by the EMPLOYER, but subject to paragraphs 5.1 and 5.2 above, the SUPPLIER shall either:
- (A) respond with a completed Change Request Impact Assessment; or
- (B) where the SUPPLIER does not reasonably believe that it shall be able to provide the Change Request Impact Assessment within the timescales for the relevant category of Change as shown in Table 1 below, it shall provide:
- (1) the anticipated timescales, to be agreed with the EMPLOYER, indicating when the Change Request Impact Assessment shall be provided to the EMPLOYER; and
- (2) if appropriate, an explanation as to why the SUPPLIER believes the Change should be considered as a paid scoping study as defined in paragraph 8 below.

Category of proposed Change	Target time for delivery of Change Request Impact Assessment
Contract Changes	Five (5) Working Days
Operational Changes	Ten (10) Working Days
Major Change, expected to exceed ten (10) days' effort	To be reasonably agreed between the EMPLOYER and the SUPPLIER

Table 1 – Categorisation of Changes

- 5.4. Each Change Request Impact Assessment shall clearly identify the type of Change under consideration using the definitions set out at paragraph 1.2 above.
- 5.5. Any Changes which have a financial impact on Charges must be clearly identified by the SUPPLIER and agreed by the EMPLOYER.

6. Change Approval

- 6.1. For all Changes covered under this Appendix E(Change Control) and defined under Table 2, the EMPLOYER representative should review the Change and recommend authorisation on behalf of both Parties.

6.2. Changes shall only be valid and enforceable if they are duly authorised by the representatives of the EMPLOYER and the SUPPLIER as set out in Table 2 below or by their nominated deputies as notified in writing to the other Party in advance.

Type of Proposed Change	EMPLOYER representative	SUPPLIER representative
Contract Changes	Head of Legal Service and a Karbon Executive member. EMPLOYER to review whether legal sign-off required.	The appropriate delegated representative of the SUPPLIER
Operational Changes	Head of Service Delivery or nominated representative. EMPLOYER to review whether commercial sign-off is required.	The appropriate delegated representative of the SUPPLIER

Table 2 – Levels of EMPLOYER

Change Control Form

Annex A

Change Request Form:

Contract Ref:

Date:

Both parties hereby certify, by the signature of an Employer representative, that this Change Request will amend and be fully incorporated into the existing Contract.

Question number	Question	Response
1.	Change Request Number:	
2.	Reason for Change Request:	
3.	Changes to Contract or Schedules:	
4.	Cost Impact	
5.	Costs Expenses Total	
6.	Original value of the Contract	
7.	Value of this Change Request	
8.	New total value of Contract	

Except as changed herein, all terms and conditions of the Contract remain in full force and effect.

IN WITNESS THEREOF, the duly authorised representatives of the parties have caused this Change Request to be fully executed.

**Signed for and on behalf
of THE EMPLOYER**

Signed: _____

Print: _____

Position: _____

Date: _____

**Signed for and on behalf
of THE SUPPLIER**

Signed: _____

Print: _____

Position: _____

Date: _____