Annex D: Draft Contract Terms and Conditions

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|  | Standard Terms and Conditions |  |
| Complex Services |
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| --- |
| **Contract Summary** |
| **Date:** |  |
| **Agreement No:** | [AGREEMENT NUMBER] |
| **Authority:** | The Mayor's Office for Policing and Crime  |
| **Authority's address:** | City Hall, Kamal Chunchie Way, London E16 1ZE |
| **Authority Representatives:**  | Contact: [POSITION OF CONTACT]Email address: [EMAIL ADDRESS]DX number: [DX NUMBER] |
| **Supplier:** | [COMPANY NAME] (No. [NUMBER]) |
| **Supplier's address:** | [ADDRESS] |
| **Supplier Representatives:** | Contact: [POSITION OF CONTACT]Email address: [EMAIL ADDRESS]DX number: [DX NUMBER] |
| **Background:**  | [ABC] |
| **Commencement Date:** | [DATE OR The date when both parties have signed the Agreement.] |
| **Initial Period:** | [TERM] |
| **Extension Period:** | [EXTENSION PERIOD] |
| **Termination for convenience period:** | [Notice Period in days] |
| **Price:** | [PRICE OR the price for Services set out in the Charges, Payment and Invoicing Schedule.]] |
| **Liability:** | General Liability Limitation £[INSERT] (see clause 37.3)Property Damage Limitation £[INSERT] (see clause 37.3) |
| **Special Conditions:**  |  |
| **Schedules:** | **Mandatory** | **Apply** |
| Service Description Schedule | **** |
| Charges Payment and Invoicing Schedule  | **** |
| Performance Regime Schedule | **** |
| Data Processing Schedule | **** |
| Continuous Improvement Schedule | **** |
| Value for Money Schedule | **** |
| Dispute Resolution Schedule | **** |
| Responsible Procurement Schedule | **** |
| Financial Distress Schedule | **** |
| Business Continuity Schedule | **** |
| Exit Management Schedule | **** |
| Staff Transfer Schedule | **** |
| **Optional** |  |
| Implementation Plan and Testing Schedule | **** OR **** |
| Key Personnel Schedule  | **** OR **** |
| Governance Schedule | **** OR **** |
| Guarantee Schedule | **** OR **** |
| Commercially Sensitive Information Schedule | **** OR **** |
| IR35 Schedule | **** OR **** |
| Facility Management Integrator Schedule | **** OR **** |
| **Policies (Mandatory)** |  |
| Security Policy | **** |
| **Policies (Optional)** |  |
| Safety Rules Policy | **** OR **** |
| Records Policy | **** OR **** |
| **Executed as a Deed**  | IN WITNESS of which this Agreement has been duly executed by the Parties as a deed on the date which appears at the head of page 1. THE COMMON SEAL of THE MAYOR'S OFFICE FOR POLICING AND CRIME was hereunto affixed and attested by:**……………………****The Chief Operating Officer of The Mayor's Office For Policing And Crime****Executed as a deed by (the Supplier)** acting by [a director and its secretary][two directors]**Signature of Director:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_****Signature of [Secretary][Director]:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Executed under hand**  | **IN WITNESS** of which this Agreement has been duly executed by the parties.**SIGNED** for and on behalf of The Mayor’s Office for Policing and CrimeSignature.............................................................................................Name ..................................................................................................Position ..........................................................................Date ................................................................................**SIGNED** for and on behalf of [the Supplier]Signature..............................................................................................Name ...................................................................................................Position ..........................................................................Date ................................................................................ |

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1. Definitions and interpretation
	1. In this agreement, unless the context otherwise requires, the following words have the following meanings:

|  |  |
| --- | --- |
| Achieved KPIs | in respect of the supply of the Services in any measurement period, the standard of performance actually achieved by the Supplier in the provision of the Services in the measurement period in question (calculated and expressed in the same way as the KPI for the Services is calculated and expressed in the Performance Regime Schedule) |
| Agreement | this Agreement as entered into between the Authority and the Supplier |
| Agreement Expiry Date | means:1. the end date of the Initial Period or any Extension Period; or
2. if this Agreement is terminated before the date specified in (a) above, the earlier date of termination of this Agreement
 |
| Approval | the prior written consent of the Authority and Approve and Approved shall be construed accordingly |
| Applicable Laws | all applicable laws, statutes, regulations and codes from time to time in force |
| Authority | The Mayor's Office for Policing and Crime |
| Authority Data | all information and data (including texts, documents, drawings, diagrams, images or sounds) owned by, licensed to (other than by the Supplier) or relating to the Authority which is in each case generated by, supplied to, or is otherwise retained by, the Supplier or any sub-processor pursuant to or in connection with the Agreement |
| Authority IPR | Intellectual Property Rights owned by the Authority |
| Authority Materials | all documents, information, items and materials in any form (whether owned by the Authority or a third party), which are provided by the Authority to the Supplier in connection with the Services |
| Authorised Representatives | the persons respectively designated as such by the Authority and the Supplier as set out in the Contract Summary |
| Authority Premises | premises owned, controlled or occupied by the Authority which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them) |
| Authority Representative | the person(s) named in the Contract Summary Form |
| Change | any change to this Agreement including to any of the Services in accordance with clause 43 (Contract Change) |
| Change of Control | a change of control of the Supplier within the meaning of Section 450 of the Corporation Tax Act 2010 |
| Change Request | shall be a document setting out the proposed Changes and the effect those Changes will have on:1. the Services;
2. the Charges;
3. the timetable for the Services; and
4. any terms of this Agreement
 |
| Charges | the price (exclusive of any applicable VAT), payable to the Supplier by the Authority under this Agreement, as set out in the Charges, Payment and Invoicing Schedule, for the full and proper performance by the Supplier of its obligations under this Agreement |
| Charitable Contribution | the charitable contribution the Supplier commits to making as set out in the Supplier’s tender submission for the supply of the Services |
| Commencement Date | the date stated in the Contract Summary |
| Commercially Sensitive Information | where the Commercially Sensitive Information Schedule is stated to apply in the Contract Summary, means the confidential information listed in the Commercially Sensitive Information Schedule (if any) comprising of commercially sensitive information relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss |
| Contract Summary | the contract summary form at the beginning of this Agreement |
| Contract Year | 1. a period of 12 months commencing on the Commencement Date; or
2. thereafter a period of 12 months commencing on each anniversary of the Commencement Date;

provided that the final Contract Year shall end on the expiry or termination of the Term |
| Data Protection Legislation | all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 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); and the guidance and codes of practice issued by the Information Commissioner or other relevant data protection or supervisory authority and applicable to a party. |
| Default | any breach of the obligations of the Supplier or any other default (including material Default) after the words, act, omission, negligence or statement of the Supplier, of its sub-contractors or any Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Agreement and in respect of which the Supplier is liable to the Authority |
| Deliverables | any outputs of the Services and any other documents, products and materials provided by the Supplier to the Authority as specified in the Service Description Schedule and any other documents, products and materials provided by the Supplier to the Authority in relation to the Services (excluding the Supplier's Equipment) |
| Developed IPR | all Intellectual Property Rights created by the Supplier or Supplier's Personnel:1. in the course of performing the Services; or
2. exclusively for the purpose of performing the Services
 |
| Disaster | an event defined as a disaster in the Business Continuity Schedule |
| Disaster Recovery Plan | a plan which sets out the procedures to be adopted by the Supplier in the event that Services are affected by reason of a Disaster (including the procedures to be taken by the Supplier in planning and providing for any such event), the Disaster Recovery Plan at the date of this Agreement being set out in the Business Continuity Schedule |
| Dispute | any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with clause 43 (Contract Change) or any matter where this Agreement directs the parties to resolve an issue by reference to the Dispute Resolution Procedure |
| Dispute Resolution Procedure | the dispute resolution procedure set out in the Dispute Resolution Procedure Schedule of this Agreement |
| Environmental Information Regulations or EIRs | the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations |
| Extension Period | the extension period stated in the Contract Summary |
| 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 | has the meaning given in clause 34 (Force majeure) of this Agreement |
| General Liability Limitation | the amount specified in the Contract Summary |
| Good Industry Practice | standards, practices, methods and procedures conforming to the Applicable Laws and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances |
| Governance Board  | the governance boards as set out in the Governance Schedule |
| Guarantee | a guarantee from a Guarantor in relation to the performance of the Supplier’s obligations under this Agreement in the form as set out in the Guarantee Schedule. |
| Guarantor | an entity who provides a Guarantee (where applicable) in accordance with clause 59 (Guarantee)  |
| Indexation  | the adjustment of a relevant amount agreed by the Authority and calculated by multiplying the relevant amount by the percentage increase or change in the Consumer Price Index published for the twelve (12) months ended on 31 January immediately preceding the relevant adjustment date.  |
| Information | has the meaning given to it under section 84 of the Freedom of Information Act 2000 |
| Initial Period | the initial term of the Agreement stated in the Contract Summary |
| Intellectual Property Rights | patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world |
| Key Personnel | any personnel named as key personnel in the Key Personnel Schedule of this Agreement (where such Schedule is stated to apply in the Contract Summary) |
| KPIs | the key performance indicators set out in the Performance Regime Schedule |
| Licensed Software | all and any software licensed by or through the Supplier, its Sub-Contractors or any third party to the Authority for the purposes of or pursuant to this Agreement |
| Management Reports | the reports to be prepared and presented by the Supplier in accordance with clauses 30 and clause 50 and the Governance Schedule to include a comparison of Achieved KPIs with the Target KPIs in the measurement period in question and measures to be taken to remedy any deficiency in Achieved KPIs |
| Personal Data | as defined in Data Protection Legislation |
| Processing | as defined in Data Protection Legislation |
| Property Damage Limitation | the amount specified in the Contract Summary |
| Records Policy | the Authority’s “Safety Rules” policy regarding the retention of documents and information, as provided to the Supplier along with this Agreement and as updated by the Authority from time to time. |
| Rectification Plan | the rectification plan pursuant to the Rectification Plan Process |
| Rectification Plan Process | the process set out in clause 31 (Rectification Plan Process) |
| Related Supply | any services provided by a third party and used by the Supplier or the Supplier Personnel in the supply of the Services, but such services shall not include the Services themselves |
| Replacement Services | any services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the Agreement Expiry Date, whether those services are provided by the Authority internally and/or by any third party |
| Request for Information | a request for information or an apparent request relating to this Agreement or the provision of the Services or an apparent request for such information under the FOIA or the EIRs |
| Responsible Procurement Schedule | the Authority’s “Responsible Procurement Schedule” regarding the Supplier’s compliance with social & ethical, economic, environmental and governance matters, as provided to the Supplier along with this Agreement and as updated by the Authority from time to time.  |
| Safety Rules Policy | the Authority’s “Safety Rules” policy regarding the safety rules to be followed by the Supplier when operating or working on Authority Premises or any Site, as provided to the Supplier along with this Agreement and as updated by the Authority from time to time. |
| Security Policy | the Authority’s “Security Policy” regarding information security as provided to the Supplier along with this Agreement and as updated by the Authority from time to time. |
| Service Credits | a sum which the Authority is entitled to deduct or invoice for a Service Failure as specified in the Performance Regime Schedule |
| Service Credit Cap  | 20% of the Service Charges paid and/or due to be paid to the Supplier under this Agreement in the period of 12 months immediately preceding the Service Period in respect of which Service Credits are accrued |
| Service Failure | a shortfall or failure by the Supplier to provide the Services in accordance with any Target KPI, as specified in the Performance Regime Schedule |
| Service Levels | any service levels applicable to the provision of the Services under this Agreement specified in the Performance Regime Schedule |
| Services | the services to be provided by the Supplier to the Authority as specified in the Service Description Schedule to this Agreement |
| Services Description  | the services description set out in the Service Description Schedule |
| Service Period | shall mean a calendar month, save that the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term |
| Sites | any premises (including the Authority premises, the Supplier's premises or third party premises) from, to or at which the Services are (or are to be) provided or the Supplier manages, organises or otherwise directs the provision or the use of the Services |
| Specification | as detailed in the Service Description Schedule |
| Step-in Trigger Event  | * + - 1. any event falling within the definition of a Default;
			2. the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Agreement;
			3. the Authority being advised by a regulatory body that the exercise by the Authority of its rights under Clause 33 (Step-In Rights) is necessary;
			4. the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or
			5. a need by the Authority to take action to discharge a statutory duty.
 |
| Sub-contract | any contract or agreement, or proposed contract or agreement, between the Supplier or a Sub-contractor and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services |
| Sub-contractor | any third party with whom the Supplier or a sub-contractor enters into a Sub-contract |
| Supplier Background IPR | Intellectual Property Rights owned by the Supplier and not created:1. in the course of performing the Services; or
2. exclusively for the purpose of performing the Services
 |
| Supplier Code of Conduct | the Authority’s supplier code of conduct as available at <https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/lists_and_registers/corporate/mps-supplier-code-of-conduct-april2023.pdf> , as may be updated, amended or replaced by the Authority from time to time |
| Supplier's Equipment | any equipment, including tools, systems, cabling or facilities, provided by the Supplier, its agents, Sub-contractors or consultants to the Authority and used directly or indirectly in the supply of the Services, including any such items specified in the Service Description Schedule |
| Supplier Personnel | all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier's obligations under this Agreement |
| Supplier Representative | the person(s) named in the Contract Summary |
| Target KPI | the minimum level of performance for a KPI which is required by the Authority as set out against the relevant KPI in the Performance Regime Schedule |
| Term | the period of the Initial Period as may be varied by:1. the Extension Period; or
2. the earlier termination of this Agreement in accordance with its terms
 |
| 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 Agreement on a specified date and setting out the grounds for termination |
| Termination Payment Default | has the meaning given in clause 52.1.3 (Termination) of this Agreement |
| Third Party IPR | Intellectual Property Rights owned by third parties |
| TUPE | the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) |
| UK GDPR | has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018. |
| Valid Invoice | an invoice issued by the Supplier to the Authority that complies with this Agreement |
| Working Days | any day other than a Saturday or Sunday or public holiday in England and Wales |

* 1. In this Agreement, unless the context otherwise requires, capitalised expressions shall have the meanings set out in clause 1 above or the relevant clause or Schedule in which that capitalised expression appears.
	2. In this Agreement, unless the context otherwise requires:
		1. any reference to a statute or a provision of a statute shall be construed as a reference to that statute or provisions as amended, re-enacted or extended at the relevant time;
		2. any reference to a person shall be construed as a reference to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or one or more of the foregoing;
		3. any reference to the singular shall include the plural and vice versa;
		4. any reference to the masculine gender shall include the feminine and neuter and vice versa;
		5. the table of contents and headings are inserted for ease of reference only and shall not affect the construction of this Agreement;
		6. where any party comprises two or more persons, any obligations of that party in, under or arising from this Agreement is undertaken by or binding upon such two or more persons jointly and severally;
		7. references to any party to this Agreement include its successors-in-title and permitted assignees;
		8. references to numbered clauses, schedules or paragraphs are references to the relevant clauses or schedules in this Agreement or the relevant paragraph of this Agreement respectively;
		9. any reference to **written** or **writing** includes email but not fax;
		10. references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any legal concept, state of affairs or thing shall in respect of any jurisdiction other than England be deemed to include that which most approximates in that jurisdiction to the English legal term;
		11. references to times of the day are to London time and references to a day are to a period of 24 hours commencing at midnight at the start of the day;
		12. any document expressed to be in the agreed form or in the agreed terms means a document in a form Approved by (and for the purposes of identification signed or initialled by or on behalf of) the Authority.
1. Precedence
	1. In the event of, and only to the extent of, any conflict or inconsistency between the clauses of this Agreement, the Schedules and any other documents referred to in or attached to this Agreement, the conflict or inconsistency shall be resolved in accordance with the following order of precedence:
		1. first priority, the clauses of this Agreement;
		2. second priority, the Schedules;
		3. third priority, any other Authority document referred to in or attached to this Agreement including the Contract Summary;
		4. fourth priority, the Supplier's tender submission for the supply of the Services or any other document supplied by the Supplier (and referenced in this Agreement).
2. Provision of Services
	1. The Supplier shall provide the Services from (and including) the Commencement Date.
	2. The Supplier shall ensure that the Services comply in all respects with the Services as set out in the Service Description Schedule.
	3. The Supplier shall:
		1. perform its obligations under this Agreement, including in relation to the supply of the Services and any associated products supplied by the Supplier in accordance with:
			1. the Service Description Schedule
			2. all Applicable Law;
			3. Good Industry Practice;
			4. the Security requirements (as set out in the Security Policy);
			5. all other relevant documents referred to in this Agreement; and

(f) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of clauses 3.3.1(a) to 3.3.1(e).

* + 1. deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money.
	1. In the event that the Supplier becomes aware of any inconsistency between the requirements of clauses 3.3.1(a) to 3.3.1(f), the Supplier shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.
1. Warranties
	1. Each party represents and warrants that:
		1. it has full capacity and authority to enter into and to perform this Agreement;
		2. this Agreement is executed by its duly Authorised Representative;
		3. there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its affiliates) that might affect its ability to perform its obligations under this Agreement; and
		4. its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to following (as applicable) (as the case may be for each party) bankruptcy, reorganisation, insolvency, moratorium or similar Applicable Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).
	2. Each of the representations and warranties set out in clauses 4.1 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Agreement.
	3. If at any time a party becomes aware that a representation or warranty given by it under clause 4.1 has been breached, is untrue or is misleading, it shall immediately notify the other party of the relevant occurrence in sufficient detail to enable the other party to make an accurate assessment of the situation.
	4. For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of breach of that provision by the Supplier which constitutes a material Default.
2. Supplier warranties
	1. The Supplier represents and warrants that:
		1. it is validly incorporated, organised and subsisting in accordance with the Applicable Laws of its place of incorporation;
		2. it has all necessary consents (including, where its procedures so require, the consent of its parent company) and regulatory approvals to enter into this Agreement;
		3. its execution, delivery and performance of its obligations under this Agreement does not and will not constitute a breach of any law or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;
		4. as at the Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement;
		5. it has and shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPR, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement including the receipt of the Services by the Authority and the grant of any licences to the Authority on terms specified in this Agreement or otherwise agreed by the parties;
		6. it is the sole legal and beneficial owner of the Supplier Background IPR, free from encumbrances;
		7. it has not created, or allowed to be created, any security interest, option, mortgage, charge or lien over the Supplier Background IPR;
		8. it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Authority's confidential information (held in electronic form) owned by or under the control of, or used by, the Authority;
		9. it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
		10. it is not affected by an insolvency event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
		11. for the Term and for a period of twelve (12) months after the Agreement Expiry Date, the Supplier shall not employ or offer employment to any staff of the Authority which have been associated with the provision of the Services without Approval or the prior written consent of the Authority, which shall not be unreasonably withheld. However this clause 5.1.11 shall not preclude the Supplier's rights to (i) make generalised searches for employees by the use of advertisements in the media (including by any recruitment agency), (ii) hire any employee of the Authority who approaches the Supplier on an unsolicited basis; or (iii) solicit for employment or hire any such employee who ceases to be employed by the Authority.
3. Mistakes in information

The Supplier shall be responsible for the accuracy of all drawings, data, documentation and information supplied to the Authority by the Supplier in connection with this Agreement and shall pay the Authority any extra costs incurred by the Authority due to any discrepancies, errors or omissions therein.

1. Policies
	1. The Supplier shall abide by the relevant Authority policies from time to time in place, as referenced in the Contract Summary.
	2. Any breach or non-compliance with the terms of an Authority policy shall amount to a Default for the purposes of this Agreement.
2. Supplier's status

At all times during the Term the Supplier shall be an independent supplier and nothing in the Agreement shall create a contract of employment, a relationship of agency or partnership or a joint venture between the parties and accordingly neither party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other party save as expressly permitted by the terms of the Agreement.

1. Authority's obligations

Save as otherwise expressly provided, the responsibilities of the Authority as set out in the Service Description Schedule under this Agreement are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under this Agreement (howsoever arising) on the part of the Authority to the Supplier.

1. Key personnel
	1. Where the Key Personnel Schedule is stated to apply in the Contract Summary then the provisions of this clause 10 applies.
	2. The Supplier acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority. The Key Personnel shall be responsible for the delivery of the Services.
	3. The Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.
	4. Any replacements to the Key Personnel shall be subject to the agreement of the Authority. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
	5. The Authority shall not unreasonably withhold its agreement under clauses 10.3 or 10.4. Such agreement shall be conditional on appropriate arrangements being made by the Supplier to minimise any adverse impact on the Agreement which could be caused by a change in Key Personnel.
2. Confidentiality
	1. **“Confidential information**” means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of this Agreement in connection with the provision of the Services, including but not limited to:
		1. the existence and terms of this Agreement or any agreement entered into in connection with this Agreement;
		2. any information that would be regarded as confidential by a reasonable business person relating to:
			1. the business, assets, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party; and
			2. the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
		3. any information developed by the parties in the course of carrying out this Agreement.

**“Representatives”** means, in relation to a party, its employees, officers, representatives, contractors subcontractors and advisers.

* 1. The provisions of this clause shall not apply to any Confidential Information that:
		1. is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
		2. was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
		3. was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
		4. the parties agree in writing is not confidential or may be disclosed; or
		5. is developed by or for the receiving party independently of the information disclosed by the disclosing party.
	2. Each party shall keep the other party's Confidential Information secret and confidential and shall not:
		1. use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this Agreement (**“Permitted Purpose”**); or
		2. disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 11.
	3. A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
		1. it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
		2. it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this Agreement,

and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 11.

* 1. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
	2. A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.
	3. Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Agreement are granted to the other party, or to be implied from this Agreement.
	4. On termination or expiry of this Agreement, each party shall:
		1. destroy or return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
		2. erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and
		3. certify in writing to the other party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party, subject to clause 52 (Termination).
	5. Except as expressly stated in this Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.
	6. The provisions of this clause 11 shall survive for a period of five years from termination or expiry of this Agreement.
1. Provision of information

Without prejudice to any other provisions in this Agreement, the Supplier shall provide such information in relation to the performance of its obligations and compliance with the Applicable Laws required under this Agreement (including information in respect of claims, progress against relevant timescales or milestones and information required by the Authority for the purposes of re-tendering provision of the Services) as the Authority may reasonably request from time to time, such information to be provided in the format and within the timescales reasonably specified by the Authority. The Supplier shall ensure that all such information is accurate and complete and, in respect of any information required by the Authority for re-tendering purposes, shall notify the Authority without delay of any changes to information previously provided to the Authority.

1. Intellectual property
	1. In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property Rights in the Deliverables and Developed IPR shall vest in the Authority on creation.
	2. The Authority hereby grants the Supplier a royalty-free, non-exclusive, non-transferable licence to the Supplier to use, load, execute, store, transmit and copy Authority IPR to the extent necessary to allow the Supplier to perform the Services and deliver the Deliverables.
	3. The Supplier hereby grants the Authority a royalty-free, non-exclusive, perpetual, irrevocable, world-wide licence to use, load, execute, store, transmit, display, copy, modify, adapt, enhance, translate and sub-licence the Supplier Background IPR to the extent necessary for the Authority (and any sub-licensees) to receive the benefit of the Services and/or Deliverables.
	4. Where any Third Party IPR is or becomes incorporated into any of the Deliverables the Supplier shall:
		1. notify the Authority in writing prior to the delivery of the Deliverables, or in any event as soon as reasonably practicable;
		2. maintain a register of all Third Party IPR incorporated into any Deliverables and make this available to the Authority on request; and
		3. unless otherwise agreed in writing, obtain a perpetual, royalty-free, licence for the Authority to use and sub-licence all Third Party IPR included in the Deliverables to the extent necessary for the Authority (and any sub-licensees) to receive the benefit of the Services and/or Deliverables.
	5. The Supplier 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 be required for the purpose of giving full effect to this clause 13.
	6. The Supplier warrants that the receipt, use and onward supply of the Developed IPR, Services, Deliverables, licensed materials and Supplier Background IPRs by the Authority shall not infringe the rights, including any Intellectual Property Rights, of any third party.
	7. The Supplier shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs calculated on a full indemnity basis) arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the receipt, use and onward supply of the Developed IPR, Services, Deliverables, licensed materials and Supplier Background IPRs.
2. Data protection

Both parties acknowledge that in connection with the Processing of Personal Data in relation to the provision of the Services under this Agreement, both parties will comply with the Data Protection Legislation and the terms of the Data Processing Schedule.

1. Freedom of information
	1. The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
		1. provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its Information disclosure obligations under the FOIA and EIRs;
		2. transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
		3. provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information;
		4. as requested by the Authority and using the Information Commissioner's methodology to do so, redact all necessary information. The Supplier shall provide the Authority with redacted versions within fourteen (14) Working Days of the Commencement Date; and
		5. not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
	2. The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
2. Security/Official Secrets Act

If and when requested by the Authority, the Supplier shall procure (in respect of the Supplier's Personnel involved in the delivery of the Services) from each person identified by the request, a signed statement that it understands that the Official Secrets Acts 1911 to 1989 applies both during the carrying out and after expiry or termination of the Agreement.

1. Publicity and communications
	1. The Supplier shall not:
		1. make any press announcements or publicise this Agreement in any way; or
		2. use the Authority's name, logo or brand in any promotion or marketing or announcement of orders,

without the prior written Approval of the Authority.

* 1. Each party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other party (including the Services, equipment, the Supplier system and the Authority system) and each party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.
1. Transparency
	1. The Supplier acknowledges that the Authority is subject to the Elected Local Policing Bodies (Specified Information) Order 2011 and hereby gives its consent for the Authority to publish this Agreement when the Authority is required to do so.
	2. The Authority, at its sole discretion and where applicable by application of a public interest test, may:
		1. publish all or part of the information contained in this Agreement (including information deemed by the Supplier to be confidential) where the Authority are required to publish information in accordance with all Applicable Laws; and
		2. redact all or part of the information contained within this Agreement prior to its publication. In doing so the Authority will take account of the FOIA requirements.
	3. The Authority may consult with the Supplier regarding any redactions to this Agreement to be published pursuant to this clause. The final decision regarding publication and/or redaction of the information contained within this Agreement shall be that of the Authority.
	4. The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Agreement.
2. Access to Authority's premises
	1. The Authority shall, subject to the provisions of the licence set out in clause 20, provide the Supplier (and its Sub-contractors) with access to such parts of the Authority Premises as the Supplier reasonably requires for the purposes only of providing the Services. The Supplier's right of access will terminate upon termination of this Agreement, subject to clause 19.3.
	2. The Authority shall provide the Supplier with such accommodation and facilities in the Authority Premises as is specified in the Service Description Schedule or which is otherwise agreed by the parties from time to time.
	3. Subject to the requirements of the Exit Management Schedule, in the event of the expiry or termination of this Agreement, the Authority shall on reasonable notice provide the Supplier with such access as the Supplier reasonably requires to the Authority Premises to remove any of the Supplier's equipment. All such equipment shall be promptly removed by the Supplier.
	4. The Supplier shall ensure that:
		1. where using the Authority Premises and any Authority Materials they are kept properly secure and it will comply and cooperate with the Authority's security requirements from time to time regarding the security of the same;
		2. only those of the Supplier Personnel that are duly authorised to enter upon the Authority Premises for the purposes of providing the Services, do so;
		3. any Authority Materials used by the Supplier are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from Authority Premises unless expressly permitted under this Agreement or by the Authority's Authorised Representative; and
		4. any Authority Materials are used with all reasonable care and skill and in accordance with any manufacturer guidelines or instructions.
	5. The Authority shall maintain and repair the Authority Materials, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Supplier or its representatives (fair wear and tear excluded) the costs incurred by the Authority in maintaining and repairing the same shall be recoverable from the Supplier as a debt.
	6. The Supplier shall notify the Authority immediately on becoming aware of any damage caused by the Supplier, its agents, employees or Sub-contractors to any property of the Authority, to any of the Authority Premises or to any property of any other recipient of the Services in the course of providing the Services.
	7. The Supplier shall indemnify the Authority against all and any damage to the Authority Premises and the Authority Materials caused by the same.
3. Licence to occupy Authority premises
	1. Any Authority Premises shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Agreement. The Supplier shall have the use of such Authority Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Agreement in accordance with the Exit Management Schedule.
	2. The Supplier shall limit access to the Authority Premises to such Supplier Personnel as is necessary to enable it to perform its obligations under this Agreement and the Supplier shall co-operate (and ensure that the Supplier Personnel co-operate) with such other persons working concurrently on such Authority Premises as the Authority may reasonably request.
	3. Should the Supplier require modifications to the Authority Premises, such modifications shall be subject to Approval and shall be carried out by the Authority at the Supplier's expense. The Authority shall undertake any modification work which it approves pursuant to this clause 20.3 without undue delay. Ownership of such modifications shall rest with the Authority.
	4. The Supplier shall observe and comply with such rules and regulations as may be in force at any time for the use of such Authority Premises and conduct of personnel at the Authority Premises as determined by the Authority, and the Supplier shall pay for the full cost of making good any damage caused by the Supplier Personnel other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein. The parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Supplier or the Supplier Personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Agreement, the Authority retains the right at any time to use any Authority Premises in any manner it sees fit.
4. Security of Authority premises
	1. The Authority shall be responsible for maintaining the security of the Authority Premises in accordance with the Security Policy. The Supplier shall comply with the Security Policy, and any other reasonable security requirements of the Authority while on the Authority Premises.
	2. The Authority shall afford the Supplier upon Approval (the decision to Approve or not will not be unreasonably withheld or delayed) an opportunity to inspect its physical security arrangements.
5. Supplier's records
	1. The Supplier shall allow the Authority (or its professional advisers) to access the Supplier's premises, personnel, systems and relevant records to verify that the Charges and any other sums charged to the Authority under this Agreement are accurate.
	2. Subject to the Authority's obligations of confidentiality at clause 11 (Confidentiality), the Supplier shall provide the Authority (and its professional advisers) with all reasonable co-operation, access and assistance in relation to each audit.
	3. The Supplier shall keep and maintain until six (6) years after the end of the Term, or as long a period as may be agreed between the parties.
	4. The Authority shall provide reasonable notice of its intention to conduct an audit and any audit shall be conducted on a Working Day.
	5. The Authority and its professional advisers shall have the right to take copies of any records which they reasonably require and remove such copies and the Supplier shall provide the necessary facilities to assist in copying free of charge.
6. Health and safety
	1. The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
		1. all Applicable Laws regarding health and safety;
		2. the Authority's health and safety policy (as provided to the Supplier from time to time) whilst at the Authority Premises; and
		3. the Safety Rules Policy (where stated to apply in the Contract Summary).
	2. Each party shall promptly notify the other as soon as possible of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement.
	3. While on the Authority Premises, the Supplier shall comply with any health and safety measures implemented by the Authority in respect of Supplier Personnel and other persons working there and any instructions from the Authority on any necessary associated safety measures.
7. Equality
	1. The Supplier shall:
		1. perform its obligations under this Agreement (including those in relation to provision of the Services) in accordance with:
			1. all Applicable Laws (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
			2. any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under Applicable Laws;
		2. take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).
8. Responsible procurement and Supplier Code of Conduct
	1. The Supplier shall comply with the Responsible Procurement Schedule in respect to all social & ethical, economic, environmental and governance matter arising from, or relating to, this Agreement.
	2. The Supplier shall comply with the Supplier Code of Conduct at all times during the Term.
	3. A failure by the Supplier to comply with the Supplier Code of Conduct shall amount to a Default but such Default shall not automatically trigger the Authority’s remedies under clause 52.1.1, unless the Authority (acting reasonably) determines that such Default is significantly serious to be determined a material breach of this Agreement.
9. Anti-Slavery and Human Trafficking
	1. In performing its obligations under this Agreement, the Supplier shall:
		1. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force (**Anti-Slavery Laws**) including but not limited to] the Modern Slavery Act 2015;
		2. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct had been carried out in England and Wales;
		3. include in contracts with its subcontractors anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 26;
		4. notify the Authority as soon as it becomes aware of any actual or suspected breach of clause 26.1.1 and clause 26.1.2; and
		5. maintain a complete set of records to trace the supply chain of all Services provided to the Authority in connection with this Agreement; and permit the Authority and its third party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 26.
	2. Further and in addition to the provisions of clause 26.1, the Supplier:
		1. shall not use, nor allow its sub-contractors to use forced, bonded or involuntary prison labour;
		2. shall not require any Supplier Personnel or Sub-Contractors to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice;
		3. warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
		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;
		5. shall make reasonable enquires to ensure that its officers, employees and Sub-Contractors have not been convicted of slavery or human trafficking offences anywhere around the world;
		6. shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Sub-Contractors anti-slavery and human trafficking provisions;
		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 Agreement;
		8. shall prepare and deliver to the Authority, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;
		9. shall not use, nor allow the Supplier Personnel or Sub-Contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of Supplier Personnel or Sub-Contractors;
		10. shall not use or allow child or slave labour to be used by its Sub-Contractors; and
		11. shall report the discovery or suspicion of any slavery or trafficking by it or its sub-contractors to the Authority and the Modern Slavery Helpline.
	3. Breach of this clause 26 shall be deemed a material breach under clause 52.
10. Corruption and fraud
	1. The Supplier shall:
		1. comply with all Applicable Laws, statutes and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010 (the **Relevant** **Requirements**);
		2. not commit to any Prohibited Act or engage in any activity, practice or conduct that would constitute a Prohibited Act by it, or the Authority if such activity, practice or conduct had been carried out in the United Kingdom;
		3. devise, implement and enforce throughout the Term its own written policies and procedures, including adequate procedures under the Bribery Act 2010, in order to ensure compliance by:
			1. the Supplier;
			2. the Supplier Personnel; and
			3. any other associated persons of the Supplier,

with the Relevant Requirements as set out in this clause, and the Supplier shall produce to the Authority copies of such written policies and procedures within 5 Working Days of signature of this Agreement and at any time upon request by the Authority;

* + 1. promptly report to the Authority any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement;
		2. immediately notify the Authority in writing if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier, and the Supplier warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Agreement;
		3. within two (2) months of the Commencement Date, and annually thereafter, certify to the Authority in writing signed by an officer of the Supplier, compliance with this clause 27.1 by the Supplier and all persons associated with it under clause 27.2. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request.
	1. The Supplier shall ensure that any person associated with the Supplier who is performing services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 27 (the **Relevant Terms**), the Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Authority for any breach of the Relevant Terms, and shall be directly liable to the Authority for any breach by such persons of any of the Relevant Terms.
	2. If the Supplier (including any member of the Supplier's Personnel, Sub-contractor, third party or agent, in all cases whether or not acting in the Supplier's knowledge) engages in conduct prohibited by this clause 27 or commits any offence under the Bribery Act 2010, the Authority may:
		1. terminate this Agreement with immediate effect and recover from the Supplier the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Term; or
		2. recover in full from the Supplier any other loss sustained by the Authority in consequence of any breach of the conditions set out in this clause.
	3. For the purposes of this clause 27:
		1. the meaning of **adequate procedures** and **foreign public official** and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively;
		2. a person associated with the Supplier includes but is not limited to any Sub-contractor or third party of the Supplier; and
		3. Prohibited Act means any of the following:
			1. offering, giving or agreeing to give to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind as an inducement or reward;
			2. for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Agreement, or any other agreement with the Authority or any other public body; or
			3. for showing or refraining from showing favour or disfavour to any person in relation to this Agreement or any such agreement;
			4. paying commission or agreeing to pay any commission to the Authority or any other public body or any person employed by or on behalf of the Authority, or any other public body in connection with this Agreement, or any other agreement with the Authority, or any other public body or person employed by or on behalf of the Authority, or any other public body; or
			5. committing any offence (i) under the Bribery Act 2010, (ii) under any Applicable Laws creating offences in respect of fraudulent acts; or (iii) at common law in respect of fraudulent acts,

in relation to this Agreement, or any other agreement with the Authority, or any other public body or person employed by or on behalf of the Authority, or any other public body.

* 1. The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent fraud by Supplier Personnel and the Supplier (including its shareholders, members, directors) in connection with the receipt of monies from the Authority.
	2. The Supplier shall notify the Authority immediately if it has reason to suspect that any fraud in relation to any agreements with the Authority has occurred or is occurring or is likely to occur.
	3. If the Supplier or Supplier Personnel commits fraud in relation to this Agreement or any contract with the Authority, the Authority may:
		1. terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Term; or
		2. recover in full from the Supplier any other loss sustained by the Authority in consequence of any breach of this clause.
1. Implementation Plan and Testing Schedule

Where the Implementation Plan and Testing Schedule is stated to apply in the Contract Summary then the Supplier shall comply with the requirements set out in such Schedule.

1. Service credits

If the Supplier commits a Service Failure, the Authority shall be entitled to either submit an invoice to the Supplier or make deductions from the Charges corresponding to the Service Credits set out in the Performance Regime Schedule.

1. KPIs
	1. Where any Service is stated in the Performance Regime Schedule to be subject to a specific KPI, the Supplier shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than the corresponding Target KPI to such specific KPI as set out in the Performance Regime Schedule.
	2. If the existing Services are varied or new Services are added, Target KPIs for the same will be determined and included within the Performance Regime Schedule.
	3. The Supplier shall provide records of and Management Reports summarising the Achieved KPIs and its performance against KPIs and any Service Levels.
	4. In the event that any Achieved KPI falls short of the relevant Target KPI, without prejudice to any other rights the Authority may have, the provisions of clause 31 shall apply.
2. Rectification plan process
	1. Where the Authority has instructed the Supplier to comply with the Rectification Plan Process pursuant to this clause 31:
		1. the Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the parties) from the date of the Authority's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Authority's request for a draft Rectification Plan;
		2. the draft Rectification Plan shall set out:
			1. full details of the Default that has occurred, including a root cause analysis;
			2. the actual or anticipated effect of the Default; and
			3. the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).
	2. The Supplier shall promptly provide to the Authority any further documentation that the Authority requires to assess the Supplier's root cause analysis. If the parties do not agree on the root cause set out in the draft Rectification Plan, either party may refer the matter to be determined by an expert in accordance with the Dispute Resolution Procedure.
	3. The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
		1. is insufficiently detailed to be capable of proper evaluation;
		2. will take too long to complete;
		3. will not prevent recurrence of the Default; and/or
		4. will rectify the Default but in a manner which is unacceptable to the Authority.
	4. The Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within five (5) Working Days (or such other period as agreed between the parties) of the Authority's notice rejecting the first draft.
	5. If the Authority consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.
	6. If the:
		1. Supplier fails to submit a Rectification Plan in accordance with clause 31.1.1 or 31.4, or
		2. Authority continues to reasonably withhold consent in accordance with clause 31.5 following a resubmission of the Rectification Plan by the Supplier in accordance with 31.4, or
		3. Supplier fails to comply with the provisions of this clause 31

The Supplier shall be in Default and the provisions of clause 52 (Termination) shall apply.

1. Remedies
	1. Without prejudice to any other right or remedy of the Authority howsoever arising, if the Supplier commits any Default of this Agreement then the Authority may (whether or not any part of the Services have been delivered) do any of the following:
		1. at the Authority's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (and where such Default is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of this Agreement are fulfilled, in accordance with the Authority's instructions;
		2. carry out, at the Supplier's expense, any work necessary to make the provision of the Services comply with this Agreement;
		3. if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults, whether of the same or different obligations and regardless of whether such Defaults are remedied (which taken together constitute a material Default):
			1. instruct the Supplier to comply with the Rectification Plan Process;
			2. suspend this Agreement and step-in to itself supply or procure a third party to supply (in whole or in part) the Services;
			3. without terminating or suspending the whole of this Agreement, terminate or suspend this Agreement in respect of part of the provision of the Services only and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Services in accordance with clause 33.
	2. Where the Authority exercises any of its step-in rights under clauses 32.1.3(a) or 32.1.3(c), the Authority shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Authority (including any reasonable administration costs) in respect of the supply of any part of the Services by the Authority or a third party and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.
2. Step-In Rights
	1. On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a **Step-In Notice**) that it will be taking action under this clause 33 (Step- in Rights), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to clause 11 (Confidentiality)). The Step-In Notice shall set out the following:
		1. the action the Authority wishes to take and in particular the Services that it wishes to control (the **Required Action**);
		2. the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier's Default;
		3. the date on which it wishes to commence the Required Action;
		4. the time period which it believes will be necessary for the Required Action;
		5. whether the Authority will require access to the Supplier's premises and/or the Sites; and
		6. to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.
	2. Following service of a Step-In Notice, the Authority shall:
		1. take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to Achieve the Required Action;
		2. keep records of the Required Action taken and provide information about the Required Action to the Supplier;
		3. co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Authority is not assuming control; and
		4. act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this Clause 33.
	3. For so long as and to the extent that the Required Action is continuing, then:
		1. the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
		2. no deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 33.4 shall apply to deductions from Charges in respect of other Services; and
		3. the Authority shall pay to the Supplier the Charges after subtracting any applicable deductions and the Authority's costs of taking the Required Action.
	4. If the Supplier demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:
		1. the degradation of any Services not subject to the Required Action; or
		2. the non-achievement of a Milestone,

beyond that which would have been the case had the Authority not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.

* 1. Before ceasing to exercise its step in rights under this Clause 33 the Authority shall deliver a written notice to the Supplier (a **Step-Out Notice**), specifying:
		1. the Required Action it has actually taken; and
		2. the date on which the Authority plans to end the Required Action (the **Step-Out Date**) subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 33.6.
	2. The Supplier shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a **Step-Out Plan**) relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.
	3. If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then within five (5) Working Days revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
	4. Under no circumstances can the Supplier refuse to:
		1. exercise any Step-Out Plan or
		2. co-operate with any Step-In or Step-Out activity required by the Authority.
	5. The Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause 33, provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:
		1. limbs (b) or (c) of the definition of a Step-In Trigger Event; or
		2. limbs (d) or (e) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Supplier's Default)

provided that the Supplier provides evidence that demonstrates to the reasonable satisfaction of the Authority that those costs are reasonable and have been incurred directly as a result of the step-in action taken by the Authority.

* 1. The Supplier shall provide the Authority with such assistance as the Authority may reasonably require in relation to any step-in action initiated by the Authority pursuant to a third party including without limitation managing the process and timescales by which any third party entity appointed to step-in exercises its obligations and, if requested, shall:
		1. exercise the Authority's step-in rights under a third party agreement on behalf of the Authority;
		2. accept an appointment by the Authority to step-in to and provide the services under the applicable third party agreement
	2. If the Supplier is appointed by the Authority to step-in and provide the services under a third party agreement in accordance with Clause 33.10.1, the Parties shall agree any Changes to this Agreement necessitated by the step-in in accordance with clause 43 (Contract Change).
1. Force majeure
	1. **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:
		1. acts of God, flood, drought, earthquake or other natural disaster;
		2. epidemic or pandemic, subject to clause 34.2;
		3. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
		4. nuclear, chemical or biological contamination or sonic boom;
		5. any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
		6. collapse of buildings, fire, explosion or accident;
		7. any labour or trade dispute, strikes, industrial action or lockouts [(other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
		8. non-performance by suppliers or Sub-contractors (other than by companies in the same group as the party seeking to rely on this clause); and
		9. interruption or failure of utility service.
	2. The Supplier and the Authority acknowledge and agree that events and circumstances arising from or related to the COVID-19 coronavirus shall not amount to a Force Majeure Event.
	3. Provided it has complied with clause 34.5, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
	4. The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
	5. The Affected Party shall:
		1. as soon as reasonably practicable after the start of the Force Majeure Event but no later than five (5) Working Days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and
		2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
	6. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than four (4) weeks, the party not affected by the Force Majeure Event may terminate this Agreement by giving four (4) weeks' written notice to the Affected Party.
	7. The costs of termination incurred by the parties shall lie where they fall if either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event.
2. Disaster recovery
	1. The Supplier shall comply at all times with the relevant provisions of the Business Continuity Schedule.
	2. Following the declaration of a Disaster in respect of any of the Services, the Supplier shall:
		1. implement the Disaster Recovery Plan;
		2. continue to provide the affected Services to the Authority in accordance with the Disaster Recovery Plan; and
		3. restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.
	3. To the extent that the Supplier complies fully with the provisions of this clause 35 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this Agreement on the part of the Supplier), the KPIs to which the affected Services are to be provided during the continuation of the Disaster shall not be the KPIs as referred to in clause 30 but shall be the KPIs set out in the Disaster Recovery Plan or (if none) the best service levels which are reasonably achievable in the circumstances.
3. Amendments and variations to the Agreement

Either party may propose changes to the scope or execution of the Services, provided that such variation does not amount to a material Change of this Agreement within the meaning of the Applicable Laws. No proposed Change shall come into effect until a relevant Change Request has been signed by both parties in accordance with clause 43.

1. Liabilities
	1. Neither party excludes or limits liability to the other party for:
		1. death or personal injury caused by its negligence; or
		2. fraud; or
		3. fraudulent misrepresentation; or
		4. any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982; or
		5. any liability arising under any indemnity provision in the Agreement, save for the indemnity set out at clause 37.2, or (in the case of the Supplier only) any liability arising under clause 27 (Corruption and fraud).
	2. Subject to clause 37.3, the Supplier shall indemnify and keep indemnified the Authority from and against any loss, damages, liabilities, claims, demands, proceedings, actions, costs, or expenses suffered by the Authority and legal fees and costs incurred by the Authority resulting from:
		1. any breach of this Agreement by the Supplier;
		2. any act, neglect or Default of the Supplier or the Supplier's Personnel;
		3. any breaches in respect of any matter arising from the performance of the Services resulting in any successful claim by any third party; and
		4. any failure for any reason by the Supplier to perform the Services in accordance with this Agreement which results in the Authority making alternative provision for the Services.
	3. Subject always to clause 37.1, the liability of either party for Defaults shall be subject to the following limits:
		1. save as provided by clause 37.3.3, the liability of either party for any single Default resulting in loss of or damage to the property of the other party shall not exceed the Property Damage Limitation;
		2. save as provided by clause 37.3.3, the aggregate liability under the Agreement of either party for any and all Defaults (other than a Default covered by clause 37.3.1) shall not exceed the General Liability Information.
		3. to the extent that the liability of the Supplier for any particular Default is (or, but for any breach of this Agreement by the Supplier, would be) covered by any insurance which the Supplier is required under this Agreement to maintain, the Supplier shall at a minimum be liable to the Authority in respect of that Default up to the limit of liability, even if this results in the liability of the Supplier under this Agreement exceeding the limits specified in clauses 37.3.1 or 37.3.2, as applicable.
	4. Subject to the provisions of clause 37.5, during the term of this Agreement and for a period of 6 years after the expiry or termination of this Agreement, the Supplier shall maintain in force, with a reputable insurance company:
		1. employer's liability insurance in accordance with legal requirements for the time being in force and in any event for not less than ten million pounds (£10,000,000);
		2. professional indemnity insurance at an amount not less than ten million pounds (£10,000,000);
		3. public liability insurance at an amount not less than ten million pounds (£10,000,000);
		4. product liability insurance at an amount not less than ten million pounds (£10,000,000),

to cover the liabilities that may arise under or in connection with this Agreement and shall produce to the Authority on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

* 1. Where this Agreement is entered into as a deed the period of 6 years referenced at clause 37.4 shall be extended to 12 years.
1. Assignment
	1. The Supplier shall not assign, sub-contract or in any other way dispose of this Agreement or any part of it without prior written consent of the Authority.
	2. The Authority may at any time assign, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with any or all of its rights under this Agreement, provided that it gives prior written notice of such dealing to the Supplier.
2. Sub-Contracting
	1. The Supplier shall only Sub-contract its obligations under this Agreement to a Sub-contractor, with the prior written consent of the Authority in accordance with the following provisions of this clause.
	2. Upon requesting the appointment of a Sub-contractor, the Supplier shall provide the Authority with such information as the Authority reasonably requests regarding a proposed Sub-contractor.:
	3. Where the Authority provides written consent to the appointment of a Sub-contractor the Supplier shall ensure the Sub-contract shall include:
		1. a right under the Contracts (Rights of Third Parties) Act 1999 for the Authority to enforce the terms of that Sub-contract as if it were the Supplier;
		2. a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-contract to the Authority;
		3. a provision requiring the Sub-contractor to enter into a direct confidentiality agreement with the Authority on the same terms as set out in clause 11 of this Agreement;
		4. a provision requiring the Sub-contractor to comply with protection of data requirements pursuant to the Data Processing Schedule to this Agreement;
		5. a provision requiring the Sub-contractor to comply with the prevention of corruption obligations pursuant to clause 27(Corruption and fraud) of this Agreement;
		6. a provision restricting the ability of the Sub-contractor to further Sub-contract elements of the Services or goods provided to the Supplier without first seeking the consent of the Authority; and
		7. payment terms as set out in clause 46 (Charges and payment) of this Agreement.
	4. The Supplier shall not terminate or materially amend the terms of any Sub-contract without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.
	5. The Authority may require the Supplier to terminate any Sub-contract where the acts or omissions of the relevant Sub-contractor have given rise to the Authority's right of termination under this Agreement.
	6. The Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that Sub-contractor also do, or refrain from doing, such act or thing.
3. Continuous improvement
	1. The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with the Continuous Improvement Schedule.
	2. Any potential changes highlighted as a result of the Supplier's reporting in accordance with this clause 40 shall be addressed by the parties using clause 43 (Contract Change).
4. Value for Money

Notwithstanding the Supplier's obligations under clause 40 (Continuous Improvement), the Authority shall be entitled to regularly benchmark the Charges and level of performance by the Supplier of the supply of the Services, against other suppliers providing services substantially the same as the Services during the Term in accordance with the Value for Money Schedule.

1. Financial Distress

The Supplier shall comply with the requirements of the Financial Distress Schedule.

1. Contract change
	1. Either party may propose changes to the scope or execution of the Services, but no proposed changes shall come into effect until a relevant Change Request has been signed by both parties.
	2. If the Authority wishes to make a change to the Services:
		1. it shall notify the Supplier, providing as much detail as is reasonably necessary to enable the Supplier to prepare the draft Change Request; and
		2. the Supplier shall, within five (5) Working Days of receiving the Authority's request at clause 43.2.1, provide a draft Change Request to the Authority.
	3. If the Supplier wishes to make a change to the Services, it shall provide a draft Change Request to the Authority.
	4. If the Supplier submits a draft Change Request in order to comply with any applicable safety or regulatory requirements and such changes do not affect the nature, scope of, or charges for the Services, the Authority shall not unreasonably withhold or delay consent to it.
	5. If the parties:
		1. agree to a Change Request, they shall sign it and that Change Request shall amend this Agreement; or
		2. are unable to agree a Change Request, either party may require the disagreement to be dealt with in accordance with clause 57 (Dispute resolution) of this Agreement.
	6. The Supplier shall only be entitled to charge for the time it spends on preparing and negotiating Change Requests which originate from the Authority in accordance with clause 43.2. The Supplier shall charge for its time so spent on a time and materials basis at the Supplier's daily dates specified in the Charges, Payment and Invoicing Schedule.
2. Change of control of Supplier
	1. The Supplier shall notify the Authority immediately if the Supplier undergoes a Change of Control. The Authority may terminate the Agreement with immediate effect by giving notice in writing within six (6) months of:
		1. being notified that a Change of Control has occurred; or
		2. where no notification has been made, the date that the Authority becomes aware of the Change of Control,

but shall not be permitted to terminate where an Approval in writing was granted prior to the Change of Control.

1. Change in law

The Supplier shall neither be relieved of its obligations to supply the Services in accordance with this Agreement nor be entitled to an increase in the Charges as a result of any change in Applicable Laws.

1. Charges and payment
	1. In consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, the Authority shall pay the undisputed Charges in accordance with the Charges, Payment and Invoicing Schedule.
	2. The Authority shall accept and process for payment an electronic invoice submitted for payment by the Supplier where the invoice is undisputed and where it complies with the standard on electronic invoicing.
	3. For the purposes of clause 46.2, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
2. VAT
	1. The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a Valid Invoice.
	2. The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Agreement. Any amounts due under this clause 47 (VAT) shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.
3. Recovery of sums due
	1. Wherever under the Agreement any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Agreement), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under this Agreement or under any other agreement or contract with the Authority.
	2. Any overpayment by either party, whether of the Charges or of VAT or otherwise, shall be a sum of money recoverable by the party who made the overpayment from the party in receipt of the overpayment.
	3. The Supplier shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.
	4. Unless otherwise specified in this Agreement, any sum payable by the Supplier to the Authority under this Agreement or by either party to the other under clause 48.2 shall be paid in cleared funds, within five (5) Working Days of a demand for the same being notified by the recipient party to the paying party, to such bank or building society account as the recipient party may from time to time direct.
4. Audit
	1. The Supplier shall keep and maintain until two (2) years after the end of the Term, or as long a period as may be agreed between the parties, full and accurate records of the Agreement including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority.
	2. During the Term and for a period of two (2) years after termination or expiry of this Agreement, the Authority (acting by itself or through its Authorised Representatives) may conduct an audit of the Supplier to:
		1. verify the Supplier’s compliance with the terms and conditions of this Agreement:
		2. to review the integrity, confidentiality and security of any information and data relating to the Authority or any Authority personnel; and
		3. to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
	3. The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
	4. Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and any relevant regulatory body (and/or their agents or Authorised Representatives) with all reasonable co-operation and assistance in relation to each audit, including:
		1. all information requested by the above persons within the permitted scope of the audit;
		2. reasonable access to any Sites; and
		3. access to the Supplier's Personnel.
	5. The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) Working Days' notice of its intention or, where possible, a regulatory body's intention, to conduct an audit.
	6. The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 49, unless the audit identifies a material failure by the Supplier to perform its obligations under this Agreement in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
	7. If an audit identifies that the Supplier has failed to perform its obligations under this Agreement in any material manner, the Authority may stipulate a remedial plan (including, where applicable, provision of information about the Charges, proposed Charges or Supplier’s costs).
5. Reporting and meetings
	1. The Supplier shall provide the Management Reports in the form and at the intervals set out in the Governance and/or the Records Policy.
	2. Where the Governance Schedule is stated to apply to this Agreement in the Contract Summary, the Authorised Representatives and relevant Key Personnel (to the extent there are any Key Personnel) shall meet in accordance with the details set out in the Governance Schedule. The Supplier shall, at each meeting, present its previously circulated Management Reports in the format set out in the Governance Schedule.
6. Monitoring
	1. The Authority may monitor the performance of the Services by the Supplier.
	2. The Supplier shall co-operate, and shall procure that its Sub-contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 51.1 at no additional charge to the Authority.
7. Termination
	1. Termination for breach
		1. The Authority may terminate this Agreement (in whole or in part) with immediate effect by issuing a Termination Notice to the Supplier if the Supplier commits a Default and:
			1. the Supplier has not remedied the Default to the reasonable satisfaction of the Authority within ten (10) Working Days, or such other period as may be specified by the Authority, after issue of a Termination Notice; or
			2. the Default is not, in the reasonable opinion of the Authority, capable of remedy; or
			3. the Default, in the reasonable opinion of the Authority, is a material breach of the Agreement; or
			4. the Default relates to a failure to meet and/or rectify performance in respect of particular service levels or key performance indicators and the failure in question is of a severity that permits the Authority by reference to other provisions in this Agreement (where in a Schedule or otherwise) to terminate this Agreement.
		2. If this Agreement is terminated by the Authority in accordance with clause 52.1.1, or clause 27 (Corruption and Fraud) or clause 44 (Change of Control of Supplier) such termination shall be at no loss or cost to the Authority and the Supplier hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination.
		3. In the event that at any time undisputed Charges have been overdue for payment for a period of ninety (90) days or more, the Authority will have committed a Termination Payment Default.
		4. The Supplier may terminate this Agreement in the event that the Authority commits a Termination Payment Default by giving sixty (60) days' written notice to the Authority. In the event that the Authority remedies the Termination Payment Default in the sixty (60) day notice period, the Supplier's notice to terminate this Agreement shall be deemed to have been withdrawn.
	2. Termination for breach of the Public Contracts Regulations 2015

The Authority may terminate this Agreement by issuing a Termination Notice to the Supplier on the occurrence of any of the statutory provisions contained in Regulation 73 (1)(a) to (c) of the Public Contracts Regulations 2015. The costs incurred by the parties shall lie where they fall if the Authority terminates under this clause 52.2.

* 1. Recovery on Termination
		1. On the termination of this Agreement for any reason, the Supplier shall:
			1. immediately return to the Authority all information and documentation belonging to the Authority;
			2. assist and co-operate with the Authority with any re-tender;
			3. promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority; and
			4. where applicable comply with the Exit Management Schedule.
1. Termination without cause

The Authority shall have the right to terminate this Agreement at any time for any reason by giving the Supplier no less than three (3) month's prior written notice

1. Consequences of termination
	1. On termination or expiry of this Agreement:
		1. the Supplier shall immediately deliver to the Authority all Deliverables whether or not then complete, and return all of the Authority Materials and the Authority's Assets. If the Supplier fails to do so, then the Authority may enter the Supplier's premises and take possession of them. Until they have been delivered or returned, the Supplier shall be solely responsible for the safe keeping of all Deliverables, Authority Materials and Authority's Assets in its possession and will not use them for any purpose not connected with this Agreement;
		2. the Supplier shall, if so requested by the Authority, provide all assistance reasonably required by the Authority to facilitate the smooth transition of the Services to the Authority or any replacement supplier appointed by it including the assistance as set out in the Exit Management Schedule; and
		3. the following clauses shall continue in force: Definitions and interpretation; Precedence; Severability; Waiver; Confidentiality; Audit; Dispute resolution, Governing law; Jurisdiction; Consequences of termination; TUPE; Limitation of liability; and Intellectual property.
	2. Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the Agreement Expiry Date, including the right to claim damages in respect of any breach of the Agreement which existed at or before the Agreement Expiry Date.
2. Termination Costs
	1. Where:
		1. the Authority terminates (in whole or in part) this Agreement under clause 53 (Termination Without Cause); or
		2. the Supplier terminates this Agreement under clause 52 (Termination),

the Authority shall indemnify the Supplier against any reasonable and proven losses which would otherwise represent an unavoidable loss by the Supplier as a direct result of the Termination of this Agreement, subject to the Supplier taking all reasonable steps to mitigate such losses. The Supplier must provide supporting evidence including any further evidence as requested by the Authority, of all losses reasonably and actually incurred by the Supplier as a result of termination under clause 53.

* 1. The Authority shall not be liable under clause 55.1 to pay any sum which:
		1. as claimable under insurance held by the Suppler, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
		2. when added to any sums paid or due to the Supplier under this Agreement, exceeds the total sum which would have been payable to the Supplier if this Agreement had not been terminated.
1. Remedies cumulative

Except as otherwise expressly provided by this Agreement, all rights and remedies available to either party under this Agreement or otherwise are cumulative and may be exercised concurrently or separately, and the exercise of any one right or remedy shall not be deemed an election of such right remedy to the exclusion of, and shall be without prejudice to the availability of, any other right or remedy.

1. Dispute resolution
	1. The parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure as set out in the Dispute Resolution Procedure Schedule.
	2. The Supplier shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.
2. TUPE

The parties acknowledge that the commencement and/or expiry or termination of this Agreement may constitute a relevant transfer for the purposes of TUPE. The provisions of the Staff Transfer Schedule will apply on such commencement or expiry or termination.

1. Guarantee
	1. Where the Contract Summary states the Guarantee Schedule will apply to this Agreement then the provisions of this clause 59 apply.
	2. Where the Authority has stipulated that the award of this Agreement shall be conditional upon receipt of a Guarantee, then, on or prior to the Commencement Date or on any other date specified by the Authority, the Supplier shall deliver to the Authority:
		1. an executed Guarantee in the form set out in the Guarantee Schedule; and
		2. a certified copy extract of the board minutes and/or resolution of the guarantor approving the execution of the Guarantee.
	3. The Authority may in its sole discretion at any time agree to waive compliance with the requirement in this clause 59 by giving the Supplier notice in writing.
2. IR35

Where the IR35 Schedule is stated to apply in the Contract Summary then the parties shall comply with the provisions of the IR35 Schedule.

1. Facility Management Integrator

Where the Facility Management Integrator Schedule is stated to apply in the Contract Summary then the parties shall comply with the provisions of the Facility Management Integrator Schedule.

1. Entire agreement
	1. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
	2. Each party agrees that 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.
	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.
2. Waiver
	1. A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
	2. A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
	3. A party that waives a right or remedy provided under this Agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.
	4. Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by Applicable Laws, in equity or otherwise.
3. Notices
	1. A notice given to a party under or in connection with this Agreement:
		1. shall be in writing and in English;
		2. shall be signed by or on behalf of the party giving it;
		3. shall be sent to the party for the attention of the contact and at the address of the set out below;
		4. is deemed received as set out in clause 64.4 if prepared and sent in accordance with this clause.
	2. The addresses, email addresses and DX numbers for service of notices are set out in the Contract Summary:
	3. A party may change its details given in clause 64.2 by giving notice, the change taking effect for the party notified of the change on the later of:
		1. the date, if any, specified in the notice as the effective date for the change; or
		2. the date seven (7) days after deemed receipt of the notice.
	4. This clause 64.4 sets out the delivery methods for sending a notice to a party under this Agreement and, for each delivery method, the date and time when the notice is deemed to have been received (provided that all other requirements of this clause have been satisfied and subject to the provisions in clause 64.5):
		1. if delivered by hand, on signature of a delivery receipt;
		2. if sent by pre-paid first class post the next working day delivery service at 9.00am on the second day after posting or at the time recorded by the delivery service;
		3. if sent by email, at the time of transmission;
		4. if sent by document exchange (DX), at 9.00 am on the second day after being put into the DX.
	5. If deemed receipt under clause 64.4 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this clause 64.5, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
	6. This clause 64 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.
4. Severability
	1. If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
	2. In the event that any deemed deletion under clause 65.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either party may give notice to the other party requiring the parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably practicable, achieves the parties' original commercial intention.
	3. If the parties are unable to resolve the matter arising in accordance with clause 65.2 within twenty (20) Working Days of the date of the notice given pursuant to clause 65.2, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the parties shall lie where they fall if this Agreement is terminated pursuant to this clause 65.
5. Third party rights
	1. Unless it expressly states otherwise] 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.
	2. The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.
6. Governing law
	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.
	2. Subject to the Dispute Resolution Procedure, the parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.
7. Jurisdiction

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.

Service Description Schedule

**Service Description**

[INSERT]

**Specification**

[INSERT]

**Authority Responsibilities**

[INSERT]

**Charges, Payment and Invoicing Schedule**

1. General Provisions
	1. This Schedule details:
		1. the Charges for the Services under this Agreement; and
		2. the payment terms/profile for the Charges;
		3. the invoicing procedure; and
		4. the procedure applicable to any adjustments of the Charges.
2. **Agreement Charges**
	1. The Charges which are applicable to this Agreement are set out in Appendix 1 of this Schedule.
	2. The Supplier acknowledges and agrees that:
		1. a discount structure as set out in Appendix 2 shall be applied by the Supplier to this Agreement.
		2. subject to Paragraph 5 of this Schedule (Adjustment of Charges), the Charges cannot be increased during the Term.
3. **Payment Terms/Payment Profile**

The payment terms/profile which are applicable to this Agreement are set out in Appendix 3 of this Schedule.

1. **Invoicing Procedure**
	1. The Authority shall pay all sums properly due and payable to the Supplier in cleared funds within thirty (30) days of receipt of a valid invoice, submitted to the address specified by the Authority in Paragraph 4.4 of this Schedule and in accordance with the provisions of this Agreement.
	2. The Supplier shall ensure that each invoice shall be submitted electronically and must specify:
		1. all appropriate references, including the unique purchase order reference number: and
		2. a detailed breakdown of the Services, including a milestone(s) (if any) within this Agreement against the applicable due and payable Charges; and
		3. shows separately:
			1. any Service Credits due to the Authority; and
			2. the VAT added to the due and payable Charges in accordance with this Agreement (VAT) and the tax point date relating to the rate of VAT shown; and
			3. is supported by any other documentation reasonably required by the Authority to substantiate that the invoice is a valid invoice.
	3. All payments due by one party to the other shall be made within thirty (30) days of receipt of a valid invoice unless otherwise specified in this Agreement, in cleared funds, to such bank or building society account as the recipient party may from time to time direct.
	4. Invoices should be sent electronically to sscl.mps.ap@police.sscl.com for payment or submitted via our e-invoicing mechanisms, please engage with MPS Commercial Services to discuss how to set up e-invoicing.
2. **Adjustment of Charges**
	1. The Charges shall only be varied:
		1. due to a change in law in relation to which the parties agree that a change is required to all or part of the Charges (Legislative Change);
		2. where all or part of the Charges are reduced as a result of a review of the Charges in accordance the Continuous Improvement Schedule;
		3. where all or part of the Charges are reduced as a result of a review of Charges in accordance with the Value for Money Schedule (Benchmarking);
		4. where all or part of the Charges are reduced as a result of a review of the Charges in accordance with Paragraph 6 of this Schedule; or
		5. where all or part of the Charges are reviewed and reduced in accordance with Paragraph 7 of this Schedule.
	2. The Authority may at its sole discretion consider Indexation of the Charges or any part of the Charges subject to the Supplier having applied continuous improvements to the satisfaction of the Authority in accordance with the Continuous Improvement Schedule.
	3. Subject to Paragraphs 5.1.1 to 5.1.5 and 5.2 of this Schedule, the Charges will remain fixed for the Term
3. Service Credits
	1. Service Credits shall be calculated by reference to the number of Service Points accrued in any one Service Period pursuant to the provisions of the Performance Regime Schedule.
	2. For each Service Period:
		1. the Service Points accrued shall be converted to a percentage deduction from the Charges for the relevant Service Period on the basis of one point equating to a [0.5%] deduction in the Charges; and
		2. the total Service Credits applicable for the Service Period shall be calculated in accordance with the following formula:

$$SC=TSP ×x ×AC$$

where:

SC is the total Service Credits for the relevant Service Period;

TSP is the total Service Points that have accrued for the relevant Service Period;

x is 0.5% and

AC is the total Charges payable for the relevant Service Period (prior to deduction of applicable Service Credits).

* 1. The liability of the Supplier in respect of Service Credits incurred in any rolling 12 months shall be subject to the Service Cap provided that, for the avoidance of doubt, the operation of the Service Credit Cap shall not affect the continued accrual of Service Points in excess of such financial limit in accordance with the provisions of Performance Regime Schedule.
	2. Service Credits are a reduction of the Service Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.
	3. Service Credits shall be shown as a deduction from the amount due from the Authority to the Supplier in the invoice for the Service Period immediately succeeding the Service Period to which they relate.
1. **Supplier Periodic Assessment of Agreement Charges**
	1. Every six (6) months during the Term, the Supplier shall assess the level of the Charges to consider whether it is able to reduce them.
	2. Such assessments by the Supplier under Paragraph 6 of this Schedule shall be carried out on 1 May and 1 December in each Contract Year (or in the event that such dates do not, in any Contract Year, fall on a Working Day, on the next Working Day following such dates). To the extent that the Supplier is able to decrease all or part of the Charges it shall promptly notify the Authority in writing and such reduction shall be implemented in accordance with Paragraph 7 of this Schedule below.
2. **Implementation of Adjusted Charges**
	1. Variations in accordance with the provisions of this Schedule to all or part the Charges (as the case may be) must be Approved by the Authority and the Parties shall amend the Charges shown in Appendix 1 to this Schedule to reflect such variations.

**Appendix 1: Charges**

[agreed charges]

The Charitable Contribution is [INSERT DETAILS]

**Appendix 2: Discounts**

[to be added if applicable]

**Appendix 3 Payment Terms/Profile**

[to be added if applicable]

Dispute Resolution Procedure Schedule

1. **Definitions**
	1. In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| "**CEDR**" | the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU; |
| "**Counter Notice**" | has the meaning given to it in paragraph 6.2 of this Schedule; |
| "**Dispute Notice**" | as described in paragraph 2 of this Schedule; |
| "**Exception**" | a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Agreement or in the supply of the Services; |
| "**Expedited Dispute Timetable**" | the accelerated timetable for the resolution of disputes as set out in paragraph 2.6 of this Schedule; |
| "**Expert**" | the person appointed by the parties in accordance with paragraph 5.2 of this Schedule; |
| "**Expert Determination**" | as prescribed in paragraph 5 of this Schedule; |
| "**Mediation Notice**" | has the meaning given to it in paragraph 3.2 of this Schedule; and |
| "**Mediator**" | the independent third party appointed in accordance with paragraph 4.2 of this Schedule. |

1. **Introduction**
	1. If a Dispute arises then:
		1. the Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
		2. if such attempts are not successful within a reasonable time either party may give to the other a Dispute Notice.
	2. The Dispute Notice shall set out:
		1. the material particulars of the Dispute;
		2. the reasons why the party serving the Dispute Notice believes that the Dispute has arisen; and
		3. if the party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 2.6, the reason why.
	3. Unless agreed otherwise in writing, the parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure set out in this Schedule.
	4. Subject to paragraph 2.1 the parties shall seek to resolve Disputes:
		1. first by commercial negotiation (as prescribed in paragraph 3);
		2. then by mediation (as prescribed in paragraph 4); and
		3. lastly by recourse to arbitration (as prescribed in paragraph 6) or litigation (in accordance with the Governing law and Jurisdiction clauses of this Agreement,

specific issues shall be referred to Expert Determination (as prescribed in paragraph 5) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 (Expert Determination).

* 1. In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one party would be materially disadvantaged by a delay in resolving the Dispute, the parties may agree to use the Expedited Dispute Timetable. If the parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
	2. If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.5 or is otherwise specified under the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs of this Schedule:
		1. in paragraph 3.2.3, ten (10) Working Days;
		2. in paragraph 4.2, ten (10) Working Days;
		3. in paragraph 5.2, five (5) Working Days; and
		4. in paragraph 6.2, ten (10) Working Days.
	3. If at any point it becomes clear that an applicable deadline cannot be met or has passed, the parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.
1. **Commercial negotiations**
	1. Following the service of a Dispute Notice, the Authority and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Authorised Representatives, such discussions being commercial negotiations.
	2. If:
		1. either party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution; or
		2. the parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 3; or
		3. the parties have not settled the Dispute in accordance with paragraph 3.1 within thirty (30) Working Days of service of the Dispute Notice,

either party may serve a written notice to proceed to mediation (a "**Mediation Notice**") in accordance with paragraph 4.

1. **Mediation**
	1. If a Mediation Notice is served, the parties shall attempt to resolve the Dispute in accordance with the CEDR Model Mediation Procedure which shall be deemed to be incorporated by reference into this Agreement.
	2. If the parties are unable to agree on the joint appointment of a mediator within thirty (30) Working Days from service of the Mediation Notice then either party may apply to CEDR to nominate the mediator.
	3. If the parties are unable to reach a settlement in the negotiations at the mediation, and only if the parties so request and the mediator agrees, the mediator shall produce for the parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the mediator suggests are appropriate settlement terms in all of the circumstances.
	4. Any settlement reached in the mediation shall not be legally binding until it has been produced in writing and signed by, or on behalf of, the parties (in accordance with the procedure for variations under clause 43 (Contract Changes), where appropriate. The mediator shall assist the parties in recording the outcome of the mediation.
2. **Expert determination**
	1. If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to an ICT technical, financial technical or other aspect of a technical nature (as the parties may agree) and the Dispute has not been resolved by discussion or mediation, then either party may request (which request will not be unreasonably withheld or delayed) by written notice to the other that the Dispute is referred to an expert for determination.
	2. The expert shall be appointed by agreement in writing between the parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the expert shall be appointed on the instructions of a suitable independent association or professional body.
	3. The expert shall act on the following basis:
		1. he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
		2. the expert's determination shall (in the absence of a material failure by either party to follow the agreed procedures) be final and binding on the parties;
		3. the expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his/her appointment or as soon as reasonably practicable thereafter and the parties shall assist and provide the documentation that the expert requires for the purpose of the determination;
		4. any amount payable by one party to another as a result of the expert's determination shall be due and payable within twenty (20) Working Days of the expert's determination being notified to the parties;
		5. the process shall be conducted in private and shall be confidential; and
		6. the expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.
3. **Arbitration**
	1. The Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4.
	2. Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 or be subject to the jurisdiction of the courts in accordance with Governing law and Jurisdiction clauses of this Agreement. The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
	3. If:
		1. the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 shall apply;
		2. the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Governing law and Jurisdiction clauses of this Agreement, the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
		3. the Authority does not serve a Counter Notice within the fifteen (15) Working Day period referred to in paragraph 6.2, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 or commence court proceedings in the courts in accordance with Governing law and Jurisdiction clauses of this Agreement which shall (in those circumstances) have exclusive jurisdiction.
	4. In the event that any arbitration proceedings are commenced pursuant to paragraph 6.1 to 6.3, the parties hereby confirm that:
		1. all disputes, issues or claims arising out of or in connection with this Agreement (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("**LCIA**") subject to paragraph 6.4.5, 6.4.6 and 6.4.7;
		2. the arbitration shall be administered by the LCIA;
		3. the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Agreement and the decision of the arbitrator shall be binding on the parties in the absence of any material failure to comply with such rules;
		4. if the parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
		5. the chair of the arbitral tribunal shall be British;
		6. the arbitration proceedings shall take place in London and in the English language; and
		7. the seat of the arbitration shall be London.
4. **Urgent relief**
	1. Either party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
		1. for interim or interlocutory remedies in relation to this Agreement or infringement by the other party of that party's Intellectual Property Rights; and/or
		2. where compliance with paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that party to commence proceedings before the expiry of the limitation period.

**Responsible Procurement Schedule**

1. **Definitions and interpretation**
	1. For the purpose of this Schedule, unless the context indicates otherwise, the following words have the following meanings:

|  |  |
| --- | --- |
| **Adverse Climate Outcome (ACO)** | 1. reduced air quality;
2. an increase in green house gas (GHG) emissions;
3. depletion of natural capital; or
4. wasted embedded carbon.
 |
| **Affiliate** | an affiliate of Electronics Watch who, as a contracting authority (as defined in The Public Contracts Regulations 2015), monitors Code compliance in Factories through Electronics Watch |
| **Approved Progressive Driver Training** | an ongoing programme of Drivers’ training to ensure they have the appropriate knowledge, skills and attitude to operate safely on urban roads. This includes the training specific for the urban environment  (including on-road experience from a cyclist’s perspective), which is required to be completed at least once every 5 years |
| **Category N3 HGV** | a vehicle designed and constructed for the carriage of goods and having a MAM exceeding 12,000 kilograms |
| **Car-derived Van** | a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment |
| **CCSL** | the Centre for Civil Society Limited or any relevant replacement organisation as notified by the Authority from time to time |
| **CLOCS Standard** | the Construction Logistics and Community Safety standard, which aims to eliminate risk of a collision between heavy goods vehicles servicing the construction sector and vulnerable road users by ensuring effective practice in the management of operations, vehicles, drivers and construction sites; further information can be found at: www.clocs.org.uk |
| **Collision Report** | a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities |
| **Delivery and Servicing Vehicle** | a HGV, a Van or a Car-derived Van |
| **Direct Vision Standard or DVS** | Direct Vision Standard, a performance based assessment and rating tool, as updated from time to time that measures how much direct vision a Driver has from a Category N3 HGV cab in relation to other road users. Further information can be found at: www.tfl.gov.uk |
| **Disclosure Form** | the disclosure form available separately to Electronics Watch Affiliates |

|  |  |
| --- | --- |
| **Driver** | any employee of the Supplier (including an agency or contracted driver), who operates Delivery and Servicing Vehicles on behalf of the Supplier while delivering the Services |

|  |  |
| --- | --- |
| **Electronic Goods** | the electronic goods (including components) that form the subject matter of the Agreement (including goods and components that are supplied only temporarily as part of a service contract) |
| **Electronics Watch** | Stichting Electronics Watch Foundation, whose registered office is Sarphatistraat 30, 1018 GL Amsterdam, The Netherlands |
| **Factory / Factories** | an assembly factory in which any of the Electronic Goods are assembled or a component supplier factory in which the main (based on value) electronic components used in the assembly of any of the Electronic Goods are produced |
| **FORS** | the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating commercial vehicles including vans, HGV, coaches and P2W. It offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance |
| **FORS Standard** | the standard setting out the accreditation requirements for the Fleet Operator Recognition Scheme, a copy of which can be found at: www.fors-online.org.uk |
| **Gold Accreditation** | the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at: www.fors-online.org.uk |
| **HGV** | a vehicle with an MAM exceeding 3,500 kilograms |
| **London Living Wage** | the London rate for the basic hourly wage as updated and published annually by the CCSL (or any relevant replacement organisation) on its website ([www.livingwage.org.uk](http://www.livingwage.org.uk)) |
| **MAM** | the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road |
| **Service Description** | as set out in the Service Description Schedule |
| **Silver Accreditation** | the minimum level of accreditation within the FORS Standard acceptable for the contract schedule, the requirements of which are more particularly described at: www.fors-online.org.uk |
| **Van** | a vehicle with a MAM not exceeding 3,500 kilograms |
| **Working Areas** | areas/countries from which the Supplier or any of its Sub-contractors operates including locations of offices and Factories including where the production of goods takes place |

1. **Introduction**

This Responsible Procurement Schedule sets out the Authority's commitment to improving responsible and sustainable procurement practices focusing on the promotion of economic, social and environmental principles. This schedule embodies the principles identified by the Authority and in the Greater London Authority's responsible procurement policy and The Public Contracts Regulations 2015.

1. **Social and Ethical**
	1. Equality and Diversity

The Authority encourages equality and diversity within its supply chains and looks to remove any barriers of entry under its contracts. The Supplier shall co-operate with the Authority to ensure the procurement process and Service delivery is transparent.

* 1. Health and Safety

The Supplier will commit to providing and maintaining a healthy and safe working environment for all employees which meets and where possible exceeds the standards set by applicable health and safety laws. Where Services are provided by Sub-contractors, those Sub-contractors will be subject to a proportionate assessment of their working environment.

* 1. Safeguarding

The Supplier will ensure that appropriate safeguarding measures are in place where applicable.

* 1. Discrimination

The Authority opposes all forms of discrimination and prides itself on being an equal opportunities employer. The Supplier will not discriminate in any of its supply chain contracts against, amongst other things, age, gender, disability, race, religion, sexual orientation, marriage and civil partnerships and pregnancy and maternity.

* 1. Small and Medium Sized Enterprises (SMEs)
		1. The standard definition of an SME will apply.
		2. The Supplier will recognise the importance of encouraging the participation of SMEs in their supply chain and will take adequate measures to encourage and monitor SME participation.
	2. Tax Transparency

If tax non-compliance happens during this Agreement, the Supplier shall:

* + 1. tell the Authority in writing within 10 Working Days.
		2. promptly provide the Authority with details of the steps it has taken to address the non-compliance
		3. provide any other information the Authority reasonably needs
	1. The Authority can end this Agreement for material Default if the Supplier doesn't:
		1. comply with paragraph 3.6.
		2. provide details of any mitigating factors and its plans to prevent recurrence, which are acceptable to the Authority.
	2. Charitable Contribution
		1. The Supplier shall make the Charitable Contribution in accordance with the commitment made in the Supplier’s tender submission for the supply of the Services, as confirmed in the Charges Payment and Invoicing Schedule.
		2. The Supplier shall comply with the Authority’s instructions and directions regarding payment of the Charitable Contribution, including the timings and manner of the payments.
	3. Modern Slavery

In performing its obligations under the Agreement, the Supplier shall comply with all applicable anti-slavery and human trafficking laws, statutes and regulations from time to time in force including but not limited to the Modern Slavery Act 2015.

* 1. Human Rights

The Supplier shall and shall ensure its Sub-contractors comply with all applicable labour, anti-slavery and human trafficking laws, statutes and regulations from time to time in force.

* 1. Ethical Trading
		1. The Supplier shall comply with the Ethical Trading Initiative (**ETI**) (<https://www.ethicaltrade.org/>) base code.
		2. The Supplier shall provide the Authority with full details (which shall be updated as necessary) of all Working Areas. Such details shall include the name and full postal address of each Working Area, the name and contact details of the company that owns each Working Area and the name and contact details for the individual responsible for managing each Working Area.
		3. Prior to supplying plant and materials in relation to the Services, the Supplier shall provide an initial third-party audit report no more than twelve (12) months old in relation to each Working Area. Unless the Authority otherwise agrees, the Supplier shall provide subsequent third-party audit reports in relation to each Working Area on each anniversary of the initial audit for the duration of the Term.
		4. Each audit report shall address how the Supplier has complied with each of the nine key areas set out in the ETI base code, and such report shall be supplied at the Supplier's cost.
		5. lf, in the Authority’s opinion, any remedial action is required to be undertaken by the Supplier as a result of an audit, the Authority shall agree an action plan and timeline for the remedial action with the Authority by no later than one month from the date of the Authority notifying the Supplier that remedial action is required. The Supplier shall comply with the agreed action plan within the agreed timeline. The Authority reserves the right to carry out such additional audits as may be necessary to monitor compliance with the action plan, such audits to be completed by a third-party auditor approved by the Authority. The Supplier shall pay the full costs of any such audits.
		6. The Supplier shall submit an ethical sourcing action plan to the Authority for acceptance within one (1) month of the starting date. The Supplier’s ethical sourcing action plan shall comply with the requirements set out in the Services Description. The Authority shall be entitled to withhold fifty percent (50%) of the amount due to the Supplier under the Agreement until it has received an ethical sourcing action plan from the Supplier which complies with the requirements set out in the Services Description.
	2. Ethical Sourcing
		1. The Supplier shall submit an ethical sourcing action plan to the Authority for acceptance within one (1) month of the starting date. The Supplier's ethical sourcing action plan shall comply with the requirements set out in the Services Description.
		2. The Authority (acting reasonably) reserves the right to audit compliance by the Supplier with its obligations under paragraph 3.11.1 at any time. If the audit report finds that the Supplier is not complying with any such obligations then, the parties may agree an action plan and timeline for remediating the breach, in which case the Supplier will comply with the agreed action plan within the agreed timeline. The Authority reserves the right to carry out such additional audits as may be necessary to monitor compliance with the action plan, such audits to be completed by a third-party auditor approved by the Authority. The Supplier shall pay the full costs of any such audits.
	3. London Living Wage
		1. The Supplier shall:
			1. ensure that its Supplier Personnel and procure that the Supplier Personnel of its Sub-contractors engaged in the provision of the Services:
				1. for two (2) or more hours of work in any given day in a week, for eight (8) or more consecutive weeks in a year; and
				2. on the Authority’s Premises including (without limitation) premises and land owned or occupied by the Authority;

be paid an hourly wage (or equivalent of an hourly wage) equivalent to or greater than the London Living Wage;

* + - 1. ensure that none of:
				1. the Supplier Personnel; nor
				2. the personnel of its Sub-contractors;

engaged in the provision of the Services be paid less than the amount to which they are entitled in their respective contracts of employment;

* + - 1. provide to the Authority such information concerning the London Living Wage as the Authority or its nominees may reasonably require from time to time, including (without limitation);
				1. all information necessary for the Authority to confirm that the Supplier is complying with its obligations under paragraph 3.12 and
				2. reasonable evidence that clause 3.12.1 has been implemented;
			2. disseminate on behalf of the Authority to:
				1. the Supplier Personnel; and
				2. the personnel of its Sub-contractors;

engaged in the provision of the Services such perception questionnaires as the Authority may reasonably require from time to time and promptly collate and return to the Authority responses to such questionnaires; and

* + - 1. co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage including (without limitation):
				1. allowing the CCSL to contact and meet with the Supplier Personnel and any trade unions representing the Supplier Personnel;
				2. procuring that the Supplier’s Sub-contractors allow the CCSL to contact and meet with the Sub-contractors’ personnel and any trade unions representing the Sub-contractors’ personnel;

in order to establish that the obligation in paragraph 3.12.1 have been complied with.

* + 1. For the avoidance of doubt the Supplier shall:
			1. implement the annual increase in the rate of the London Living Wage; and
			2. procure that its Sub-contractors implement the annual increase in the rate of the London Living Wage;

on or before 1st April in the year following the publication of the increased rate of the London Living Wage.

* + 1. The Authority reserves the right to audit (acting by itself or its nominee(s)) the provision of the London Living Wage to the Supplier Personnel and the personnel of its Sub-contractors.
		2. Without limiting the Authority’s rights under any other termination provision in this Agreement, the Supplier shall remedy any breach of the provisions of this paragraph 3.12 within four (4) weeks’ notice of same from the Authority (the “**Notice Period**”). If the Supplier remains in breach of the provisions of this paragraph 3.12 following the Notice Period, the Authority may by written notice to the Supplier immediately terminate this Agreement.]
	1. Anti-Bribery and Corruption

The Supplier will ensure that it has adequate procedures in place to ensure that it is not involved in bribery and corruption and that it does not incur liability under the Bribery Act 2010. The Authority will monitor and identify corruption and respond appropriately if corruption is uncovered. These policies will apply to the Authority and its employees and any Suppliers and Sub-contractors.

* 1. Sub-contractors

The Supplier shall procure that each of its Sub-contractors (if any) comply with obligations substantially similar to those set out in this Schedule.

* 1. Compliance
		1. If and when requested to do so by the Authority at any time, the Supplier shall provide the Authority with such documents and/or permit representatives of the Authority to have such access to the Supplier's premises and personnel as the Authority may reasonably require for the purposes of verifying compliance on the part of the Supplier with its obligations under this paragraph 3.
		2. During the Term, the Supplier shall on request by the Authority and as soon as reasonably practicable provide the Authority with such complete, accurate and up-to-date information as may be required by the Authority in order to monitor compliance by the Supplier and any Supplier Sub-contractor with the obligations arising on the Supplier under this paragraph 3.
1. **Economic**
	1. Apprenticeships

The Supplier will offer and increase access to apprenticeships to provide investment into its workforce enabling its employees to develop the skills and behaviours they need as well as offering opportunities to those already in work.

* 1. Responsible procurement to Sub-contractors

The Supplier shall include the same responsible procurement measures contained within this schedule to encourage responsible procurement throughout their supply chains. This will ensure responsible procurement has a greater impact throughout the supply chain.

* 1. Principles of good employment practice
		1. The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Authority Employee as set down in:
			1. HM Treasury's guidance, Staff Transfers from Central Government: A Fair Deal for Staff Pensions, of 1999;
			2. HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
			3. The New Fair Deal.
		2. Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in paragraph 4.3.1 or paragraph 4.3.2 shall be agreed in accordance with the Change Control Procedure.
	2. Electronic trade
		1. The Supplier agrees that it will register and transact with the eMarketplace managed service solution or any other electronic marketplace (including Coupa) as designated by the Authority (the “**Electronic Marketplace**”) in any or all of the options described at (a) to (d) below:
			1. receive electronic requests for service quotations and free text purchase orders as emailed PDF attachments;
			2. receive electronic request for quotations and free text purchase orders and in turn convert electronic purchase orders to electronic invoices for submission through the Electronic Marketplace;
			3. provide electronic catalogue content of the goods and/or Services as required by the Authority; and/or
			4. enable a punch-out link from the Electronic Marketplace to the Supplier’s online ordering portal.
		2. Undertake full back office integration with the Electronic Marketplace and any Authority managed service solution in order to transact with the Authority through any of the means detailed above at 4.4.1(a) to 4.4.1(d).
	3. Electronics Watch
		1. The Supplier undertakes its business in a manner that is consistent with the Electronics Watch Code of Labour Standards (the “**Code**”), the United Nations Guiding Principles on Business and Human Rights, and Socially Responsible Trading Conditions.
		2. The Supplier shall notify the Electronics Watch as soon as it becomes aware of any breach, or potential breach of the Code or this Agreement, or any actual or suspected modern slavery and/or forced labour and/or human trafficking related to the manufacturing process for the production of the Electronic Goods.
		3. Within twenty five (25) Working Days of the date of the Agreement (or as soon as reasonably practicable) and free of charge, the Supplier shall, by way of a completed Disclosure Form, inform the Affiliate and Electronics Watch of:
			1. the Factories where the Electronic Goods are produced (including their legal names and complete physical addresses);
			2. the specific products or components produced in each Factory (including the value of the products or components).
		4. The Supplier shall as soon as reasonably practicable notify the Affiliate and Electronics Watch of any changes to the information provided in its Disclosure Form, of which it becomes aware.
		5. The Supplier shall use reasonable and proportionate endeavours to disclose the compliance findings in summary or in whole (or, if available for disclosure, the audit reports) relating to the Factories conducted within the previous twenty four (24) months which it is able to discover and obtain through reasonable enquiries. These disclosures shall be made within twenty five (25) Working Days of the date of the Agreement (or as soon as reasonably practicable).
		6. The Supplier shall make enquiries of every direct supplier every six (6) months into whether any further compliance finding (or, if available for disclosure, audit reports) relating to the Factories have been undertaken, and disclose such findings in accordance with the provisions of this paragraph.
	4. London Anchor Institutions’ Charter
		1. The Supplier acknowledges the Authority’s commitment to the London Anchor Institutions’ Charter. <https://www.london.gov.uk/coronavirus/londons-recovery-coronavirus-crisis/anchor-institutions-charter> (“the Charter”).
		2. The Supplier shall wherever reasonably and practicably possible support the aims and objectives of the Charter including but not limited to:
			1. reverse unemployment and loss of economic growth due to the Covid-19 pandemic;
			2. narrow social, economic and health inequalities;
			3. help young people to flourish with access to support and opportunities;
			4. support our communities, including those most impacted by the Covid-19 virus; and
			5. accelerate delivery of a cleaner, greener London.
1. **Environmental**
	1. Endorsement of Cruelty Free Products
		1. The Supplier shall only use and shall procure that each of its Sub-contractors shall only use for the purpose of this Agreement, cleaning products (including, without limitation, the ingredients of those cleaning products) which are cruelty free and have not been tested on animals and which have been certified by Cruelty Free International as not tested on animals.
	2. Environmental Sustainability and Carbon Management

The Supplier will aim to minimise any adverse environmental effects associated with the goods, works and Services it procurers and will promote the positive environmental impact of these where possible. When considering the environmental impact of such goods, works and Services the Authority shall not incur excessive additional costs.

* 1. Net Zero Carbon Emissions
		1. The Supplier shall fulfil their obligations under this agreement to:
			1. achieve climate goals including net zero targets; achieve net zero or net negative emissions by 2050 or sooner, in a manner that promotes a just transition to a low carbon economy and that results in at least a 7% reduction of green house gas emissions year on year;
			2. minimise their impact on climate change by minimising the greenhouse gas emissions generated through the provision of the Services pursuant to this Agreement;
			3. perform their obligations under this Agreement in a way that minimises the carbon footprint associated with the activities under this Agreement; and
			4. avoiding the occurrence of an Adverse Climate Outcome as a result of performing the obligations in this Agreement.
	2. Energy Efficiency

Where reasonably practicable, the Supplier will purchase energy efficient products, services and buildings in accordance Applicable Law. The duty only applies in so far as the purchase is consistent with cost-effectiveness, economic feasibility, wider sustainability, technical suitability and sufficient completion.

* 1. Waste Electrical and Electronics Equipment (WEEE Regulations)
		1. The Supplier is responsible under the WEEE Regulations for the environmentally sound disposal of EEE when it is discarded as WEEE.
		2. All other relevant environmental legislation must also be followed.
	2. Fleet Operator Recognition Scheme (FORS) Accreditation
		1. Where the Supplier operates Delivery and Servicing Vehicles to provide the Services, it shall within 90 days of the Agreement Commencement Date:
			1. (unless already registered) register for FORS or a scheme, which in the reasonable opinion of the Authority, is an acceptable substitute to FORS (the “Alternative Scheme”); and
			2. (unless already accredited) have attained the standard of Silver Accreditation (or higher) or the equivalent within the Alternative Scheme and shall maintain the standard of Silver Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent audit in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the Supplier has attained Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.
	3. Safety Features on HGVs

The Supplier shall ensure that every HGV, which it uses to provide the Services, shall be fitted with safety features consistent with the FORS Silver Accreditation.

* 1. Construction Logistics and Community Safety (CLOCS)
		1. Where applicable, for works contracts exceeding a value of £1,000,000.00:
			1. the Supplier shall comply with the CLOCS Standard
			2. the Supplier shall ensure that the conditions at all sites and locations where:
				1. the Services are being delivered, or
				2. in connection with the performance of the Services, any waste is being disposed of or supplies are being delivered to or from,

are appropriate for each Category N3 HGV being used in the provision of the Services.

* 1. Direct Vision Standard (DVS)
		1. Where applicable, for contracts exceeding a value of £1,000,000.00 where the duration will exceed 12 months and a significant amount of the work will be conducted within the GLA boundaries:
			1. the Supplier shall comply with the DVS Schedule attached to this Agreement.
			2. the Supplier shall ensure that all Category N3 HGVs used in the provision of the Services achieve a minimum of a one (1) star Direct Vision Standard rating;
			3. from and including 26 October 2023 all Category N3 HGVs used in the provision of the Services achieve a minimum of three (3) star Direct Vision Standard rating.
	2. Driver Training

Where the Supplier operates Delivery and Servicing Vehicles to provide the Services the Supplier shall ensure that each of its Drivers attend the Approved Progressive Training throughout the Term of the Agreement.

* 1. Collision Reporting

Where the Supplier operates Delivery and Servicing Vehicles to deliver the Agreement, the Supplier shall within 15 days of the Commencement Date, provide to the Authority a Collision Report. The Supplier shall provide to the Authority an updated Collision Report within five working days of a written request from the Authority at any time.

* 1. Non-Road Mobile Machinery (**NRMM**)

5.12.1 Where applicable when using NRMM, each party shall comply with the Non-Road Mobile Machinery (Type-Approval and Emission of Gaseous and Particulate Pollutants) Regulations 2018/764 and any other regulations applicable to NRMM. Each party shall ensure the NRMM meets the minimum required emission stage for each activity carried out and that all in-scope machinery is registered correctly.

5.12.2 Examples of NRMM include: excavators, dumpers, piling rigs, generators, mobile cranes, MEWPs, static pumps, compressors, crushers, telehandlers (list is non-exhaustive) and these would more typically be found in construction contracts.

1. **Implementation**

To ensure successful implementation of this schedule the Authority may develop a proportionate action plan for each agreement including relevant targets and Key Performance Indicators (**KPIs**) which will allow for monitoring of the performance of the principles in this schedule.

Data Processing Schedule

1. Principles
	1. The Agreement involves the Processing of Personal Information by the Supplier on behalf of the Authority.
	2. The parties wish to agree the terms set out in this Data Processing Schedule in order to, at the very least, satisfy the requirement under Data Protection Legislation a written contract be in place where Processing of Personal Data takes place.
2. **Definitions and interpretation**
	1. For the purpose of this Schedule, unless the contract indicates otherwise, the following words have the following meanings:

|  |  |
| --- | --- |
| **Adequate Jurisdiction** | a jurisdiction outside the European Economic Area that has been determined to have in place adequate protections for Personal Data including under the Data Protection Legislation, pursuant to a valid decision notice issued by the Regulator |
| **Data Breach** | means (a) a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, access to, Personal Information, transmitted, stored or otherwise Processed or (b) any other breach of obligations relating to the Processing of Personal Data including but not limited to rights not met in relation to Data Subject access requests, fair processing, objection to processing (including marketing and automated decisions), rectification, erasure, restriction of processing, data portability; |
| **"Controller"**, **"Data Subject"**, **"Personal Data"**, **"Process"**, **"Processed"**, **"Processing"**, and **"Processor"** | have the meanings set out in, and will be interpreted in accordance with Data Protection Legislation. |
| **Group** | together a person and any other person that controls, is controlled by or is under common control with the first person from time to time; |
| **Personal Information** | the Personal Data (as defined under Data Protection Legislation) comprised in Authority Data being Processed from time to time pursuant to the terms of this Schedule, including as is more particularly described in Appendix 1 to this Data Processing Schedule; |
| **Regulator** | the UK Information Commissioner's Office or such other supervisory authority as may be responsible for enforcing compliance with the Data Protection Legislation from time to time; |
| **Sub-Processor** | any third party Sub-contractor appointed by the Supplier in accordance with the Agreement or this Data Processing Schedule, with the prior written consent of the Authority, to Process Personal Information; |
| **Supplier Personnel** | all or any of: (i) the directors, officers, employees and/or agents of the Supplier or any member of its Group; (ii) the directors, officers, employees and/or agents of any Sub-Processor; and (iii) any other individuals engaged by or on behalf of Supplier or any Sub-Processor in the performance of any part of the Supplier's obligations under the Agreement or this Data Processing Schedule; |
| **Standard Contractual Clauses** | the standard contractual clauses regarding transfer of Personal Data to a non-Adequate Jurisdiction as dictated by the Regulators from time to time. |
| **UK GDPR** | has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018. |

* 1. Terms and expressions used in this Data Processing Schedule that are not defined in this the Agreement shall have the meaning assigned to them in the Data Protection Legislation relevant to the Processing in question.
	2. References to statutes or statutory provisions include references to any orders or regulations made thereunder and references to any statute, provision, order or regulation include references to that statute, provision, order or regulation as amended, modified, re-enacted or replaced before the date hereof (subject as otherwise expressly provided herein) and to any previous statute, statutory provision, order or regulation amended, modified, re-enacted or replaced by such statute, provision, order or regulation.
1. **Authority and Roles**
	1. With respect to the parties' rights and obligations under this Data Processing Schedule and the Agreement (to the extent they relate to Personal Data), the parties agree that the Authority is the Controller and that it authorises the Supplier to Process the Personal Information during the term of the Agreement as the Processor.
	2. A description of the nature and purpose of the Processing carried out by the Supplier under the Agreement, and the type of Personal Data and categories of Data Subjects contained in the Personal Information is set out in Appendix 1 to this Data Processing Schedule, and Supplier shall keep this information up-to-date while the Agreement is in force.
	3. Where under this Data Processing Schedule the Authority's consent is required before the Supplier is permitted to do a particular act or thing, unless expressly provided otherwise, the Authority shall be entitled to give or withhold consent or make consent subject to conditions at its sole discretion.
	4. The parties acknowledge that if the Supplier infringes the terms of this Data Processing Schedule and Data Protection Legislation by determining the purposes and means of Processing, the Supplier shall be considered to be a Controller in respect of that Processing.
2. **Compliance and processing**
	1. The Supplier shall, and shall procure that any Sub-Processor shall:
		1. comply with its obligations under the Data Protection Legislation and this Data Processing Schedule;
		2. only process the Personal Information for the limited purposes of performing its obligations as a Processor under the Agreement;
		3. process the Personal Information only in accordance with the documented instructions of the Authority on its own behalf and on behalf of the relevant member(s) of its Group who is/are the Controller(s) from time to time (including for the avoidance of doubt the instructions as are set out in this Data Processing Schedule provided always that if the Supplier is required by Applicable Law to Process the Personal Information for any purpose it will inform the Authority of that legal requirement before carrying out any such Processing, unless the Applicable Law prohibits the same on grounds of public interest;
		4. keep the Personal Information secret and confidential in accordance with the terms of this Data Processing Schedule; and
		5. without prejudice to paragraph 4.1.3, ensure that Personal Information will be used solely for the purposes of providing, and to the extent required to provide, the Services.
	2. The Supplier shall immediately inform the Authority in writing if, in its opinion, an instruction from the Authority infringes the Data Protection Legislation.
	3. The Supplier shall conduct data protection impact assessments of any Processing operations and consult with the Regulator, Data Subjects and their representatives in respect of the same.
3. **Supplier Personnel**
	1. The Supplier shall take reasonable steps to ensure the reliability of any Supplier Personnel who have access to any Personal Information, and ensure that the Personal Information shall only be accessible by Supplier Personnel:
		1. to the extent necessary to properly perform their duties in relation to the Services;
		2. who are informed of its confidential nature and the security procedures relating to it, and who are contractually bound to maintain its confidentiality; and
		3. who are appropriately reliable, qualified and trained.
4. **Security of processing**
	1. The Supplier shall implement (and assist the Authority to implement) appropriate technical and organisational measures:
		1. in such a manner that Processing will meet the requirements of the Data Protection Legislation and ensure the protection of the rights of the Data Subject; and
		2. in relation to the Processing to ensure a level of security appropriate to the risk (taking into account the nature, scope, context and purposes of Processing the Personal Information), including by (as appropriate):
			1. pseudonymising and encrypting Personal Information and ensuring the ongoing confidentiality, integrity, availability and resilience of Processing systems and services;
			2. being able to restore the availability and access to Personal Information in a timely manner in the event of a physical or technical incident;
			3. regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing (and having a suitable process to do so); and
			4. when assessing the appropriate level of security for such Personal Information the Supplier shall take into account the risks that are presented by Processing, in particular from a Data Breach.
	2. The Supplier shall allow for and contribute to any and all supplier assurance reviews of the type and frequency deemed appropriate to the Authority due to the overall risk the Supplier (including any of its affiliates and/or Sub-Processors) poses, or is likely to pose, to the Authority Sites, systems or information.
	3. The Supplier shall work with the Authority business relationship manager for the purpose of minimising risks identified as a result of the supplier assurance review and provide any necessary supporting evidence such as but not limited to, ISO certification documents, penetration test results, and access reports.
5. **Assisting with requests from Data Subjects**
	1. The Supplier shall assist the Authority in fulfilling its obligations to respond to requests for exercising the rights of the Data Subject under the Data Protection Legislation, including but not limited to:
		1. responding to requests for exercising Data Subjects' Rights (defined below) under Data Protection Legislation by implementing appropriate technical and organisational measures to enable such assistance;
		2. conducting privacy impact assessments of any Processing operations and consulting with supervisory authorities, Data Subjects and their representatives in respect of the same.

**Data Subjects' Rights** shall have the following meaning in this paragraph: rights including but not limited to the right to be informed, the right to have Personal Information corrected if it is inaccurate, the right to object to certain Processing of Personal Information, the right to restrict Processing of Personal Information, the right to have Personal Information erased (commonly known as 'right to be forgotten'), the right to request access to Personal Information, the right to move, copy or transfer certain Personal Information (commonly known as 'data portability'), rights in relation to automated decision making including profiling, and the right to complain to the Regulator about infringements of the Data Protection Legislation and for the avoidance of doubt in cases where a Data Subject has engaged the right to have Personal Information erased under the Data Protection Legislation, the Supplier acknowledges and agrees that merely putting beyond use the Personal Data or suppressing the same will not amount to erasure so as to enable it to comply with this paragraph 7.1.

1. **Data breaches**
	1. The Supplier shall notify the Authority, without undue delay (and in any event within 24 hours or by 5pm on the next Working Day), if it becomes aware of a Data Breach, or any unauthorised or unlawful Processing of the Personal Information and, together with such notice, provide a written description of:
		1. the nature of, and facts relating to, the Data Breach together (where possible) with categories and approximate numbers of the Data Subjects and Personal Information records concerned;
		2. the name and contact details of the data protection officer or other contact point at the Supplier (or the relevant Sub-Processor) where more information can be obtained;
		3. the likely consequences of the Data Breach; and
		4. measures taken or proposed to be taken to address the Data Breach including any measures to mitigate any possible adverse effects,

in each case taking into account the nature of the Processing and the information available to the Supplier, and where and in so far as it is not possible to provide all the relevant information at the same time, the information may be provided in phases without undue further delay, but the Supplier (and Sub-Processors, as applicable) may not delay notification under this paragraph 8.1 on the basis that an investigation is incomplete or ongoing.

* 1. The Supplier shall assist the Authority in fulfilling its obligations to respond to Data Breaches under the Data Protection Legislation, including but not limited to:
		1. (without prejudice to paragraph 8.1) documenting any Data Breach (including the facts relating to the Data Breach, their effects and the remedial action taken) and reporting any Data Breach to the Regulator and/or Data Subjects, including by taking into account the information available to the Supplier; and
		2. (without prejudice to paragraph 8.1) taking measures to address Data Breaches, including, where appropriate, measures to mitigate their possible adverse effects.
1. **General assistance with other aspects of the Data Protection Legislation**
	1. The Supplier shall promptly provide to the Authority with such assistance as the Authority may from time to time reasonably require to enable it to comply with its security, breach notification, impact assessment, prior consultation, record keeping and audit responsibilities under the Data Protection Legislation.
	2. The Supplier shall at the option of the Authority, securely delete or return to the Authority, all Personal Information in accordance with paragraph 16.1 at any time at the written request of the Authority (provided the Authority is acting reasonably), and securely delete any existing or remaining copies, and promptly certify (via an authorised representative) when this exercise has been completed.
2. **Information provision, records and audit rights**
	1. The Supplier shall (and shall procure that Sub-Processors shall) at no additional cost to the Authority, maintain a written record of the Processing activities it carries out under the Agreement and the Authority's instructions relating to the Personal Information, together with:
		1. a general description of the technical and organisational measures referred to in paragraph 6.1;
		2. all information necessary to demonstrate compliance with the Agreement; and
		3. such other records as the Authority may reasonably request and/or which the Supplier is legally obliged to keep under the Data Protection Legislation,

and shall promptly make such information available to the Authority on request.

* 1. The Supplier shall grant to the Authority, by the Authority's own personnel or by an independent auditor, the right of access at all reasonable times upon reasonable notice (save in the case of emergency) to inspect and take copies from information and record of Processing activity under the Agreement and shall provide all reasonable assistance at all times for the duration of the Agreement for the purposes of allowing the Authority to obtain such information as is necessary to carry out an audit for the purpose of examining the Supplier's compliance with its obligations arising under the Agreement.
	2. The Supplier shall allow for and contribute to audits, including inspections, conducted by the Regulator and provide all information necessary in response to any request from the Regulator in relation to the same, in each case which relates in whole or in part to the Personal Information.
	3. The Supplier shall conduct an annual audit in respect of its Processing of the Personal Information, its compliance with the Data Protection Legislation and promptly thereafter supply the Authority with a copy of a written report in respect of the annual audit including the findings and outcomes relating to the same.
1. **Communication of information to the Authority**
	1. The Supplier shall promptly notify the Authority if it receives:
		1. from a Data Subject a communication relating to the exercise of that person's rights under the Data Protection Legislation in relation to the Personal Information, including their right to access the Personal Information or prevent certain Processing; or
		2. any complaint, request, notice, communication or penalty which relates directly or indirectly to the Processing of the Personal Information or to either party's compliance with the Data Protection Legislation (save to the extent that such notification is prohibited by the relevant Data Protection Legislation),

and, together with such notice, shall provide a copy of any such communication, complaint, request, notice or penalty and reasonable details of the circumstances giving rise to it.

1. **Regulator**
	1. The Supplier shall provide assistance (including information and access), as reasonably required by the Authority, regarding the obligations of the Authority to co-operate with the Regulator in the performance of its tasks.
	2. The Supplier shall, to the extent permitted by Applicable Law, notify and consult with the Authority prior to co-operating directly with the Regulator and/or disclosing any information relating to the Authority or the Processing under the Agreement.
2. **Transfers of Personal Information outside the United Kingdom or the EEA**
	1. The Supplier shall not transfer Personal Information outside the United Kingdom or the European Economic Area (**EEA**) without the prior written consent of the Authority and, where the Authority consents to such transfer, the Supplier shall, where applicable and in any event prior to causing or permitting any such Processing to occur outside the United Kingdom and/or the EEA:
		1. ensure that the Standard Contractual Clauses are entered into as between the Authority as 'data exporter' and the recipient of the Personal Information (including the Sub-Processor, as relevant) as 'data importer' and that they remain in place throughout the term of the Agreement; or
		2. verify that the transfer is to a recipient located within an Adequate Jurisdiction (subject to any applicable restrictions); or
		3. provide evidence in writing to the Authority that the recipient of the Personal Information (including the Sub-Processor, as relevant) has entered into Binding Corporate Rules which are valid in respect of Processing of Personal Information under this Data Processing Schedule and which have been approved by the European Commission and/or appropriate regulators (and the Supplier hereby warrants and undertakes to ensure that the Standard Contractual Clauses are entered into in the manner more particularly described at paragraph 13.1.1 immediately in the event that the recipient of the Personal Information is no longer entered into Binding Corporate Rules).
	2. Should any of the transfer mechanisms more particularly referred to in paragraph 13.1 used by the Supplier for the purposes of transfers under this Data Processing Schedule be held to be invalid under the Data Protection Legislation or be formally described by the Regulator as no longer providing for adequate protection for Personal Data under the Data Protection Legislation, the Supplier will (at the option of the Authority):
		1. immediately at no additional cost to the Authority put in place an alternative mechanism for transfers which has been prior Approved in writing by the Authority having regard to the Data Protection Legislation; or
		2. cease transfers of the Personal Information to the relevant recipient forthwith and procure that the relevant recipient immediately takes all actions as are necessary in order for the Supplier to comply with paragraph 9.2.
3. **Description of Processing**
	1. The Supplier warrants and undertakes to use best endeavours to ensure that its description of the Processing carried out on the Personal Information as is set out in Appendix 1 to this Data Processing Schedule and as is completed in the first instance by the Supplier, is complete and accurate as at the date of the Supplier's signature of the Agreement.
	2. The Authority reserves the right to review and amend the description of the Processing more particularly referred to in paragraph 14.1 at its sole discretion.
4. **Engagement of another processor**
	1. The Supplier shall not engage another processor to process Personal Information on behalf of the Authority (a Sub-Processor) unless:
		1. it has obtained the Authority's prior specific written consent;
		2. it has carried out sufficient due diligence on the proposed Sub-Processor, and obtained sufficient guarantees that such Sub-Processor will implement appropriate technical and organisational measures in such a manner that the Processing will meet the requirements of the Data Protection Legislation and ensure the protection of the rights of the Data Subject;
		3. it has provided the Authority with full details of the proposed Sub-Processor and the processing it will be carrying out;
		4. the Authority is granted the right to inspect the facilities of the proposed Sub-Processor and/or the Supplier's due diligence (to the extent the Authority reasonably requires to confirm the security of the proposed Personal Information Processing);
		5. it has entered into a written agreement with such Sub-Processor on no less onerous terms as are set out in this Data Processing Schedule, except for this paragraph 15, which shall be replaced by a provision preventing that other processor from sub-contracting; and
		6. the written agreement referred to in paragraph 15.1.5 shall terminate automatically on expiry or termination of the Agreement (in whole or in part) for any reason.
	2. The Supplier shall not be relieved of any of its obligations under the Agreement or this Data Processing Schedule by entering into any Sub-contract or otherwise delegating the performance of any part of the Services, and the Supplier shall remain fully liable to the Authority for the performance of any Sub-Processor's obligations, and for its acts and omissions (as if they were the acts and omissions of the Supplier).
5. **Termination**
	1. Following the termination or expiry of the Agreement, the Supplier shall (at the Authority's discretion) either promptly:
		1. return to the Authority all of the Personal Information (or relevant part thereof, including all existing copies) in a format agreed by the Authority which, unless otherwise agreed, shall be a structured, commonly used and machine readable format; or
		2. securely delete all of the Personal Information (or relevant part thereof, including all existing copies) and certify such deletion in writing.

**Appendix 1: Details of Processing of Personal Information**

The Processing of the Personal Information taking place under this Agreement includes that which is set out in the following description.

|  |  |
| --- | --- |
| **Controller** | The Mayor's Office for Policing and Crime, City Hall, Kamal Chunchie Way, London, E16 1ZE |
| **Processor** | \*Mandatory[Supplier Address, Postcode]Data Protection Officer: [Name] |
| **The subject matter of the Processing is:** |  [DESCRIBE for example, personal data relating to individuals benefitting from obligations performed by the Supplier under the Agreement] \*Mandatory (To be completed by the Authority relationship manager – high level ) |
| **The nature and purpose of the Processing is:** | \*Mandatory (To be completed by the Authority relationship manager – more granular ) [DESCRIBE for example: Processing of personal data relating to [description of whose personal data will be processed is conducted to enable the Supplier to perform its obligations under this Agreement and shall include, but shall not be limited to, the following types of Processing:* collection;
* recording;
* organisation;
* structuring;
* storage;
* adaptation or alteration;
* retrieval;
* consultation; and
* use.]
 |
| **The duration of the Processing is:** |  [DESCRIBE] OR [As set out in this Agreement] OR [Example: The Processing will last for the duration of the Agreement and for such period after the expiry or termination of the Agreement to allow the Supplier to comply with its legal obligations and return or delete the personal data in accordance with the Agreement.] \*Mandatory (To be completed by the Authority relationship manager)This section should include the length of time the supplier will process data for. |
| **The categories of Personal Data being Processed is** | **:** \*Mandatory (To be completed by the Authority relationship manager) [DESCRIBE]This section should include a list of personal data being processed, for example: Name, Address, DOB, Contact Details, NI, the Authority Account details, IP Address, Nationality, and Health Data etc. It should be separated into personal data and special category personal data. Example: The personal data Processed by the Supplier under this Agreement relates to [insert who it relates to – and comprises the following types of personal data:Personal Data1. name;2. contact details including address, telephone number and email address;3. date of birth;4. national insurance number;5. authority account details6. IP address7. [include any other personal data processed]Special Category Personal Data1. racial or ethnic origin; and2. health data.[please also list any other special categories of personal data processed, for example: political opinions, religious or philosophical beliefs, trade union membership, genetic data, biometric data for the purpose of uniquely identifying an individual and sex life or sexual orientation.]**Personal Information Definition;** Any information relating to an identified or identifiable natural person.**Special Categories of Personal Information;** Personal information that consists of information with regard to racial or ethnic origin; political opinions; physical or mental health or condition; sexual life; genetic data" and "biometric data etc.  |
| **The categories of Data Subjects include:** | \*Mandatory (To be completed by the Authority relationship manager) [DESCRIBE]This section should include a list of categories of Data Subjects, for example; 1. Colleagues;
2. Customers;
3. Customer Representatives;
4. Agency Staff;
5. Suppliers;
6. Enquirers;
7. complainants etc.

**Definition**; A Data Subject is an individual whom the particular personal information is about.  |

Continuous Improvement Schedule

1. **Supplier's obligations**
	1. The Supplier shall have an on-going obligation throughout the Term to identify new or potential improvements to the supply of the Services in accordance with this Schedule with a view to reducing the Authority's costs (including the Charges) and/or improving the quality and efficiency of the Services to the Authority. As part of this obligation the Supplier shall identify and report to the Authority once every twelve (12) months regarding:
		1. the emergence of new and evolving relevant technologies which could improve the provision of the Services, and those technological advances potentially available to the Supplier and the Authority which the parties may wish to adopt;
		2. new or potential improvements to the Services or the provision of the Services including in respect of the quality, responsiveness, procedures, benchmarking methods, ways of performing the Services and customer support services in relation to the Services;
		3. changes in business processes and working practices that would enable the Services to be provided at lower cost and/or with greater benefits to the Authority;
		4. changes to the ICT environment, business processes and working practices that would enable reductions in the total energy consumed in the provision of the Services;
		5. improvements which the Supplier uses or is planning to use with its other customers;
		6. proposals as to how any investment required for continuous improvement could be shared with other customers of the Supplier;
		7. a zero usage report for the delivered Services;
		8. measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains relating to the Deliverables, and identifying opportunities to assist the Authority in meeting their sustainability objectives; and
		9. any Change in Charges and cost / benefit analysis of the potential improvements identified subject to this Schedule.
	2. The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.
	3. If the Authority wishes to incorporate any improvement identified by the Supplier, including any impact on the Charges declared by the Supplier as part of that improvement, the Authority shall request a Change in accordance clause 43 (Contract Change).
	4. Notwithstanding anything to the contrary in this Agreement, the parties may not change or improve the Services in any way which adversely affects or may adversely affect any relevant Authority Standards or processes.
2. Gain share
	1. The Supplier shall in good faith work with the Authority to increase the cost efficiency of the Services. Any savings achieved through implementation of any continuous improvements measures undertaking in accordance with Paragraph 1 shall be shared equally between the Supplier and the Authority.
	2. Prior to any implementation of any such gain share under Paragraph 2.1 the parties shall:
		1. agree on how to account for any savings achieved by the continuous improvement measures and
		2. work together to implement any such gain share for the mutual benefit of the parties.

**Value for Money Schedule**

1. **Definitions**
	1. In this Schedule, the following expressions shall have the following meanings:

**"Benchmarked Rates"** the Charges for the Benchmarked Services;

**"Benchmarker"** a neutral and independent third party with knowledge and experience of financial matters in relation to the Benchmarked Services;

**"Benchmark Review"** a review of the Services carried out in accordance with this Schedule to determine whether those Services represent Good Value;

**"Benchmarked Services"** any Services included within the scope of a Benchmark Review pursuant to this Schedule;

**"Comparable Rates"** rates payable by the Comparison Group for Comparable Services that can be fairly compared with the Charges;

**"Comparable Services"** Services that are identical or materially similar to the Benchmarked Services (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar Services exist in the market, the Supplier shall propose an approach for developing a comparable Services benchmark;

**"Comparison Group"** a sample group of organisations providing Comparable Services 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 Services (as applicable) provided by the Comparison Group;

**"Good Value"** that the Benchmarked Rates are within the Upper Quartile; and

**"Upper Quartile"** in respect of Benchmarked Rates, that based on an analysis of Equivalent Data, the Benchmarked Rates, as compared to the range of prices for Comparable Services, are within the top 25% in terms of best value for money for the recipients of Comparable Services.

* 1. The Supplier acknowledges that the Authority wishes to ensure that the Services, represent value for money to the taxpayer throughout the Term.
	2. This Schedule sets to ensure the Agreement represents value for money throughout and that the Authority may terminate the Agreement by issuing a Termination Notice to the Supplier if the Supplier refuses or fails to comply with its obligations as set out in Paragraphs 3 of this Schedule.
	3. Amounts payable under this Schedule shall not fall with the definition of Charges.
1. **Benchmarking**
	1. How benchmarking works
		1. The Authority may, by written notice to the Supplier, require a Benchmark Review of any or all of the Services.
		2. The Authority shall not be entitled to request a Benchmark Review during the first six (6) month period from the Commencement Date or at intervals of less than twelve (12) months after any previous Benchmark Review.
		3. The purpose of a Benchmark Review will be to establish whether the Benchmarked Services are, individually and/or as a whole, Good Value.
		4. The Services that are to be the Benchmarked Services will be identified by the Authority in writing.
		5. Upon its request for a Benchmark Review the Authority 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 Authority may propose an alternative Benchmarker. If the parties cannot agree the appointment within twenty (20) Working Days of the initial request for Benchmark review then a Benchmarker shall be selected by the Chartered Institute of Financial Accountants.
		6. The cost of a Benchmarker shall be borne by the Authority (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 Services 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 Authority.
	2. **Benchmarking Process**
		1. The Benchmarker shall produce and send to the Authority, for Approval, a draft plan for the Benchmark Review which must include:
			1. a proposed cost and timetable for the Benchmark Review;
			2. 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
			3. a description of how the Benchmarker will scope and identify the Comparison Group.
		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. The Authority 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 2.2.3 shall apply to any amended draft plan.
		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.
		5. Once it has received the Approval of the draft plan, the Benchmarker shall:
			1. (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:
				1. market intelligence;
				2. the Benchmarker's own data and experience;
				3. relevant published information; and
				4. pursuant to Paragraph ‎2.2.7 below, information from other suppliers or purchasers on Comparable Rates;
			2. by applying the adjustment factors listed in Paragraph ‎2.2.7 and from an analysis of the Comparable Rates, derive the Equivalent Data;
			3. using the Equivalent Data, calculate the Upper Quartile;
			4. determine whether or not each Benchmarked Rate is, and/or the Benchmarked Rates as a whole are, Good Value.
		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.
		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:
			1. the Agreement terms and business environment under which the Comparable Rates are being provided (including the scale and geographical spread of the customers);
			2. exchange rates;
			3. 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. **Benchmarking Report**
		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;
		2. The Benchmarker shall prepare a Benchmarking Report and deliver it to the Authority, at the time specified in the plan Approved pursuant to Paragraph ‎2.2.3, setting out its findings. Those findings shall be required to:
			1. include a finding as to whether or not a Benchmarked Service and/or whether the Benchmarked Services as a whole are, Good Value;
			2. if any of the Benchmarked Services are, individually or as a whole, not Good Value, specify the changes that would be required to make that Benchmarked Service or the Benchmarked Services as a whole Good Value; and
			3. include sufficient detail and transparency so that the Authority can interpret and understand how the Benchmarker has calculated whether or not the Benchmarked Services are, individually or as a whole, Good Value.

The parties agree that any changes required to this Agreement identified in the Benchmarking Report shall be implemented at the direction of the Authority in accordance with clause 43 (Contract Change).

Performance Regime Schedule

1. **Definitions**
	1. In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| Available | has the meaning given in Appendix 2 |
| End User | any person authorised by the Authority to use the Services |
| Fix Time  | is the period from the time that the Service Incident has been reported to the Supplier to the point of its Resolution  |
| Non-Available | the Services are not Available |
| Performance Monitoring Report | has the meaning given in Paragraph 2 of Part B (Performance Monitoring) of this Schedule |
| Performance Review Meeting | the regular meetings between the Supplier and the Authority to manage and review the Supplier's performance under this Agreement, as further described in Paragraph 2.3 of Part B (Performance Monitoring) |
| Repeat Service Failure | has the meaning given in Paragraph 4 Part A (Performance Indicators and Service Credits); |
| Resolution | means in relation to a Service Incident either:1. the root cause of the Service Incident has been removed and the Services are being provided in accordance with the Services Description and the performance levels set out in this Schedule, or
2. the Authority has been provided with a workaround in relation to the Service Incident deemed acceptable by the Authority, or
3. Resolution has been agreed by the End User who raised the initial incident
 |
| Satisfaction Survey | has the meaning given in Paragraph 10 of Part A (Performance Indicators and Service Credits) |
| Service Downtime | any period of time during which any of the Services are Non-Available |
| Service Incident | a reported occurrence of a failure to deliver any part of the Services in accordance with the Authority Requirements or the Service Levels set out in this Schedule |
| Service Period | shall mean a calendar month, save that the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term |
| Service Points  | in relation to a Service Failure, the points that are set out against the relevant KPI in the table in Appendix 1 of this Schedule  |
| Service Point Accrual Date  | the date from which Service Points shall accrue being three (3) Months from the Commencement Date of each Service to which the KPI applies |
| Threshold Service Failure  | has the meaning given in Paragraph 5 of Part A (Performance Indicators and Service Credits) |

Part A: Key Performance Indicators and Service Credits

1. **Objectives of the KPIs**
	1. The KPIs shall:
		1. ensure that the Services are provided to a consistent and high level of quality;
		2. ensure the Services meet the Authority requirements as set out in the Service Description Schedule;
		3. provide a mechanism for the Authority to receive a reasonable and proportionate remedy for inconvenience or loss resulting from the Supplier’s failure to meet the required performance levels; and
		4. incentivise the Supplier to meet the required performance levels.
2. **KPIs**
	1. Appendix 1 sets out the KPIs which the parties have agreed shall be used to measure the performance of the Services by the Supplier.
	2. The Supplier shall monitor its performance against each KPI and shall send the Authority a report detailing the level of service actually achieved in accordance with Part B (Performance Monitoring) of this Schedule.
	3. Service Points, and therefore Service Credits, shall accrue for any Service Failure and shall be calculated in accordance with this Schedule.
	4. The KPIs shall apply from the Commencement Date.

3.5 **Service points**

* 1. If the level of performance of the Supplier during a Service Period achieves the Target KPI in respect of a KPI, no Service Points shall accrue to the Supplier in respect of that KPI.
	2. Service Points shall accrue from the Service Point Accrual Date.
	3. If the level of performance of the Supplier during a Service Period is below the Target KPI in respect of a KPI, Service Points shall accrue to the Supplier in respect of that KPI as set out in this Paragraph 3.
	4. A total number of 100 Service Points will be allocated across all of the KPIs (**"Service Points Pool"**). The Authority may adjust the allocation of Service Points in accordance with Paragraph 9 (Changes to Existing KPIs).
	5. The number of Service Points that shall accrue to the Supplier in respect of a Service Failure shall be the applicable number as set out in Appendix 1 unless the Service Failure is:
		1. a Repeat Service Failure; or
		2. a Threshold Service Failure; or
		3. a joint Repeat and Threshold Service Failure,

when the provisions of Paragraphs 4, 5 and 6 (below) respectively shall also apply.

1. **Repeat Service Failures**
	1. If a Service Failure occurs in respect of the same KPI in:
		1. any two consecutive Service Periods; or
		2. any two (2) or more Service Periods over any four (4) consecutive Service Periods,

the second and any subsequent such Service Failure shall be a “**Repeat Service Failure**”.

* 1. The number of Service Points that shall accrue to the Supplier in respect of a Service Failure that is a Repeat Service Failure shall be calculated as follows:

**SP = P x 2**
where:

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

and

**P** = the applicable number of Service Points for that Service Failure as set out in Appendix 1 (KPIs).

1. **Threshold Service Failure**
	1. If the level of performance is below the KPI Service Threshold in respect of a KPI such Service Failure shall be a “**Threshold Service Failure**”.
	2. The number of Service Points that shall accrue to the Supplier in respect of a Service Failure that is a Threshold Service Failure shall be calculated as follows: **SP = P x 1.5**where:

	**SP** = the number of Service Points that shall accrue for the Threshold Service Failure;

	and

	**P** = the applicable number of Service Points for that Service Failure as set out in Appendix 1 (KPIs).
2. **Joint Repeat and Threshold Service Failure**
	1. Where the supplier has incurred both a Repeat Service Failure and a Threshold Service Failure in respect of the same KPI, the number of Service Points that shall accrue to the Supplier shall be calculated as follows:

	**SP = (P x 1.5) x 2**where: **SP** = the number of Service Points that shall accrue for the Repeat Service Failure;

	and

	**P** = the applicable number of Service Points for that Service Failure as set out in 1 (KPIs).
3. **Excused performance**
	1. The Supplier must advise the Authority in writing of any events or circumstances which it claims give rise to excused performance (as specified in Paragraph 7.2) within the Service Period and shall do so as soon as reasonably practicable after becoming aware of any such events or circumstances and, in any event, detail the reason in the report for that Service Period. Failure to advise the Authority shall prevent the Supplier from claiming that the relevant events or circumstances give rise to any excused performance.
	2. The Supplier shall be entitled to excused performance in respect of a Service Failure if and to the extent (and subject to the Supplier demonstrating to the reasonable satisfaction of the Authority) that:
		1. the Service Failure was caused by a Force Majeure Event which the Supplier could not have foreseen, prevented or mitigated and which directly affected the Supplier's ability to provide the Services in respect of the relevant Target KPIs, provided that the Supplier has effectively and in good time implemented any applicable disaster recovery or business recovery plan that would enable the Supplier to resume providing the Services to the Target KPIs; or
		2. the Supplier can demonstrate the underlying cause of the Service Failure was due to an act or omission of the Authority or its employees or contractors; or
	3. Notwithstanding the cause of any excused performance, the Supplier shall use all reasonable endeavours and take all necessary steps within its control to mitigate the impact to the Authority of any Services failing to achieve the Target KPIs.
	4. Where excused performance has been agreed in respect of a Service Failure for a KPI within a Service Period, no Service Points are accrued for the KPI for the Service Period.
4. **Service credits**
	1. The Charges, Payment and Invoicing Schedule sets out the mechanism by which Service Points shall be converted into Service Credits.
	2. The Authority shall use the Performance Monitoring Reports provided pursuant to Part B (Performance Monitoring), among other things, to verify the calculation and accuracy of the Service Credits (if any) applicable to each Service Period.
5. **Changes to existing KPIs**
	1. At any time during the Term subject to Paragraph 9.4 the Authority may at its sole discretion and acting reasonably:
		1. amend or delete any KPI; and/or
		2. add new KPIs; and/or
		3. amend the Service Points distribution across the KPIs;

to reflect changes in the Authority’s business requirements or objectives.

* 1. The Authority shall review the KPIs every six (6) months.
	2. Where the Governance Schedule applies to this Agreement (as stated in the Contract Summary), amendments, deletions and additions to the KPI’s must be:
		1. approved by the Authority at relevant monthly Governance Board in accordance with the Governance Schedule;
		2. reported by the Authority to the relevant monthly Governance Board in accordance with the Governance Schedule including a justification for the amendment, deletion or addition; and
		3. notified to the Supplier in writing at least twenty (20) Working Days prior to the KPI amendment, deletion or addition taking effect.
	3. Amendments, deletions or additions to KPIs pursuant to Paragraph 9.1 shall only be permitted:
		1. six months after the Commencement Date; and
		2. thereafter every six months,

with the Authority being limited to amending existing Target KPIs or Service Points distribution, or deleting or adding up to a maximum of four (4) KPIs on each such occasion unless agreed otherwise by the parties via clause 43 (Contract Change).

* 1. Amendments deletions or additions to the KPIs as set out in Appendix 1 which exceed those permitted in 9.4 shall be changes to the KPIs and shall be conducted in accordance with clause 43 (Contract Change).
	2. Regardless of any changes or additions, the total number of Service Points within the Service Points Pool will always equal 100.
1. **End User Surveys**
	1. In order to assess the level of performance of the Supplier, the Authority may undertake or may require the Supplier to undertake satisfaction surveys in respect of End Users or various groups of End Users (each such survey a **Satisfaction Survey**). The subject matter of Satisfaction Surveys may include:
		1. the assessment of the Supplier's performance by the End Users against the agreed KPIs and subsidiary KPIs; and/or
		2. other suggestions for improvements to the Services.

Part B: Performance Monitoring

1. **Performance monitoring and performance review**
	1. Within ten (10) Working Days of the end of each Service Period, the Supplier shall provide a report to the Authority Representative which summarises the performance by the Supplier against each of the KPIs as more particularly described in Paragraph 2 (the **Performance Monitoring Report**).
2. **Performance Monitoring Report**
	1. The Performance Monitoring Report shall be in such format as initially agreed between the parties prior to the Commencement Date (and thereafter from time to time), and shall contain, as a minimum, the following information:
		1. Information in respect of the Service Period just ended;
		2. for each KPI and subsidiary KPI, the actual performance achieved over the Service Period, and that achieved over the previous three (3) Service Periods;
		3. a summary of all Service Failures that occurred during the Service Period including failures to meet a Target KPI, Threshold Service Failure, Repeat Service Failures, and joint Threshold and Repeat Service Failures;
		4. the Service Point allocation (as set out in Appendix 1) of each Service Failure which occurred during the Service Period and whether each Service Failure which occurred during the Service Period fell below the KPI Service Threshold;
		5. which Service Failures remain outstanding and the progress made in resolving them;
		6. for any Service Failures occurring during the Service Period, the cause of the relevant Service Failure, the Fix Time (where applicable) and the action being taken, to reduce the likelihood of recurrence;
		7. any excused performances in accordance with Part A Paragraph 7 (Excused performance) and the justification for such excused performance;
		8. the status of any outstanding Rectification Plan processes, including:
			1. whether or not a Rectification Plan has been agreed; and
			2. where a Rectification Plan has been agreed, a summary of the Supplier's progress in implementing that Rectification Plan;
		9. for any Repeat Service Failures, actions taken to resolve the underlying cause and prevent recurrence;
		10. the number of Service Points awarded in respect of each Service Failure;
		11. the Service Credits to be applied, indicating the Service Failure(s) to which the Service Credits relate;
		12. the conduct and performance of any agreed periodic tests that have occurred, such as the annual failover test of the Disaster Recovery Plan;
		13. relevant particulars of any aspects of the Supplier's performance which fail to meet the requirements of this Agreement;
		14. such other details as the Authority may reasonably require from time to time;
		15. a rolling total of the number of Service Failures that have occurred over the last six (6) Service Periods;
		16. the amount of Service Credits that have been incurred by the Supplier over the past six (6) Service Periods;
		17. any aspects of the Supplier's performance of the Services which the responses to the Satisfaction Surveys reasonably suggest are not meeting the Services Description or the KPIs;
		18. the conduct and performance of any agreed periodic tests that have occurred in such Service Period such as the annual failover test of the Disaster Recovery Plan; and
		19. information relevant to key performance levels in respect of the next Service Period including (but not limited to) any scheduled Service Downtime for Permitted Maintenance.
	2. The Performance Monitoring Report shall be reviewed and its contents agreed by the parties at the next relevant Governance Board meeting held in accordance with the Governance Schedule.
	3. The parties shall attend meetings on a monthly basis (unless otherwise agreed) to review the Performance Monitoring Reports. The relevant Governance Board shall (unless otherwise agreed):
		1. take place within five (5) Working Days of the Performance Monitoring Report being issued by the Supplier;
		2. take place at such location and time (within normal business hours) as the Authority shall reasonably require (unless otherwise agreed in advance); and
		3. be attended by the Supplier Representative and the Authority Representative.
	4. The Authority shall be entitled to raise any additional questions and/or request any further information from the Supplier regarding any Service Failure.
3. **Performance records**
	1. The Supplier shall ensure that the Performance Monitoring Report and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and the Records Policy and any other document or record reasonably required by the Authority are Available to the Authority on-line and are capable of being printed.
4. **Performance Verification**
	1. The Authority reserves the right to verify whether services are Available and/or the Services and the Supplier's performance under this Agreement against the KPIs including by carrying out test transactions or otherwise.

Appendix 1

KPIs

Part I: KPIs Table

The KPIs shall apply to the Services from the Commencement Date are set out below:

KPIs

| **No.** | **KPI****[Examples, the Authority to Service specific KPIs]** | **Frequency of Measurement** | **Service Points (Incurred by the Supplier where the Target and or Threhold KPI is not met]****[Note this acts as a weighting, if all KPIs are to have the same weight then this allocation should be the same for all KPIs. Total Service Points should add up to 100]** | **Target KPI** | **Threshold KPI** |
| --- | --- | --- | --- | --- | --- |
| **1** | The Supplier shall ensure the Services are Available  | per Service Period  | [10] | [99%] | [95%] |
| **2** | The Supplier shall complete a data protection impact assessment and will keep such impact assessment up-to-date | per Service Period | [5] | [100%] | [100%] |
| **3** | The Supplier has Business Continuity and Disaster Recovery Plans in place and these are kept up-to-date | per Contract Year | [5] | [100%] | [100%] |
| **4** | The Supplier shall provide a certificate of compliance in accordance with the corruption and fraud provisions in the Agreement. | per Contract Year | [10] | [100%] | [100%] |
| **5** | The Supplier shall provide Management Reports setting out its performance against the KPIs | per Service Period | [10] | [100%] | [100%] |
| **6** | The Supplier shall not commit any breaches of its obligations under the Modern Slavery Act 2015 | per Service Period  | [10] | [100%] | [100%] |
| **7** | The Supplier shall provide evidence, in a form satisfactory to the Authority, that the Required Insurances are in force and effect and meet in full the requirements of the Insurance Schedule | Per Contract Year | [10] | [100%] | [100%] |
| **8** | The Supplier shall pay, and ensures that its Sub-contractor’s pay, the London Living Wage or the UK Living Wage accordance with the policy of the Living Wage Foundation of Citizens UK (Charity No. 1107264) (or any successor body performing the same function, from time to time in place). | per Service Period  | [10] | [100%] | [100%] |
| **9** | The Supplier shall provide regular updates consisting of: 1. Number of Supplier Personnel deployed to deliver the Services
2. Total number of vetted Supplier Personnel required to perform the Services (if different from (a))
3. Number of Supplier Personnel vetted specifically for the purpose of delivering the Services

Number of Supplier Personnel currently undergoing vetting (but not yet cleared) | per Service Period  | [10] | [100%] | [100%] |
| **10** | The Supplier complies with and maintains compliance with all service standards as set out in the Service Description Schedule. | per Service Period | [10] | [100%] | [100%] |
| **11** | The Supplier shall provide annual continuous improvement report identifying potential improvements. | per Contract Year | [10] | [100%] | [100%] |
| **12** | [MPS to add further Service Specific KPIs, however the service point allocation will need to be adjusted accordingly] |  |  |  |  |

**Appendix 2**

**KPI Measurement Summary**

This Summary is to be used by both the Authority and the Supplier to measure and assess performance against the KPIs

[Add relevant details as to how each KPI will be measured if applicable. For example include a definition of “Available” being the hours the service must be available and a calculation for % Availability e.g.].

% Availability =

Total hours in a Service Period which Services are actually Available

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Total Available hours in a Services Period which Services should be Available

Financial Distress Schedule

1. Introduction
	1. The parties shall comply with the provisions of this Schedule in relation to the assessment of the financial standing of the Supplier and the consequences of a change to that financial standing.
	2. The terms of this Schedule shall survive termination or expiry of this Agreement.
2. Definitions
	1. In this Schedule, the following words shall have the following meanings and they shall supplement the Definitions:

|  |  |
| --- | --- |
| "Credit Rating Threshold" | 1. the minimum credit rating level for the Supplier and the Guarantor as set out in paragraph 8 of this Schedule and for each Key Sub-contractor (if applicable); and
 |
| "Financial Distress Event" | the occurrence or one or more of the following events:1. the credit rating of the Supplier or any Key Sub-contractor dropping below the applicable Credit Rating Threshold;
2. the Supplier, the Guarantor or any Key Sub-contractor issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;
3. there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier, the Guarantor or any Key Sub-contractor;
4. the Supplier, the Guarantor/ or any Key Sub-Contractor committing a material breach of covenant to its lenders;
5. a Key Sub-contractor (where applicable) notifying The Authority that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute; or
6. any of the following:

commencement of any litigation against the Supplier, the Guarantor/ or any Key Sub-contractor with respect to financial indebtedness or obligations under a contract; non-payment by the Supplier, the Guarantor or any Key Sub-contractor of any financial indebtedness;any financial indebtedness of the Supplier, the Guarantor or any Key Sub-contractor becoming due as a result of an event of default; orthe cancellation or suspension of any financial indebtedness in respect of the Supplier, the Guarantor or any Key Sub-contractor, 1. in each case which The Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with the Agreement;
 |
| "Financial Distress Service Continuity Plan" | 1. a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with the Agreement in the event that a Financial Distress Event occurs;
 |
| “Guarantor” | 1. the provider of the Guarantee in accordance with clause 59, where the Authority has stipulated that the award of this Agreement shall be conditional upon receipt of a Guarantee
 |
| “Key Sub-contractor” | the Sub-contractors specified at paragraph 6 of this Schedule |
| “Rating Agencies” | Dun and Bradstreet and/or such other ratings agencies as notified by the Authority from time to time. |

1. **Credit Rating And Duty To Notify**
	1. The Supplier warrants and represents to the Authority that as at the Commencement Date the long term credit ratings issued for the Supplier by each of the Rating Agencies are as set out in paragraph 8 of this Schedule.
	2. The Supplier shall promptly (and in any event within five (5) Working Days) notify the Authority in writing if there is any downgrade in the credit rating issued by any Rating Agency.
	3. If there is any downgrade credit rating issued by any Rating Agency for either the Supplier or the Guarantor, the Supplier shall ensure that the Supplier's auditors thereafter provide the Authority within ten (10) Working Days of the end of each Agreement year and within ten (10) Working Days of written request by the Authority (such requests not to exceed four (4) in any Agreement year) with written calculations of the quick ratio for the Supplier or the Guarantor as the case may be as at the end of each Agreement year or such other date as may be requested by the Authority. For these purposes the "quick ratio" on any date means:



where:

|  |  |
| --- | --- |
| A | is the value at the relevant date of all cash in hand and at the bank of the Supplier or the Guarantor; |
| B | is the value of all marketable securities held by the Supplier or the Guarantor determined using closing prices on the Working Day preceding the relevant date;  |
| C | is the value at the relevant date of all account receivables of the Supplier or the Guarantor; and |
| D | is the value at the relevant date of the current liabilities of the Supplier or the Guarantor. |

* 1. The Supplier shall:
		1. regularly monitor the credit ratings of the Supplier or Guarantor and each Key Sub-contractor with the Rating Agencies; and
		2. promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event or Key Sub-contractor Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-contractor Financial Distress Event (and in any event, ensure that such notification is made within ten (10) Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event, the Key Sub-contractor Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-contractor Financial Distress Event).
	2. For the purposes of determining whether a Financial Distress Event has occurred, the credit rating of the Supplier, the Guarantor or relevant Key Sub-contractor] (as the case may be) shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Supplier, the Guarantor or relevant Key Sub-contractor (as the case may be)] at or below the applicable Credit Rating Threshold.
1. **Consequences Of A Financial Distress Event**
	1. In the event of a Financial Distress Event then, immediately upon notification of the Financial Distress Event (or if the Authority 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 Authority shall have the rights and remedies as set out in paragraphs 4.3-4.6.
	2. In the event that a Financial Distress Event arises due to a Key Sub-contractor notifying the Authority that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute then, the Authority shall not exercise any of its rights or remedies under paragraph 4.3 without first giving the Supplier ten (10) Working Days to:
		1. rectify such late or non-payment; or
		2. demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.
	3. The Supplier shall and/or any relevant Key Sub-contractor shall:
		1. at the request of the Authority meet the Authority 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 and in accordance the Agreement; and
		2. where the Authority reasonably believes (taking into account the discussions and any representations made under paragraph 4.3 that the Financial Distress Event could impact on the continued performance in accordance with the Agreement:
			1. submit to the Authority 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); and
			2. provide such financial information relating to the Supplier or the Guarantor as the Authority may reasonably require.
	4. If the Authority 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 Authority 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 Approved by the Authority or referred to the Dispute Resolution Procedure.
	5. If the Authority considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.
	6. Following Approval of the Financial Distress Service Continuity Plan by the Authority, the Supplier shall:
		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 and delivery of the Services in accordance with Agreement;
		2. where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with paragraph 4.6.1 submit an updated Financial Distress Service Continuity Plan to the Authority for its Approval, and the provisions of paragraphs 4.4 and 4.5 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and
		3. comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
	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 Authority and subject to the agreement of the parties, the Supplier may be relieved of its obligations under paragraph 4.6
2. **Termination Rights**
	1. The Authority shall be entitled to terminate this Agreement for material Default if:
		1. the Supplier fails to notify the Authority of a Financial Distress Event in accordance with paragraph 4.1.
		2. The Authority and the Supplier fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraphs 4.4 to 4.5; and/or
		3. the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan).
3. **Primacy Of Credit Ratings**
	1. Without prejudice to the Supplier's obligations and the Authority's rights and remedies under paragraph 4 if, following the occurrence of a Financial Distress Event, the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:
		1. the Supplier shall be relieved automatically of its obligations under paragraph 4.6; and
		2. the Authority shall not be entitled to require the Supplier to provide financial information in accordance with paragraph 4.3.2(b).
4. **Key Sub-contractors**
	1. The Key Sub-contractors for this Agreement are as follows:

|  |  |
| --- | --- |
| **Key Sub-contractor** | **Details** |
|  |  |
|  |  |
|  |  |

1. **Current credit Ratings & Credit Rating Thresholds**
	1. The Credit Rating Thresholds for this Agreement shall be as follows:

|  |  |
| --- | --- |
| **Entity**  | **Credit rating (long term)** |
| Supplier | [D&B Threshold] |
| [Guarantor/ [and ] |  |
| [Key Sub-contractor] |  |

Business Continuity Schedule

1. Definitions
	1. In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| "**Business Continuity Plan**" | has the meaning given in paragraph 2.2 of this Schedule;  |
| "**Disaster**" | the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for a period of ten (10) Working Days or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period; |
| "**Disaster Recovery Plan**" | has the meaning given in paragraph 3 of this Schedule;  |

1. **Business continuity – principles and contents**
	1. The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Authority expressly states otherwise in writing:
		1. the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
		2. the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
	2. The Business Continuity Plan shall:
		1. address the various possible levels of failures of or disruptions to the Services;
		2. set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the "**Business Continuity Services**");
		3. specify any applicable KPIs with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the KPIs in respect of other Services during any period of invocation of the Business Continuity Plan; and
		4. clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.
2. **Disaster recovery – principles and contents**
	1. The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
	2. The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
	3. The Disaster Recovery Plan shall include the following:
		1. the technical design and build specification of the disaster recovery system;
		2. details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the disaster recovery Services and any testing of the same including but not limited to the following:
			1. data centre and disaster recovery site audits;
			2. backup methodology and details of the Supplier's approach to data back-up and data verification;
			3. identification of all potential disaster scenarios;
			4. risk analysis;
			5. documentation of processes and procedures;
			6. hardware configuration details;
			7. network planning including details of all relevant data networks and communication links;
			8. invocation rules;
			9. Service recovery procedures; and
			10. steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
		3. any applicable KPIs with respect to the provision of disaster recovery Services and details of any agreed relaxation to the KPIs in respect of other Services during any period of invocation of the Disaster Recovery Plan;
		4. details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
		5. access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
		6. testing and management arrangements.

Exit Management Schedule

1. Definitions
	1. In this Schedule, the following definitions shall apply

|  |  |
| --- | --- |
| **"Application Programming Interface" or "API"** | a piece of software that facilitates access to the Supplier's application(s) to provide access to business functionality and/or Authority Data to support any relevant Termination Services which conforms to the Government Digital Service API technical and data standards set online at: <https://www.gov.uk/guidance/gdsapi-technical-and-data-standards> ; |
| **“Assets”** | any assets used by the Supplier or a Sub-contractor in the provision of the Services; |
| **"Emergency Exit"** | any termination of this Agreement which is a:* + - 1. termination of the whole or part of this Agreement in accordance with Clause 52 (Termination) or Clause 53 (Termination without cause), except where the period of notice given under that Clause is greater than or equal to six (6) months;
			2. termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 52 (Termination) or Clause 53 (Termination without cause); or
			3. wrongful termination or repudiation of this Agreement by either party;
 |
| **"Exclusive Assets"** | those assets used by the Supplier or a Sub-contractor which are used exclusively in the provision of the Services; |
| **"Exit Information"** | has the meaning given in paragraph 3.1; |
| **"Exit Manager"** | the person appointed by each party pursuant to paragraph 2.3 for managing the parties' respective obligations under this Schedule; |
| **“Exit Plan”** | an exit plan agreed between the parties in accordance with the provisions of this Schedule; |
| **"Net Book Value"** | the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Authority of the same date as this Agreement; |
| **"Non-Exclusive Assets"** | those Assets (if any) which are used by the Supplier or a Sub-contractor in connection with the Services but which are also used by the Supplier or Sub-contractor for other purposes of material value; |
| **"Ordinary Exit"** | any termination of the whole or part of this Agreement which occurs:* + - 1. pursuant to Clauses 52 (Termination) or Clause 53 (Termination without cause) where the period of notice given by the party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or
			2. as a result of the expiry of the Initial Term or any Extension Period;
 |
| **"Registers"** | the register and configuration database referred to in paragraphs 2.1.1and 2.1.2; |
| **"Transferable Assets"** | those of the Exclusive Assets which are capable of legal transfer to the Authority; |
| **"Transferable Contracts"** | the Sub-contracts, licences for Supplier's software, licences for third party software or other agreements which are necessary to enable the Authority or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation; and |
| **"Transferring Contracts"** | has the meaning given in paragraph 8.2.1(b). |

1. **Obligations During the Term to Facilitate Exit**
	1. During the Term, the Supplier shall:
		1. create and maintain a register of all:
			1. Assets, detailing their:
				1. make, model and asset number;
				2. ownership and status as either Exclusive Assets or Non-Exclusive Assets;
				3. Net Book Value;
				4. condition and physical location; and
				5. use (including technical specifications); and
			2. Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;
		2. create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;
		3. agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and
		4. at all times keep the Registers up to date, in particular in the event that Assets, Sub-contracts.
	2. The Supplier shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement.
	3. Each party shall appoint a person for the purposes of managing the parties' respective obligations under this Schedule and provide written notification of such appointment to the other party within three (3) months of the Commencement Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Schedule and each party's compliance with it
2. **Obligations to assist on re-tendering of services**
	1. On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
		1. details of the Service(s);
			1. a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
			2. an inventory of Authority Data in the Supplier's possession or control;
			3. details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
			4. list of on-going and/or threatened disputes in relation to the provision of the Services;
			5. to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Agreement; and
			6. such other material and information as the Authority shall reasonably require,

(together, the "**Exit Information**").

* 1. The Supplier shall:
		1. notify the Authority within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and
		2. provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Authority.
	2. The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than four (4) updates in any six (6) month period.
	3. The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
		1. prepare an informed offer for those Services; and
		2. not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).
1. **Exit plan**
	1. The Supplier shall, within three (3) months after the Commencement Date, deliver to the Authority an Exit Plan which:
		1. sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the Authority and/or its Replacement Supplier on Partial Termination, expiry or termination of this Agreement;
		2. complies with the requirements set out in paragraph 4.2; and
		3. is otherwise reasonably satisfactory to the Authority.
	2. The parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
	3. The Exit Plan shall set out, as a minimum:
		1. how the Exit Information is obtained;
		2. separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its subcontractors to provide the Services;
		3. a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Agreement;
		4. the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
		5. the management structure to be employed during the Termination Assistance Period;
		6. a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
		7. how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
		8. the scope of the Termination Services that may be required for the benefit of the Authority;
		9. a timetable and critical issues for providing the Termination Services;
		10. any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
		11. how the Termination Services would be provided (if required) during the Termination Assistance Period;
		12. procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to the Staff Transfer Schedule; and
		13. how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.
	4. The parties acknowledge that the migration of the Services from the Supplier to the Authority and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.
	5. The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) and if requested by the Authority following the occurrence of a Financial Distress Event, within ten (10) Working Days of such request, to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Supplier shall submit the revised Exit Plan to the Authority for review. Within twenty (20) Working Days following submission of the revised Exit Plan, the parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the parties are unable to agree the contents of the revised Exit Plan within that twenty (20) Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.
	6. Within twenty (20) Working Days after service of a Termination Notice by either party or Six (6) months prior to the expiry of this Agreement, the Supplier will submit for the Authority's Approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
	7. The parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days following its delivery to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Termination Services in accordance with the principles set out in this Schedule and the last Approved version of the Exit Plan (insofar as relevant).
2. **Termination Services**
	1. The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) months prior to the date of Partial Termination, termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either party of Termination Notice. The Termination Assistance Notice shall specify:
		1. the date from which Termination Services are required;
		2. the nature of the Termination Services required; and
		3. the period during which it is anticipated that Termination Services will be required, which shall continue no longer than twenty four (24) months after the date that the Supplier ceases to provide the terminated Services.
	2. The Authority shall have:
		1. an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) months after the date the Supplier ceases to provide the terminated Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Services is otherwise due to expire; and
		2. the right to terminate its requirement for Termination Services by serving not less than twenty (20) Working Days' written notice upon the Supplier to such effect.
3. **Termination Assistance Period**
	1. Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:
		1. continue to provide the Services (as applicable) and, if required by the Authority pursuant to paragraph 5.1, provide the Termination Services;
		2. in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the Partial Termination, termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
		3. use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 6.1.2 without additional costs to the Authority;
		4. provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the parties agree otherwise in accordance with paragraph 6.3; and
		5. at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.
	2. Without prejudice to the Supplier's obligations under paragraph 6.1.3, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in paragraph 6.1.2 without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to clause 43 (Contract Change).
	3. If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the parties shall vary the relevant Target Performance Level(s) and/or the applicable Service Credit to take account of such adverse effect.
4. **Termination Obligations**
	1. The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any Partial Termination or termination.
	2. At the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule) in respect of the Services that have been terminated, the Supplier shall:
		1. cease to use the Authority Data;
		2. provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
		3. erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
		4. return to the Authority such of the following as is in the Supplier's possession or control:
			1. all copies of the Authority software and any other software licensed by the Authority to the Supplier under this Agreement;
			2. all materials created by the Supplier under this Agreement in which the IPRs are owned by the Authority;
			3. any parts of the IT Environment and any other equipment which belongs to the Authority; and
			4. any items that have been on-charged to the Authority, such as consumables;
		5. vacate any Authority Premises unless access is required to continue to deliver the Services;
		6. provide access during normal working hours to the Authority and/or the Replacement Supplier for up to twelve (12) months after the Partial Termination, expiry or termination of this Agreement to:
			1. such information relating to the Services as remains in the possession or control of the Supplier; and
			2. such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this paragraph 7.2.4(b).
	3. Upon Partial Termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each party shall return to the other party (or if requested, destroy or delete) all Confidential Information of the other party in respect of the terminated Services and shall certify that it does not retain the other party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.
	4. Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the terminated Services shall be terminated with effect from the end of the Termination Assistance.
5. **Assets, Sub-Contracts And software licences**
	1. Following notice of termination or Partial Termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, in respect of the terminated Services, without the Authority's prior written consent:
		1. terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;
		2. subject to normal maintenance requirements, make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
		3. terminate, enter into or vary any licence for software in connection with the Services.
	2. Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to paragraph 6.1.5, the Authority shall provide written notice to the Supplier setting out:
		1. which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier in respect of the terminated Services ("**Transferring Assets**");
			1. which, if any, of:
				1. the Exclusive Assets that are not Transferable Assets; and
				2. the Non-Exclusive Assets,

the Authority and/or the Replacement Supplier requires the continued use of; and

* + - 1. which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the "**Transferring Contracts**"), in order for the Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Services or Replacement Services.
	1. With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:
		1. a Termination Payment is payable by the Authority to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or
		2. the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Agreement, in which case the Authority shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.
	2. Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same.
	3. Where the Supplier is notified in accordance with paragraph 8.2.1(b) that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
		1. procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
		2. procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
	4. The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
	5. The Authority shall:
		1. accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
		2. once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
	6. The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.
	7. The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to paragraph 8.6 both:
		1. in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
		2. in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the Supplier's failure to comply with its Intellectual Property obligations under this Agreement.
1. **Supplier Personnel**
	1. The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, the Staff Transfer Schedule shall apply.
	2. The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier.
	3. During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Authority and/or the Replacement Supplier.
	4. The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
	5. The Supplier shall not for a period of twelve (12) months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose or engagement is transferred to the Authority and/or the Replacement Supplier, except that this paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.
2. **Charges**
	1. During the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services), the Authority shall pay the Charges to the Supplier in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with clause 43 (Contract Change).
	2. Where the Authority requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with paragraph 5.2:
		1. where more than six (6) months' notice is provided, the same rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable; and
		2. where less than six (6) months' notice is provided, no more than 10% increase of the rates as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable.
	3. For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with clause 43 (Contract Change).
	4. Except as otherwise expressly specified in this Agreement, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the parties to carry on after the expiry of the Termination Assistance Period.
3. **Apportionments**
	1. All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
		1. the amounts shall be annualised and divided by 365 to reach a daily rate;
		2. the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
		3. the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

Staff Transfer Schedule

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

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

If there is a staff transfer from former/incumbent supplier on entry (2nd generation), Part 2 shall apply.

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

If either Part 1 and/or Part 2 apply, then consider whether Part 4 (Pensions) shall apply and the Authority shall indicate on the Award Form which Appendix shall apply (either Appendix A (CSPS), Appendix B (NHSPS), or Appendix C(LGPS)). Part 4 (Pensions) may also apply where there is not a TUPE transfer for example where the incumbent provider is successful.

If there is no staff transfer (either 1st generation or 2nd generation) at the Start Date then Part 3 shall apply and Part 4 (Pensions) may also apply where there is not a TUPE transfer for example where the incumbent provider is successful.

If the position on staff transfers is not known at the bid stage, include Part 1, Part 2, Part 3 and Part 4 at the bid stage and then update the Authority Agreement Details before signing to specify whether Part 1 and/or Part 2, or Part 3 and Part 4 apply to the Agreement.

Part 5 (dealing with staff transfer on exit) shall apply to every Agreement.]

1. Definitions
	1. In this Schedule, the following words have the following meanings and they shall supplement the Definitions set out in the terms and conditions:

|  |  |
| --- | --- |
| 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:1. redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
2. unfair, wrongful or constructive dismissal compensation;
3. 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;
4. compensation for less favourable treatment of part-time workers or fixed term employees;
5. outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Authority or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-contractor if such payment should have been made prior to the Service Transfer Date and also including any payments arising in respect of pensions;
6. claims whether in tort, contract or statute or otherwise;

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 |
| Former Supplier | a supplier supplying the Services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Sub-contractor of such supplier (or any Sub-contractor of any such Sub-contractor) |
| Partial Termination | the partial termination of the relevant Agreement to the extent that it relates to the provision of any part of the Services as further provided for in clause 50  |
| 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 4: Pensions, shall include the Start Date, where appropriate |
| Replacement Sub-contractor | a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor) |
| Replacement Supplier  | any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority); |
| Service Transfer | any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor |
| Service Transfer Date | the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires |
| Supplier's Final Supplier Personnel List | a list provided by the Supplier of all Supplier Personnel whose will transfer under the Employment Regulations on the Service Transfer Date |
| Supplier's Provisional Supplier Personnel List | a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier |
| Staffing Information | in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:1. their ages, dates of commencement of employment or engagement, gender and place of work;
2. details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
3. the identity of the employer or relevant contracting party;
4. their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
5. their wages, salaries, bonuses and profit sharing arrangements as applicable;
6. details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
7. any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
8. details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
9. copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
10. any other employee liability information as such term is defined in regulation 11 of the Employment Regulations
 |
| Term | the period commencing on the Start Date and ending on the expiry of the Initial Period or any Extension Period or on earlier termination of the relevant Agreement |
| Transferring Authority Employees | those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to 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 whose names are provided to the Supplier on or prior to the Relevant Transfer Date |
| Transferring Supplier Employees | those employees of the Supplier and/or the Supplier's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date |

1. Interpretation
	1. Where a provision in this Schedule imposes any obligation on the Supplier including (without limit) to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be and where the Sub-contractor 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.
2. Which parts of this Schedule apply
	1. Only the following parts of this Schedule shall apply to this Agreement:

[●Delete if not applicable to the Agreement]

* 1. [Part 1 (Staff Transfer At Start Date – Outsourcing From the Authority) ]
	2. [Part 2 (Staff Transfer At Start Date – Transfer From Former Supplier)]
	3. [Part 3 (No Staff Transfer On Start Date)]
	4. [Part 4 (Pensions)]
		1. [ - Appendix A (CSPS)]
		2. [ - Appendix B (NHSPS) ]
		3. [ - Appendix C (LGPS)]
		4. [ - 0 (Other Schemes)]
	5. Part 5 (Staff Transfer on Exit)
1. : Staff Transfer at the Start Date

Outsourcing from the Authority

1. **What is a** **relevant transfer**
	1. The Authority and the Supplier agree that:
		1. the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Authority Employees; and
		2. as a result of the operation of the Employment Regulations, the contracts of employment between the Authority and the Transferring Authority Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Sub-contractor and each such Transferring Authority Employee.
		3. The Authority shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Authority Employees in respect of the period arising up to (but not including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions.
2. **Indemnities the** **Authority must give**
	1. Subject to paragraph 2.2, the Authority shall indemnify the Supplier and any Sub-contractor against any Employee Liabilities arising from or as a result of any act or omission by the indemnifying party in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee occurring before the Relevant Transfer Date.
	2. The indemnities in paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date.
	3. Subject to paragraphs 2.4 and 2.5, if any employee of the Authority who is not identified as a Transferring Authority Employee claims, or it is determined in relation to any employees of the Authority, that his/her contract of employment has been transferred from the Authority to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations then -
		1. the Supplier will, within 5 Working Days of becoming aware of that fact, notify the Authority in writing;
		2. the Authority may offer employment to such person, or take such other steps as it considers appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;
		3. if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;
		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 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 the Authority will indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any of the Authority's employees referred to in this paragraph 2.3.

* 1. The indemnity in paragraph 2.3 shall not apply to any claim:
		1. for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
		2. any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure.
	2. The indemnity in paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date.
	3. If the Supplier and/or any Sub-contractor 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 Sub-contractor and the Supplier shall comply with such obligations as may be imposed upon it under applicable Law.
1. **Indemnities the** **Supplier must give and its obligations**
	1. Subject to paragraph 3.2, the Supplier shall indemnify the Authority against any Employee Liabilities arising from or as a result of any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee whether occurring before, on or after the Relevant Transfer Date.
	2. The indemnities in paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Authority whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Authority's failure to comply with its obligations under the Employment Regulations.
	3. The Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Authority Employees, from (and including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and any other sums due under Part 4: Pensions.
2. **Information the** **Supplier must provide**
	1. The Supplier shall promptly provide to the Authority in writing such information as is necessary to enable the Authority to carry out its duties under regulation 13 of the Employment Regulations. The Authority shall promptly provide to the Supplier in writing such information as is necessary to enable the Supplier and any Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
3. **Cabinet Office requirements**
	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.
	2. The Supplier shall comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Authority Employee as set down in (i) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007; (ii) HM Treasury's guidance **Staff Transfers from Central Government: A** **Fair Deal for Staff Pensions of 1999**; (iii) HM Treasury's guidance **Fair deal for staff pensions: procurement of** **Bulk Transfer Agreements and** **Related Issues** of June 2004; and/or (iv) the New Fair Deal.
	3. Any changes embodied in 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.
4. **Pensions**
	1. The Supplier shall comply with:
		1. all statutory pension obligations in respect of all Transferring Authority Employees; and
		2. the provisions in Part 4: Pensions.
5. : Staff transfer at the Start Date

Transfer from a former Supplier on Re-procurement

1. **What is a** **relevant transfer**
	1. The Authority and the Supplier agree that:
		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
		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 Sub-contractor and each such Transferring Former Supplier Employee.
	2. The Authority shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions.
2. **Indemnities given by the Former Supplier**
	1. Subject to paragraph 2.2, the Authority shall procure that each Former Supplier shall indemnify the Supplier and any Sub-contractor against any Employee Liabilities arising from or as a result of 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. The indemnities in paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date.
	3. Subject to paragraphs 2.4 and 2.5, if any employee of a Former Supplier who is not identified as a Transferring Former Supplier Employee and claims, and/or it is determined, in relation to such person that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations then:
		1. the Supplier will within 5 Working Days of becoming aware of that fact notify the Authority and the relevant Former Supplier in writing;
		2. the Former Supplier may offer employment to such person, or take such other steps as it considers appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;
		3. if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;
		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 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 the Authority shall procure that the Former Supplier will indemnify the Supplier and/or the relevant Sub-contractor 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.

* 1. The indemnity in paragraph 2.3 shall not apply to any claim:
		1. for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Supplier and/or any Sub-contractor; or
		2. that the termination of employment was unfair because the Supplier and/or Sub-contractor neglected to follow a fair dismissal procedure.
	2. The indemnity in paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date.
	3. If the Supplier and/or any Sub-contractor 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 Sub-contractor and the Supplier shall comply with such obligations as may be imposed upon it under applicable Law.
1. **Indemnities the** **Supplier must give and its obligations**
	1. Subject to paragraph 3.1, the Supplier shall indemnify the Authority, and the Former Supplier against any Employee Liabilities arising from or as a result of any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date.
	2. The indemnities in paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
	3. The 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, on and from the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and all such sums due under Part 4: Pensions.
2. **Information the** **Supplier must give**
	1. The Supplier shall promptly provide to the Authority and/or at the Authority's direction, the Former Supplier, in writing such information as is necessary to enable the Authority and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Former Supplier shall promptly provide to the Supplier in writing such information as is necessary to enable the Supplier and any Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
3. **Cabinet Office requirements**
	1. The Supplier shall comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in (i) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007; (ii) HM Treasury's guidance **Staff Transfers from Central Government: A** **Fair Deal for Staff Pensions of 1999**; (iii) HM Treasury's guidance: **Fair deal for staff pensions: procurement of** **Bulk Transfer Agreements and** **Related Issues** of June 2004; and/or (iv) the New Fair Deal.
	2. Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.
4. **Limits on the Former Supplier's obligations**
	1. Notwithstanding any other provisions of this Part 2, where in this Part 2 the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority's must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.
5. **Pensions**
	1. The Supplier shall comply with:
		1. all statutory pension obligations in respect of all Transferring Former Supplier Employees; and
		2. the provisions in Part 4: Pensions.
6. : No Staff Transfer on the Start Date
7. **What happens** **if there is a staff transfer**
	1. The Authority and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.
	2. Subject to paragraphs 1.3, 1.4 and 1.5, if any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations then:
		1. the Supplier will, within 5 Working Days of becoming aware of that fact, notify the Authority in writing;
		2. the Authority may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;
		3. if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;
		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:

1. the Authority will indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any of the Authority's employees referred to in paragraph 1.2; and
2. the Authority will procure that the Former Supplier indemnifies the Supplier and/or any Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in paragraph 1.2.
	1. The indemnities in paragraph 1.2 shall not apply to any claim:
		1. for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or Sub-contractor; or
		2. any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure.
	2. The indemnities in paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Start Date.
	3. If the Supplier and/or the Sub-contractor does not comply with paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-contractor and the Supplier shall (i) comply with the provisions of Part 4: Pensions of this Schedule, and (ii) indemnify the Authority and any Former Supplier against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.
3. **Limits on the Former Supplier's obligations**
	1. Where in this Part 3 the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.
4. : Pensions
5. **Definitions**
	1. In this Part 4 the following words have the following meanings and they shall supplement the Definitions set out in the terms and conditions:

|  |  |
| --- | --- |
| Actuary | a Fellow of the Institute and Faculty of Actuaries |
| Admission Agreement | means either or both of the CSPS Admission Agreement (as defined in : CSPS or the LGPS Admission Agreement as defined in : LGPS), as the context requires |
| Broadly Comparable | 1. 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
2. in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,

and Broad Comparability shall be construed accordingly |
| CSPS | the schemes as defined in Appendix A to this Part 4 |
| Fair Deal Employees | those:1. Transferring Authority Employees; and/or
2. Transferring Former Supplier Employees; and/or
3. employees who are not Transferring Authority Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Sub-contractor, and whose employment is not terminated in accordance with the provisions of paragraphs 2.3.4 of Part 1 or Part 2 or paragraph 1.2.4 of Part 3
4. where the Former Supplier becomes the Supplier those employees

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 Authority |
| Fair Deal Schemes | means the relevant Statutory Scheme or a Broadly Comparable pension scheme |
| Fund Actuary | means Fund Actuary as defined in Appendix C to this Part 4 |
| LGPS | the schemes as defined in Appendix C to this Part 4 |
| NHSPS | the schemes as defined in Appendix B to this Part 4 |
| New Fair Deal | the revised Fair Deal position set out in the HM Treasury guidance: Fair Deal for Staff Pensions: Staff Transfer from Central Government issued in October 2013 including:1. any amendments to that document immediately prior to the Relevant Transfer Date; and
2. any similar pension protection in accordance with the subsequent Appendix A to Appendix C inclusive as notified to the Supplier by the Authority
 |
| Statutory Schemes | means the CSPS, NHSPS or LGPS |

1. **Supplier obligations to participate in the pension schemes**
	1. In respect of all or any Fair Deal Employees each of Appendix A: CSPS, Appendix B: NHSPS and/or Appendix C: LGPS shall apply, as appropriate.
	2. The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter, 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.
	3. The Supplier undertakes:
		1. to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
		2. 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. **Supplier obligation to provide information**
	1. The Supplier undertakes to the Authority:
		1. to provide all information which the Authority may reasonably request concerning matters referred to in this Part 4 as expeditiously as possible; and
		2. not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part 4 without the consent in writing of the Authority (such consent not to be unreasonably withheld or delayed).
3. **Indemnities the** **Supplier must give**
	1. The Supplier undertakes to the Authority to indemnify and keep indemnified NHS Pensions the Authority and/or any Replacement Supplier and/or any Replacement Sub-contractor on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards all and any Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which arise from any breach by the Supplier of this 4, and/or the CSPS Admission Agreement and/or the Direction Letter and/or the LGPS Admission Agreement or relates to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Fair Deal Schemes.
	2. The Supplier hereby indemnifies the NHS Pensions, the Authority and/or any Replacement Supplier and/or Replacement Sub-contractor from and against all Losses suffered or incurred by it or them which arise from claims by Fair Deal Employees of the Supplier and/or of any Sub-contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
		1. relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Agreement; or
		2. arise out of the failure of the Supplier and/or any relevant Sub-contractor to comply with the provisions of this Part 4 before the date of termination or expiry of this Agreement.
	3. The indemnities in this Part 4 and its Appendices:
		1. shall survive termination of this Agreement; and
		2. shall not be affected by the caps on liability contained in clause 36 (Liabilities).
4. **What happens if there is a dispute**
	1. The Dispute Resolution Procedure will not apply to this Part 4 and any dispute between the Authority and the Supplier or between their respective actuaries or the Fund Actuary about any of the actuarial matters referred to in this Part 4 and its Appendices shall in the absence of agreement between the Authority and the Supplier be referred to an independent Actuary:
		1. who will act as an expert and not as an arbitrator;
		2. whose decision will be final and binding on the Authority and the Supplier; and
		3. whose expenses shall be borne equally by the Authority and the Supplier unless the independent Actuary shall otherwise direct.
5. **Other people's rights**
	1. The Parties agree clause 62 (Third Party Rights) does not apply and that the CRTPA applies to this Part 4 to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her or it by the Supplier under this Part 4, in his or her or its own right under section 1(1) of the CRTPA.
	2. Further, the Supplier must ensure that the CRTPA will apply to any Sub-contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Sub-contractor in his or her or its own right under section 1(1) of the CRTPA.
6. **What happens if there is a breach of this** **Part 4**
	1. The Supplier agrees to notify the Authority should it breach any obligations it has under this Part 4 and agrees that the Authority shall be entitled to terminate its Agreement for material Default in the event that the Supplier:
		1. commits an irremediable breach of any provision or obligation it has under this Part 4; or
		2. commits a breach of any provision or obligation it has under this Part 4 which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Authority giving particulars of the breach and requiring the Supplier to remedy it.
7. **Transferring New Fair Deal Employees**
	1. Save on expiry or termination of this Agreement, if the employment of any Fair Deal Employee transfers to another employer (by way of a transfer under the Employment Regulations) the Supplier shall and shall procure that any relevant Sub-contractor shall:
		1. consult with and inform those Fair Deal Employees of the pension provisions relating to that transfer; and
		2. procure that the employer to which the Fair Deal Employees are transferred (the **New Employer**) complies with the provisions of this Part 4 and its Appendices 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.
8. **What happens to pensions if this Agreement ends**
	1. The provisions of Part 5: Staff Transfer on Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Agreement.
9. **Broadly Comparable Pension Schemes**
	1. If either:
		1. the terms of any of paragraphs 2.2 of Appendix A, 5.2 of Appendix B and or 4 of Appendix C apply; and/or
		2. the Authority agrees, having considered the exceptional cases provided for in New Fair Deal, (such agreement not to be unreasonably withheld) that the Supplier (and/or its Sub-contractors, if any) need not continue to provide the Fair Deal Employees, who continue to qualify for Fair Deal Protection, with access to the appropriate Statutory Scheme;

the Supplier must (and must, where relevant, procure that each of its Sub-contractors will) ensure that, with effect from the Relevant Transfer Date or if later cessation of participation in the Statutory Scheme until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Authority.

* 1. Where the Supplier has set up a Broadly Comparable pension scheme or schemes pursuant to the provisions of paragraph 10.1, the Supplier shall (and shall procure that any of its Sub-contractors shall):
		1. supply to the Authority details of its (or its Sub-contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability covering all relevant Fair Deal Employees, as soon as it is able to do so and in any event no later than 28 days before the Relevant Transfer Date;
		2. fully fund any such Broadly Comparable pension scheme in accordance with the funding requirements set by that Broadly Comparable pension scheme's Actuary or by the Government Actuary's Department for the period ending on the Service Transfer Date;
		3. instruct any such Broadly Comparable pension scheme's Actuary to, and to provide all such co-operation and assistance in respect of any such Broadly Comparable pension scheme as the Replacement Supplier and/or NHS Pension and/or CSPS and/or the relevant Administering Authority and/or the Authority may reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
		4. provide a replacement Broadly Comparable pension scheme with immediate effect for those Fair Deal Employees who are still employed by the Supplier and/or relevant Sub-contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-contractor's Broadly Comparable pension scheme is terminated;
		5. allow and make all necessary arrangements to effect, in respect of any Fair Deal 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 relevant Statutory Scheme and as is relevant on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal. For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the appropriate Statutory Scheme to fund day for day service (**Shortfall**), the Supplier or the Sub-contractor (as agreed between them) must pay the Statutory Scheme, as required, provided that in the absence of any agreement between the Supplier and any Sub-contractor, the Shortfall shall be paid by the Supplier; and
		6. indemnify the Authority and/or NHS Pension and/or CSPS and/or the relevant Administering Authority and/or on demand for any failure to pay the Shortfall as required under paragraph 10.2.5 above.
1. : CSPS
2. Definitions
	1. In this Appendix A: CSPS to 2: Pensions, the following words have the following meanings:

|  |  |
| --- | --- |
| 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 CSPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the CSPS under a 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 |
| CSPS | 1. the Principal Civil Service Pension Scheme 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
	1. ill health Benefits Arrangements and
	2. death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; and
2. alpha introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014
 |

1. Future service benefits
	1. In accordance with New Fair Deal, the Supplier and/or any of its Sub- contractors to which the employment of any CSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Agreement or a Relevant Transfer, if not an employer which participates automatically in the CSPS, shall each secure a CSPS Admission Agreement to ensure that CSPS Fair Deal Employees or CSPS Eligible Employees as appropriate shall be either admitted into, or offered continued membership of, the relevant section of the CSPS that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date. The Supplier and/or any of its Sub-contractors shall procure that the CSPS Fair Deal Employees continue to accrue benefits in the CSPS in accordance with the provisions governing the relevant section of the CSPS for service from (and including) the Relevant Transfer Date.
	2. If the Supplier and/or any of its Sub-contractors enters into a CSPS Admission Agreement in accordance with paragraph 2.1 but the CSPS Admission Agreement is terminated during the term of this Agreement for any reason at a time when the Supplier or Sub-contractor still employs any CSPS Eligible Employees, the Supplier shall (and procure that its Sub-contractors shall) at no extra cost to the Authority, offer the remaining CSPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the CSPS on the date those CSPS Eligible Employees ceased to participate in the CSPS in accordance with the provisions of paragraph 10 of Part 4.
2. : NHSPS
3. **Definitions**
	1. In this Appendix B: NHSPS to 2: Pensions, the following words have the following meanings:

|  |  |
| --- | --- |
| NHSPS Fair Deal Employees | means other than the NHS Broadly Comparable Employees, each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:1. their employment with the Authority, an NHS Body or other employer which participates automatically in the NHSPS; or
2. their employment with a Former Supplier who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Authority, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier)
3. and, in each case, being continuously engaged for more than fifty per cent (50%) of their employed time in the delivery of services (the same as or similar to the Services)

For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the Services and being covered by an open Direction Letter/Determination or other NHSPS access facility but who has never been employed directly by the Authority, an NHS Body or other body which participates automatically in the NHSPS is not an NHSPS Fair Deal Employee |
| NHS Body | has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012 |
| NHS Pensions | NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS |
| NHSPS | the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and the Public Service Pensions Act 2013 governed by subsequent regulations under those Acts including the NHS Pension Scheme Regulations |
| NHS Pension Scheme Regulations | as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time |
| NHS Premature Retirement Rights | rights to which any NHSPS Fair Deal Employee (had they remained in the employment of the Authority, an NHS Body or other employer which participates automatically in the NHSPS) would have been or is entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time |
| Pension Benefits | any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme |

1. **Membership of the NHSPS**
	1. In accordance with New Fair Deal, the Supplier and/or any of its Sub- contractors to which the employment of any NHSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Agreement 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 Agreement.
	2. Where it is not possible for the Supplier and/or any of its Sub-contractors to secure a Direction Letter/Determination on or before the Relevant Transfer Date, the Supplier must secure a Direction Letter/Determination as soon as possible after the Relevant Transfer Date, and in the period between the Relevant Transfer Date and the date the Direction Letter/Determination is secure, the Provider must ensure that:
		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. the Pension Benefits and Premature Retirement Rights of NHSPS Fair Deal Employees are not adversely affected.
	3. The Supplier must supply to the Authority a complete copy of each Direction Letter/Determination within 5 Working Days of receipt of the Direction Letter/Determination.
	4. The Supplier must ensure (and procure that each of its Sub-contractors (if any) ensures) that all of its NHSPS Fair Deal Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter/Determination.
	5. The Supplier will (and will procure that its Sub-contractors (if any) will) comply with the terms of the Direction Letter/Determination, the NHS Pension Scheme Regulations (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.
	6. Where any employee omitted from the Direction Letter/Determination supplied in accordance with paragraph 2.3 of this Appendix are subsequently found to be an NHSPS Fair Deal Employee, the Supplier will (and will procure that its Sub-contractors (if any) will) treat that person as if they had been an NHSPS Fair Deal Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
	7. The Supplier will (and will procure that its Sub-contractors (if any) will) provide any indemnity, bond or guarantee required by NHS Pensions in relation to a Direction Letter/Determination.
2. **NHS** **premature retirement rights**
	1. From the Relevant Transfer Date until the Service Transfer Date, the Supplier must provide (and/or must ensure that its Sub-contractors (if any) provide) NHS Premature Retirement Rights in respect of the NHSPS Fair Deal Employees that are identical to the benefits they would have received had they remained employees of the Authority, an NHS Body or other employer which participates automatically in the NHSPS.
3. **NHS** **broadly comparable employees**
	1. The Supplier shall (and procure that its Sub-contractors shall), with effect from the Relevant Transfer Date, offer the NHSPS Broadly Comparable Employees membership of a pension scheme which is Broadly Comparable to NHSPS on the Relevant Transfer Date in accordance with paragraph 10 of Part 4. For the avoidance of doubt, this requirement is separate from any requirement to offer a Broadly Comparable pension scheme in accordance with paragraph 5 below.
4. **Breach and cancellation of any direction letter/determination(s)**
	1. The Supplier agrees that the Authority is entitled to make arrangements with NHS Pensions for the Authority to be notified if the Supplier (or its Sub-contractors) breaches the terms of its Direction Letter/Determination. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Authority in the event that it (or its Sub-contractor) breaches the terms of its Direction Letter/Determination.
	2. If the Supplier (or its Sub-contractors, if relevant) ceases to participate in the NHSPS for whatever reason, the Supplier (or any such Sub-contractor, as appropriate) shall offer the NHSPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the NHSPS on the date the NHSPS Eligible Employees ceased to participate in the NHSPS in accordance with the provisions of paragraph 10 of Part 4.
5. **Compensation**
	1. If the Supplier (or its Sub-contractor, if relevant) is unable to provide the NHSPS Fair Deal Employees with either membership of:
		1. the NHSPS (having used its best endeavours to secure a Direction Letter/Determination); or
		2. a Broadly Comparable pension scheme,

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

* 1. This flexibility for the Authority to allow compensation in place of Pension Benefits is in addition to and not instead of the Authority's right to terminate the Agreement under paragraph 7 (Breach) of Part 4 of this Schedule.
1. **Supplier indemnities**
	1. The Supplier must indemnify and keep indemnified the Authority and any Replacement Supplier against all Losses arising out of any claim by any NHSPS Fair Deal Employee or any NHS Broadly Comparable Employees that the provision of (or failure to provide) Pension Benefits and NHS Premature Retirement Rights from the Relevant Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.
2. : Local Government Pension Schemes (LGPS)

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

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

It is important to check whether the Authority 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 Government Department 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. In this Appendix C: LGPS to Part 4: Pensions, the following words have the following meanings and they shall supplement the Definitions set out in the terms and conditions:

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

1. **Supplier must become a** **LGPS admission body**
	1. Where the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date, the Supplier shall become an LGPS Admission Body and shall on or before the Relevant Transfer Date enter into a LGPS Admission Agreement with the Administering Authority which will have effect from and including the Relevant Transfer Date.
	2. The LGPS Admission Agreement must ensure that all LGPS Eligible Employees covered by that Agreement who were active LGPS members immediately before the Relevant Transfer Date are admitted to the LGPS with effect on and from the Relevant Transfer Date. Any LGPS Eligible Employees who were eligible to join the LGPS but were not active LGPS members immediately before the Relevant Transfer Date must retain the ability to join the LGPS after the Relevant Transfer Date if they wish to do so.
	3. The Supplier shall provide any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.
	4. The Supplier shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Eligible Employees in any pension scheme other than the LGPS.
2. **Right of set-off**
	1. The Authority shall have a right to set off against any payments due to the Supplier under the Agreement an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Supplier (or from any relevant Sub-contractor) under an LGPS Admission Agreement and shall pay such amount to the relevant Fund.
3. **Supplier ceases to be an LGPS Admission Body**
	1. If the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date and the Supplier either cannot or does not participate in the LGPS, the Supplier shall offer such LGPS Eligible Employee membership of a pension scheme Broadly Comparable to the LGPS.
4. **Discretionary benefits**
	1. Where the Supplier is an LGPS Admission Body, the Supplier shall award benefits to the LGPS Eligible Employees under the LGPS in circumstances where the LGPS Eligible Employees would have received such benefits had they still been employed by their previous employer. Where such benefits are of a discretionary nature, they shall be awarded on the basis of the previous employer's written policy in relation to such benefits at the time of the Relevant Transfer Date.

: Other Schemes

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

1. : Staff Transfer on Exit
2. **Obligations before a Staff Transfer**
	1. The Supplier agrees that within 20 Working Days of the earliest of:
		1. receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
		2. receipt of the giving of notice of early termination or any Partial Termination of the relevant Agreement;
		3. the date which is 12 Months before the end of the Term; and
		4. receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 Month period),

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

* 1. At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor
		1. the Supplier's Final Supplier Personnel List, which shall identify the basis upon which they are Transferring Supplier Employees; and
		2. the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
	2. The Authority shall be permitted to use and disclose information provided by the Supplier under paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.
	3. The Supplier warrants, for the benefit of The Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
	4. From the date of the earliest event referred to in paragraph 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees that it shall not assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall, unless otherwise instructed by the Authority (acting reasonably):
		1. Not replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces
		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 Personnel (including any payments connected with the termination of employment);
		3. not increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
		4. not introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
		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);
		6. not terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process;
		7. not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier and/or Replacement Sub-contractor;
		8. give the Authority and/or the Replacement Supplier and/or Replacement Sub-contractor reasonable access to Supplier Personnel and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Authority, Replacement Supplier and/or Replacement Sub-contractor in respect of persons expected to be Transferring Supplier Employees;
		9. co-operate with the Authority 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;
		10. promptly notify the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect;
		11. not for a period of 12 Months from the Service Transfer Date re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Authority and/or the Replacement Supplier (unless otherwise instructed by the Authority (acting reasonably));
		12. not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;
		13. fully fund any Broadly Comparable pension schemes set up by the Supplier;
		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 Sub-contractor in the provision of the Services on the expiry or termination of this Agreement (including without limitation identification of the Fair Deal Employees);
		15. promptly provide to the Authority such documents and information which the Authority may reasonably request in advance of the expiry or termination of this Agreement; and
		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 Sub-contractor in the provision of the Services on the expiry or termination of this Agreement.
	5. On or around each anniversary of the Effective Date and up to four times during the last 12 Months of the Term, the Authority may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within 20 Working Days of receipt of a written request the Supplier shall provide such information as the Authority may reasonably require which shall include:
		1. the numbers of employees engaged in providing the Services;
		2. the percentage of time spent by each employee engaged in providing the Services;
		3. the extent to which each employee qualifies for membership of any of the Fair Deal Schemes (as defined in Part 4: Pensions); and
		4. a description of the nature of the work undertaken by each employee by location.
	6. The Supplier shall provide all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
		1. the most recent month's copy pay slip data;
		2. details of cumulative pay for tax and pension purposes;
		3. details of cumulative tax paid;
		4. tax code;
		5. details of any voluntary deductions from pay; and
		6. bank/building society account details for payroll purposes.
1. **Staff** **Transfer when the Agreement ends**
	1. A change in the identity of the supplier of the Services (or part of the Services), howsoever arising, may constitute a Relevant Transfer to which the Employment Regulations will apply. The Authority and the Supplier agree that where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.
	2. The Supplier shall comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Fair Deal Schemes (as defined in Part 4: Pensions).
	3. Subject to paragraph 2.4, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date.
	4. The indemnity in paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date.
	5. Subject to paragraphs 2.6 and 2.7, if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations then:
		1. the Replacement Supplier and/or Replacement Sub-contractor will, within 5 Working Days of becoming aware of that fact, notify the Authority and the Supplier in writing;
		2. the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Replacement Supplier and/or Replacement Sub-contractor;
		3. if such offer of employment is accepted, the Replacement Supplier and/or Replacement Sub-contractor shall immediately release the person from its employment;
		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, the Replacement Supplier and/or Replacement Sub-contractor may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Replacement Supplier's and/or Replacement Sub-contractor's compliance with paragraphs 2.5.1 to 2.5.4 the Supplier will indemnify the Replacement Supplier and/or Replacement Sub-contractor 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.

* 1. The indemnity in paragraph 2.5 shall not apply to:
		1. any claim for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief, or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor, or
		2. any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure.
	2. The indemnity in paragraph 2.5 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date.
	3. If at any point the Replacement Supplier and/or Replacement Sub-contract 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.
	4. The Supplier shall promptly provide the Authority and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
	5. Subject to paragraph 2.9, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its Sub-contractors against any Employee Liabilities arising from or as a result of any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee.
	6. The indemnity in paragraph 2.10 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations, or to the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Supplier's Final Supplier Personnel List in accordance with paragraph 2.5 (and subject to the limitations set out in paragraphs 2.6 and 2.7 above).

Implementation Plan and Testing Schedule

**Part A: Implementation Plan**

1. definitions

In this Schedule, the following words shall have the following meanings and they shall supplement the Definitions:

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| **"Achieve"** | (a) in respect of a Test, to successfully pass a Test; and(b) in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone in accordance with the provisions of Part B of this Schedule. |
| **"Delay"** | a delay in the Achievement of a Milestone by its Milestone Date; or a delay in the design, development, testing or implementation of a Deliverable Item by the relevant date set out in the Implementation Plan; |
| **"Delay Payment"** | the amounts payable by the Supplier to the Authority in respect of a Delay in Achieving a Milestone as specified in the Charges, Payment and Invoicing Schedule; |
| **"Deliverable Item"** | an item or feature in the supply of the Services delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Implementation Plan; |
| **"Implementation Plan"** | the Implementation Plan or (if and when approved by the Authority pursuant to paragraph 2 of this Schedule) as updated in accordance with paragraph 3 of this Schedule from time to time; |
| **"Milestone"** | an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date; |
| **"Milestone Date"** | the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved; |
| **"Milestone Payment"** | a payment identified in the Implementation Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone; |
| **"Mobilisation Period"** | has the meaning given to it in paragraph 7.  |

1. Agreeing and following the Implementation Plan
	1. A draft of the Implementation Plan is set out in Appendix 1 to Part A of this Schedule. The Supplier shall provide a further draft Implementation Plan twenty (20) days after the Commencement Date.
	2. The draft Implementation Plan:
		1. must contain information at the level of detail necessary to manage the implementation stage effectively and as the Authority may otherwise require; and
		2. it shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.
	3. Following receipt of the draft Implementation Plan from the Supplier, the parties shall use reasonable endeavours to agree the contents of the Implementation Plan. If the parties are unable to agree the contents of the Implementation Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
	4. The Supplier shall provide each of the Deliverable Items identified in the Implementation Plan by the date assigned to that Deliverable Item in the Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is achieved on or before its Milestone Date.
	5. The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and report to the Authority on such performance.
2. Reviewing and changing the Implementation Plan
	1. Subject to paragraph 3.3, the Supplier shall keep the Implementation Plan under review in accordance with the Authority's instructions and ensure that it is updated on a regular basis.
	2. The Authority shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
	3. Changes to any Milestones, Milestone Payments and Delay Payments shall only be made in accordance with clause 43 (Contract Change).
	4. Where the Supplier is responsible for the failure to achieve a Milestone by the relevant Milestone Date this shall constitute a material Default.
3. **Security requirements before the Commencement Date**
	1. The Supplier shall note that it is incumbent upon them to understand the lead-in period for security clearances and ensure that all Supplier Personnel have the necessary security clearance in place before the Commencement Date. The Supplier shall ensure that this is reflected in their Implementation Plans.
	2. The Supplier shall ensure that all Supplier Personnel and Sub-contractors do not access the Authority's IT systems, or any IT systems linked to the Authority, unless they have satisfied the Authority's security requirements.
	3. The Supplier shall be responsible for providing all necessary information to the Authority to facilitate security clearances for Supplier Personnel and Sub-contractors in accordance with the Authority's requirements.
	4. The Supplier shall ensure that all Supplier Personnel and Sub-contractors requiring access to the Authority Premises have the appropriate security clearance in accordance with the Security Policy and/or any specific security requirements of the Authority.
	5. Unless prior Approval has been received from the Authority, the Supplier shall be responsible for meeting the costs associated with the provision of security cleared escort services.
	6. If a property requires Supplier Personnel or Sub-contractors to be accompanied by the Authority's Representative, the Authority must be given reasonable notice of such a requirement, except in the case of emergency access.
4. **What to do if there is a Delay**
	1. If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Agreement it shall:
		1. notify the Authority as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay;
		2. include in its notification an explanation of the actual or anticipated impact of the Delay;
		3. comply with the Authority's instructions in order to address the impact of the Delay or anticipated Delay; and
		4. use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.
5. **Compensation for a Delay**
	1. If Delay Payments have been included in the Implementation Plan and a Milestone has not been achieved by the relevant Milestone Date, the Supplier shall pay to the Authority such Delay Payments (calculated as set out by the Authority in the Implementation Plan) and the following provisions shall apply:
		1. the Supplier acknowledges and agrees that any Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by the Authority as a result of the Supplier's failure to Achieve the corresponding Milestone;
		2. Delay Payments shall be the Authority's exclusive financial remedy for the Supplier's failure to Achieve a Milestone by its Milestone Date except where:
			1. the Authority is otherwise entitled to or does terminate this Agreement pursuant to this Agreement; or
			2. the delay exceeds the number of days (the "**Delay Period Limit**") specified in the Implementation Plan commencing on the relevant Milestone Date;
		3. the Delay Payments will accrue on a daily basis from the relevant Milestone Date until the date when the Milestone is Achieved;
		4. no payment or other act or omission of the Authority shall in any way affect the rights of the Authority to recover the Delay Payments or be deemed to be a waiver of the right of the Authority to recover any such damages; and
		5. Delay Payments shall not be subject to or count towards any limitation on liability set out in clause 37.
6. **Mobilisation Plan**
	1. The Mobilisation Period will be a [six (6)] month period].
	2. During the Mobilisation Period, the incumbent supplier shall retain full responsibility for all existing services until the Commencement Date or as otherwise formally agreed with the Authority. The Supplier's full service obligations shall formally be assumed on the Commencement Date.
	3. In accordance with the Implementation Plan, the Supplier shall:
		1. work cooperatively and in partnership with the Authority, incumbent supplier, and any other supplier(s), where applicable, to understand the scope of Services to ensure a mutually beneficial handover of the Services;
		2. work with the incumbent supplier and Authority to assess the scope of the Services and prepare a plan which demonstrates how they will mobilise the Services;
		3. liaise with the incumbent supplier to enable the full completion of the Mobilisation Period activities; and
		4. produce an Implementation Plan, to be agreed by the Authority, for carrying out the requirements within the Implementation Period including, key Milestones and dependencies.
	4. The Implementation Plan will include detail stating:
		1. how the Supplier will work with the incumbent supplier and the Authority Authorised Representative to capture and load up information such as asset data; and
		2. a communications plan, to be produced and implemented by the Supplier, but to be agreed with the Authority, including the frequency, responsibility for and nature of communication with the Authority and end users of the Services.
	5. In addition, the Supplier shall:
		1. appoint a Supplier Representative who shall be responsible for the management of the Mobilisation Period, to ensure that the Mobilisation Period is planned and resourced adequately, and who will act as a point of contact for the Authority;
		2. mobilise all the Services specified in the Specification within the Agreement;
		3. produce an Implementation Plan report for each Authority Premises to encompass programmes that will (where required) fulfil all the Authority's obligations to landlords and other tenants:
			1. the format of reports and programmes shall be in accordance with the Authority's requirements and particular attention shall be paid to establishing the operating requirements of the occupiers when preparing these programmes which are subject to the Authority's Approval; and
			2. the parties shall use reasonable endeavours to agree the contents of the report but if the parties are unable to agree the contents within twenty (20) Working Days of its submission by the Supplier to the Authority, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
		4. manage and report progress against the Implementation Plan;
		5. construct and maintain an Implementation risk and issue register in conjunction with the Authority detailing how risks and issues will be effectively communicated to the Authority in order to mitigate them;
		6. attend progress meetings (frequency of such meetings shall be as set out in the Governance Schedule, where such Schedule is stated to apply in this Agreement in the Contract Summary) in accordance with the Authority's requirements during the Mobilisation Period. Implementation meetings shall be chaired by the Authority and all meeting minutes shall be kept and published by the Supplier; and
		7. ensure that all risks associated with the Mobilisation Period are minimised to ensure a seamless change of control between the incumbent supplier and the Supplier.

**Appendix 1: Implementation Plan**

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

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Milestone** | **Deliverable Items** | **Duration** | **Milestone Date** | **Authority Responsibilities** | **Milestone Payments**  | **Delay Payments** |
| [ ] | [ ] | [ ] | [ ] | [ ] | [ ] | [ ] |
| The Milestones will be Achieved in accordance with this Schedule: (Implementation Plan and Testing)For the purposes of paragraph 6.1.2 the Delay Period Limit shall be **[insert number of days]** Working Days. |

**Appendix 1, Part B: Testing**

1. Definitions
	1. In this Schedule, the following words shall have the following meanings:

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| --- | --- |
| **"Component"** | any constituent parts of the Deliverables; |
| **"Material Test Issue"** | a Test Issue of Severity Level 1 or Severity Level 2; |
| **"Satisfaction Certificate"** | a certificate materially in the form of the document contained in Appendix 2 of Part B of this Schedule issued by the Authority when a Deliverable Item and/or Milestone has satisfied its relevant Test Success Criteria; |
| **"Severity Level"** | the level of severity of a Test Issue, the criteria for which are described in Appendix 1 of Part B of this Schedule; |
| **“Test(s)” and “Testing”** | any tests required to be carried out under this Schedule and “Tested” shall be construed accordingly; |
| **“Test Issue”** | any variance or non-conformity of a Service from its requirements (such requirements being set out in the relevant Test Success Criteria); |
| **"Test Issue Management Log"** | a log for the recording of Test Issues as described further in paragraph 8.1 of Part B of this Schedule; |
| **"Test Issue Threshold"** | in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan;  |
| **"Test Reports"** | the reports to be produced by the Supplier setting out the results of Tests; |
| **"Test Specification"** | the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in paragraph 6.2 of Part B of this Schedule; |
| **"Test Strategy"** | a strategy for the conduct of Testing as described further in paragraph 3.2 of Part B of this Schedule; |
| **"Test Success Criteria"** | in relation to a Test, the test success criteria for that Test as referred to in paragraph 5 of Part B of this Schedule; |
| **"Test Witness"** | any person appointed by the Authority pursuant to paragraph 9 of Part B of this Schedule;  |
| **"Testing Procedures"** | the applicable testing procedures and Test Success Criteria set out in this Schedule; |
| **"Severity Level"** | the level of severity of a Test Issue, the criteria for which are described in Appendix 1 of Part B of this Schedule; |

1. **How testing should work**
	1. All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, Test Specification and the Test Plan
	2. The Supplier shall not submit any Deliverable Item for Testing:
		1. unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;
		2. until the Authority has issued a Satisfaction Certificate in respect of any prior, dependent Deliverable(s); and
		3. until the parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).
	3. The Supplier shall use reasonable endeavours to submit each Deliverable Item for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.
	4. Prior to the issue of a Satisfaction Certificate, the Authority shall be entitled to review the relevant Test Reports and the Test Issue Management Log.
2. **Planning for testing**
	1. The Supplier shall develop the final Test Strategy as soon as practicable after the Commencement Date but in any case no later than twenty (20) Working Days after the Commencement Date.
	2. The final Test Strategy shall include:
		1. an overview of how Testing will be conducted in relation to the Implementation Plan;
		2. the process to be used to capture and record Test results and the categorisation of Test Issues;
		3. the procedure to be followed should a Deliverable Item fail a Test, fail to satisfy the Test Success Criteria or where the Testing of a Deliverable Item produces unexpected results, including a procedure for the resolution of Test Issues;
		4. the procedure to be followed to sign off each Test;
		5. the process for the production and maintenance of Test Reports and a sample plan for the resolution of Test Issues;
		6. the names and contact details of the Authority and the Supplier's Test representatives;
		7. a high level identification of the resources required for Testing including Authority and/or third party involvement in the conduct of the Tests;
		8. the technical environments required to support the Tests; and
		9. the procedure for managing the configuration of the Test environments.
3. **Preparing for Testing**
	1. The Supplier shall develop Test Plans and submit these for Approval as soon as practicable but in any case no later than twenty (20) Working Days prior to the start date for the relevant Testing as specified in the Implementation Plan.
	2. Each Test Plan shall include as a minimum:
		1. the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested and, for each Test, the specific Test Success Criteria to be satisfied; and
		2. a detailed procedure for the Tests to be carried out.
	3. The Authority shall not unreasonably withhold or delay its Approval of the Test Plan provided that the Supplier shall implement any reasonable requirements of the Authority in the Test Plan.
4. **Passing Testing**
	1. The Test Success Criteria for all Tests shall be agreed between the parties as part of the relevant Test Plan pursuant to paragraph 4.
5. **How Deliverables will be tested**
	1. Following Approval of a Test Plan, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least ten (10) Working Days prior to the start of the relevant Testing (as specified in the Implementation Plan).
	2. Each Test Specification shall include as a minimum:
		1. the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Authority and the extent to which it is equivalent to live operational data;
		2. a plan to make the resources available for (i) Testing, (ii) Test scripts, (iii) Test pre-requisites and the mechanism for measuring them; and (iv) expected Test results, including:
			1. a mechanism to be used to capture and record Test results; and
			2. a method to process the Test results to establish their content.
6. **Performing the tests**
	1. Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.
	2. The Supplier shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with paragraph 9.3.
	3. The Supplier shall notify the Authority at least ten (10) Working Days in advance of the date, time and location of the relevant Tests and the Authority shall ensure that the Test Witnesses attend the Tests.
	4. The Authority may raise and close Test Issues during the Test witnessing process.
	5. The Supplier shall provide to the Authority in relation to each Test:
		1. a draft Test Report not less than two (2) Working Days prior to the date on which the Test is planned to end; and
		2. the final Test Report within five (5) Working Days of completion of Testing.
	6. Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
		1. an overview of the Testing conducted;
		2. identification of the relevant Test Success Criteria that have/have not been satisfied together with the Supplier's explanation of why any criteria have not been met;
		3. the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
		4. the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with paragraph 8.1; and
		5. the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.
	7. When the Supplier has completed a Milestone it shall submit any Deliverables relating to that Milestone for Testing.
	8. Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved the Authority shall be entitled to recover from the Supplier, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.
	9. If the Supplier successfully completes the requisite Tests, the Authority shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that the Deliverables are implemented in accordance with this Agreement.
7. **Discovering Problems**
	1. Where a Test Report identifies a Test Issue, the parties shall agree the classification of the Test Issue using the criteria specified in Appendix 1 and the Test Issue Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.
	2. The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Authority upon request.
	3. The Authority shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Supplier. If the parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure.
8. **Test witnessing**
	1. The Authority may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Authority, each of whom shall have appropriate skills to fulfil the role of a Test Witness.
	2. The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
	3. The Test Witnesses:
		1. shall actively review the Test documentation;
		2. will attend and engage in the performance of the Tests on behalf of the Authority so as to enable the Authority to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;
		3. shall not be involved in the execution of any Test;
		4. shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
		5. may produce and deliver their own, independent reports on Testing, which may be used by the Authority to assess whether the Tests have been Achieved;
		6. may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
		7. may require the Supplier to demonstrate the modifications made to any defective Deliverable Item before a Test Issue is closed.
9. **Auditing the quality of the test**
	1. The Authority or an agent or contractor appointed by the Authority may perform on-going quality audits in respect of any part of the Testing (each a "**Testing Quality Audit**") subject to the provisions set out in the agreed Quality Plan.
	2. The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
	3. The Authority will give the Supplier at least five (5) Working Days' written notice of the Authority's intention to undertake a Testing Quality Audit.
	4. The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Authority to enable it to carry out the Testing Quality Audit.
	5. If the Testing Quality Audit gives the Authority concern in respect of the Testing Procedures or any Test, the Authority shall prepare a written report for the Supplier detailing its concerns and the Supplier shall, within a reasonable timeframe, respond in writing to the Authority's report.
	6. In the event of an inadequate response to the written report from the Supplier, the Authority (acting reasonably) may withhold a Satisfaction Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Authority.
10. **Outcome of the testing**
	1. The Authority will issue a Satisfaction Certificate when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.
	2. If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Authority shall notify the Supplier and:
		1. the Authority may issue a Satisfaction Certificate conditional upon the remediation of the Test Issues;
		2. the Authority may extend the Test Plan by such reasonable period or periods as the parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or
		3. where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Authority's other rights and remedies, such failure shall constitute a material Default.
	3. The Authority shall be entitled, without prejudice to any other rights and remedies that it has under this Agreement, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable Item to be satisfied.
	4. The Authority shall issue a Satisfaction Certificate in respect of a given Milestone as soon as is reasonably practicable following:
		1. the issuing by the Authority of Satisfaction Certificates and/or conditional Satisfaction Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and
		2. performance by the Supplier to the reasonable satisfaction of the Authority of any other tasks identified in the Implementation Plan as associated with that Milestone.
	5. The grant of a Satisfaction Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of any Implementation Plan and clause 4 (Pricing and payments).
	6. If a Milestone is not achieved, the Authority shall promptly issue a report to the Supplier setting out the applicable Test Issues any other reasons for the relevant Milestone not being Achieved.
	7. If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Authority shall issue a Satisfaction Certificate.
	8. If there is one or more Material Test Issue(s), the Authority shall refuse to issue a Satisfaction Certificate and, without prejudice to the Authority's other rights and remedies, such failure shall constitute a material Default.
	9. If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Authority may at its discretion (without waiving any rights in relation to the other options) choose to issue a Satisfaction Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:
		1. any Rectification Plan shall be agreed before the issue of a conditional Satisfaction Certificate unless the Authority agrees otherwise (in which case the Supplier shall submit a Rectification Plan for Approval by the Authority within ten (10) Working Days of receipt of the Authority's report pursuant to paragraph 10.5); and
		2. where the Authority issues a conditional Satisfaction Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.
11. **Risk**
	1. The issue of a Satisfaction Certificate and/or a conditional Satisfaction Certificate shall not:
		1. operate to transfer any risk that the relevant Deliverable Item or Milestone is complete or will meet and/or satisfy the Authority's requirements for that Deliverable Item or Milestone; or
		2. affect the Authority's right subsequently to reject all or any element of the Deliverables and/or any Milestone to which a Satisfaction Certificate relates.

**Appendix 1, Part B: Test Issues – Severity Levels**

1. Severity 1 Error

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

1. **Severity 2 Error**
	1. This is an error for which, as reasonably determined by the Authority, there is no practicable workaround available, and which:
		1. causes a Component to become unusable;
		2. causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
		3. has an adverse impact on any other Component(s) or any other area of the Deliverables.
2. **Severity 3 Error**
	1. This is an error which:
		1. causes a Component to become unusable;
		2. causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
		3. has an impact on any other Component(s) or any other area of the Deliverables;

but for which, as reasonably determined by the Authority, there is a practicable workaround available.

1. **Severity 4 Error**
	1. This is an error which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Deliverables.
2. **Severity 5 Error**
	1. This is an error that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Deliverables.

**Appendix 2: Satisfaction Certificate**

To: [insert name of Supplier]

From: [insert name of Authority]

[insert Date dd/mm/yyyy]

Dear Sirs

**Satisfaction Certificate**

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

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

The definitions for any capitalised terms in this certificate are as set out in the Agreement.

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

[OR]

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

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

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Authority]

Key Personnel Schedule

1. The Supplier acknowledges that the Key Personnel listed at paragraph 5 of this Schedule are essential to the proper provision of the Services to the Authority.
2. The Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.
3. Any replacements to the Key Personnel shall be subject to the agreement of the Authority. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
4. The Authority shall not unreasonably withhold its agreement under paragraphs 2 or 3. Such agreement shall be conditional on appropriate arrangements being made by the Supplier to minimise any adverse impact on the Agreement which could be caused by a change in Key Personnel.
5. The Key Personnel are as follows:

|  |  |
| --- | --- |
| **Key Personnel Name** | **Key Personnel’s Role** |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

Governance Schedule

**Definitions**

In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| "**Board Member**" | the initial persons appointed by the Authority and Supplier to the Boards as set out in Appendix 1 of this Schedule and any replacements from time to time agreed by the parties in accordance with paragraph 2; |
| “**Boards**” | the Service Management Board, Programme Board, Change Management Board, Technical Board and Risk Management Board and “Board” shall mean any of them; |
| “**Change Management Board**” | the body described in paragraph 5; |
| **“Programme Management Board”**  | the body described in paragraph 4; |
| "**Project Managers**" | the individuals appointed as such by the Authority and the Supplier in accordance with paragraph 1.1; |
| "**Risk Management Board**" | the body described in paragraph 7; |
| "**Service Management Board**" | the body described in paragraph 3; and |
| "**Technical Board**" | the body described in paragraph 6. |

1. **Management of the Services**
	1. The Supplier and the Authority shall each appoint a project manager for the purposes of this Agreement through whom the Services shall be managed on a day-to-day basis.
	2. Both parties shall ensure the appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Agreement can be fully realised.
2. **Boards**
	1. Establishment and structure of the Boards
	2. The Boards shall be established by the Authority for the purposes of this Agreement on which both the Supplier and the Authority shall be represented.
	3. In relation to each Board, the:
		1. Authority Board Members;
		2. Supplier Board Members;
		3. frequency that the Board shall meet (unless otherwise agreed between the parties);
		4. location of the Board's meetings; and
		5. planned start date by which the Board shall be established,

shall be as set out in Appendix 1 to this Schedule.

* 1. In the event that either party wishes to replace any of its appointed Board Members, that party shall notify the other in writing of the proposed change for agreement by the other party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority Board Member has at all times a counterpart Supplier Board Member of equivalent seniority and expertise.
	2. Each party shall ensure that its Board Members shall make all reasonable efforts to attend Board meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Board meeting, that person shall use all reasonable endeavours to ensure that:
		1. a delegate attends the relevant Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and
		2. that he/she is debriefed by such delegate after the Board Meeting.
	3. A chairperson shall be appointed by the Authority for each Board as identified in Appendix 1. The chairperson shall be responsible for:
		1. scheduling Board meetings;
		2. setting the agenda for Board meetings and circulating to all attendees in advance of such meeting;
		3. chairing the Board meetings;
		4. monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings;
		5. ensuring that minutes for Board meetings are recorded and disseminated electronically to the appropriate persons and to all Board meeting participants within seven (7) Working Days after the Board meeting; and
		6. facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.
	4. Board meetings shall be quorate as long as at least two representatives from each party are present.
	5. The parties shall ensure, as far as reasonably practicable, that all Boards shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each party shall endeavour to ensure that Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.
1. **Role of the Service Management Board**
	1. The Service Management Board shall be responsible for the executive management of the Services and shall:
		1. be accountable to the Programme Board for comprehensive oversight of the Services and for the senior management of the operational relationship between the parties;
		2. report to the Programme Board on significant issues requiring decision and resolution by the Programme Board and on progress against the high level Implementation Plan;
		3. receive reports from the Project Managers on matters such as issues relating to delivery of existing Services and performance against KPIs, progress against the Implementation Plan and possible future developments;
		4. review and report to the Programme Board on service management, coordination of individual projects and any integration issues;
		5. deal with the prioritisation of resources and the appointment of Project Managers on behalf of the parties;
		6. consider and resolve Disputes (including Disputes as to the cause of a delay or the performance of the Services) in the first instance and if necessary escalate the Dispute to the Programme Board; and
		7. develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same.
2. **Role of the Programme Board**
	1. The Programme Board shall:
		1. provide senior level guidance, leadership and strategy for the overall delivery of the Services;
		2. be the point of escalation from the Change Management Board, the Technical Board and the Service Management Board; and
		3. carry out the specific obligations attributed to it in paragraph 4.2.
	2. The Programme Board shall:
		1. ensure that this Agreement is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by the Authority and the commercial benefit derived by the Supplier;
		2. receive and review reports from the Service Management Board and review reports on technology, service and other developments that offer potential for improving the benefit that either party is receiving, in particular value for money;
		3. determine business strategy and provide guidance on policy matters which may impact on the implementation of the Services;
		4. provide guidance and authorisation to the Change Management Board on relevant Changes.
3. **Role of the Change Management Board**
	1. The Change Management Board shall assess the impact and Approve or reject all Change Requests. Changes which will have a significant impact on the Services shall be escalated to the Programme Board.
	2. The Change Management Board shall:
		1. analyse and record the impact of all Changes, specifically whether the proposed Change:
			1. has an impact on other areas or aspects of this Agreement and/or other documentation relating to the Services;
			2. has an impact on the ability of the Authority to meet its agreed business needs within agreed time-scales;
			3. will raise any risks or issues relating to the proposed Change; and
			4. will provide value for money in consideration of any changes to the Financial Model, future Charges and/or KPIs and Target KPIs;
		2. provide recommendations, seek guidance and authorisation from the Programme Board as required; and
		3. Approve or reject (close) all proposed Changes.
4. **Role of the Technical Board**
	1. The Technical Board shall be accountable to the Programme Board for oversight of the technology used in the Services and ensuring that technological choices are made to maximise the long term value for the Authority.
	2. The Technical Board shall:
		1. ensure compliance with the Service Description Schedule;
		2. grant dispensations for variations from such compliance where appropriate;
		3. assure the coherence and consistency of the systems architecture;
		4. monitor developments in new technology and reporting on their potential benefit to the Services;
		5. provide advice, guidance and information on technical issues; and
		6. assure that the technical elements of the Services meets the requirements set out in the Service Description Schedule and has sufficient flexibility to cope with future requirements of the Authority.
5. **Role of the Risk Management Board**
	1. The Risk Management Board shall identify and manage risks relating to the performance of the Services.
	2. The Risk Management Board shall:
		1. provide assurance to the Programme Board that risks are being effectively managed across the Services, including reporting the 'top 5' risks to the Programme Board on a monthly basis;
		2. identify the risks to be reported to the Programme Board via the regular risk reports;
		3. subject to clause 43 (Contract Change), accept or reject new risks proposed for inclusion in a risk register;
		4. ratify or refuse requests to close risks on the risk register; and
		5. identify risks relating to or arising out of the performance of the Services and provisional owners of these risks.
6. **Contract management mechanisms**
	1. Both parties shall pro-actively manage risks attributed to them under the terms of this Agreement.
	2. The Supplier shall develop, operate, maintain and amend, as agreed with the Authority, processes for:
		1. the identification and management of risks;
		2. the identification and management of issues; and
		3. monitoring and controlling project plans.
	3. The risk register shall be updated by the Supplier and submitted for review by the Risk Management Board.
7. **Annual review**
	1. An annual review meeting shall be held throughout the Term on a date to be agreed between the parties.
	2. The meetings shall be attended by the Authority Representative and the Supplier Representative and any other persons considered by the Authority necessary for the review.

**Appendix 1: Representation and Structure Of Boards**

[Amend and delete required boards as appropriate]

**Service Management Board**

|  |  |
| --- | --- |
| Authority Members of Service Management Board  | [ ] [Chairperson] |
| Supplier Members of Service Management Board |  |
| Start Date of Service Management Board |  |
| Frequency of Service Management Board |  |
| Location of Service Management Board |  |

**Programme Board**

|  |  |
| --- | --- |
| Authority Members of Programme Board  | [ ] [Chairperson] |
| Supplier Members of Programme Board |  |
| Start Date of Programme Board |  |
| Frequency of Programme Board |  |
| Location of Programme Board |  |

**Change Management Board**

|  |  |
| --- | --- |
| Authority Members of Change Management Board  | [ ] [Chairperson] |
| Supplier Members of Change Management Board |  |
| Start Date of Change Management Board |  |
| Frequency of Change Management Board |  |
| Location of Change Management Board |  |

**Technical Board**

|  |  |
| --- | --- |
| Authority Members of Technical Board  | [ ] [Chairperson] |
| Supplier Members of Technical Board |  |
| Start Date of Technical Board |  |
| Frequency of Technical Board |  |
| Location of Technical Board |  |

**Risk Management Board**

|  |  |
| --- | --- |
| Authority Members of Risk Management Board  | [ ] [Chairperson] |
| Supplier Members of Risk Management Board |  |
| Start Date of Risk Management Board |  |
| Frequency of Risk Management Board |  |
| Location of Risk Management Board |  |

Guarantee Schedule

**THIS DEED OF GUARANTEE** is made the day of 202[ ]

BETWEEN:

(1) [Insert the name of the Guarantor] [a company incorporated in England and Wales with number [ ] whose registered office is at [insert details of the Guarantor's registered office here]] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] (**"Guarantor"**); in favour of

(2) The Mayor's Office for Policing and Crime whose principal office is at City Hall, Kamal Chunchie Way, London, E16 1ZE (**"Beneficiary"**)

**WHEREAS:**

[(A) It is a condition of the Beneficiary entering into the Guaranteed Agreement that the Guarantor executes and delivers this Deed of Guarantee to the Beneficiary.]

(B) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee the due performance by the Supplier of all of the Supplier 's obligations under the Guaranteed Agreement.

(C) It is the intention of the parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

1. **DEFINITIONS AND INTERPRETATION**

* 1. In this Deed of Guarantee:
		1. unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
		2. the words and phrases below shall have the following meanings:

"**Guaranteed Agreement**" means the [ ] made between the Beneficiary and the Supplier on [ ]; and

"**Guaranteed Obligations**" means all obligations of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement.

* + 1. references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, supplemented, substituted or novated from time to time;
	1. unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
	2. references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
	3. the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
	4. unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
	5. unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
	6. unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
	7. references to clauses and schedules are, unless otherwise provided, references to clauses of and schedules to this Deed of Guarantee; and
	8. references to liability are to include any liability whether actual, contingent, present or future.
1. GUARANTEE AND INDEMNITY
	1. The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
	2. The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under the Guaranteed Agreement or in respect of the Guaranteed Obligations.
	3. If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
	4. fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
	5. indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.
	6. As a separate and independent obligation, the Guarantor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier 's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.
2. OBLIGATION TO ENTER INTO A NEW AGREEMENT

If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

1. DEMANDS AND NOTICES
	1. Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:
		1. [Address of the Guarantor in England and Wales]
		2. [Facsimile Number]
		3. [For the Attention of]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

* 1. Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:
		1. if delivered by hand, at the time of delivery; or
		2. if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or
		3. if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.
	2. In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.
	3. Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.
1. BENEFICIARY'S PROTECTIONS
	1. The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
	2. This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
		1. it shall not be discharged by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
		2. it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
		3. if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
		4. the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
	3. The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
	4. The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
	5. The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
	6. Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
	7. Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.
2. RIGHTS OF SUBROGATION
	1. The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:
		1. of subrogation and indemnity;
		2. to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
		3. to prove in the liquidation or insolvency of the Supplier, only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Supplier and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this clause on trust for the Beneficiary.
3. REPRESENTATIONS AND WARRANTIES

The Guarantor hereby represents and warrants to the Beneficiary that:

* 1. the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
	2. the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
	3. the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to paragraph 3 have been duly authorised by all necessary corporate action and do not contravene or conflict with:
	4. the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
	5. any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
	6. the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets;
	7. all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
	8. this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.
1. PAYMENTS AND SET-OFF
	1. All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
	2. The Guarantor shall pay interest on any amount due under this Deed of Guarantee from the day after the date on which payment was due up to and including the date of payment in full (as well after as before any judgment) calculated from day to day at a rate per annum equal to [4%] above the base rate of the Bank of England from time to time in force.
	3. The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.
2. GUARANTOR'S ACKNOWLEDGEMENT

The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

1. ASSIGNMENT

The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.

1. SEVERANCE

If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

1. THIRD PARTY RIGHTS

A person who is not a party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third parties) Act 1999 to enforce any term of this Deed of Guarantee. This paragraph does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

1. GOVERNING LAW
	1. This Deed of Guarantee shall be governed by and construed in all respects in accordance with English law.
	2. The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
	3. Nothing contained in this paragraph shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
	4. The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this paragraph on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
	5. [Provision dealing with the appointment of English process agent by a non English incorporated Guarantor] [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier 's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by )

[Insert name of the Guarantor] acting by [Insert/print names]

 Director

 Director/Secretary

The Common Seal of The Mayor's Office for Policing and Crime )

was hereunto affixed in the presence of )

The Chief Executive to the Mayor's Office for Policing and Crime)

…………………………………………………
The Chief Executive to the Mayor's Office for Policing and Crime

Commercially Sensitive Information Schedule

[To be completed by the Supplier]

1. Introduction
	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.
	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.
	3. Without prejudice to the Authority's obligation to disclose Information in accordance with FOIA or The Elected Local Policing Bodies (**Specified Information**) (Order 2011) or other Applicable Laws, the Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

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

**IR35 Schedule**

1. Definitions
	1. In this Schedule, the following expressions shall have the following meanings:

|  |  |
| --- | --- |
| **Deemed Employment Condition** | the condition set out in section 61M(1)(d) ITEPA; |
| **Engagement**  | the engagement of the Supplier by the Authority under the terms of the Agreement; |
| **Intermediary** | a limited company, partnership or individual through which an individual contractor provides their services; |
| **Losses** | liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses); |
| **Off Payroll Rules** | Chapter 10 of Part 2 of ITEPA; |
| **PAYE Regulations** | the Income Tax (Pay as you Earn) Regulations 2003; |
| **Qualifying Intermediary** | means:1. where the Intermediary is a company that the conditions related to ownership and non-association as set out at section 61O(1) ITEPA are met;
2. where the Intermediary is a partnership that:
	1. the relevant contractor is a member of the partnership;
	2. the provision of the services is by the relevant contractor as a member of the partnership; and
	3. the conditions in section 61P ITEPA, including in relation to the distribution of profits, are met
3. where the Intermediary is an individual
 |
| **Status Determination Statement** | 1. for any contract coming into force after 6 April 2021 or continuing after that date, a statement provided by the Authority giving its determination on whether the Deemed Employment Condition applies to any of the Contractors supplied to the Authority under this Agreement and prepared in accordance with the Off-Payroll Rules (as amended with effect from 6 April 2021)
2. for any contract that will commence before 6 April 2021, information provided in accordance with section 61T ITEPA.
 |

1. Application
	1. This Schedule shall apply where the Authority engages a Supplier who is an Intermediary.
	2. Where there is conflict with the terms of the Agreement this Schedule shall override such provisions.
2. Obligations
	1. The Supplier shall, and shall procure that the individual contractor shall, promptly give to the Authority all such information and documentation as it may reasonably require from time to time in order for the Authority to determine whether the individual contractor is or will be within scope of the Off-Payroll Rules, including whether the Deemed Employment Condition applies and whether or not the Supplier is a Qualifying Intermediary.
	2. If the Engagement is within scope of the Off-Payroll Rules, the Supplier shall, and shall procure that the individual contractor shall, promptly give to the Authority all such information and documentation as it may reasonably require from time to time in order to comply with any obligation on the Authority to deduct tax or national insurance contributions from the Charges due under the Charges, Payment and Invoicing Schedule.
	3. The Consultant Company shall, and shall procure that any individual contractor shall, promptly inform the Authority of any material change to any information or documentation previously provided in compliance with clauses 3.1 and 3.2 and shall also promptly provide any other information or documentation that it considers (or ought reasonably consider) to be materially relevant to determining whether the Engagement meets the Deemed Employment Condition.
3. Substitution and other matters

*[Under the Off-Payroll Rules the Authority has an obligation to assess whether each individual contractor providing their services through an intermediary (most commonly their own limited company) would be considered to be our employee for tax purposes if the intermediary did not exist. In order to determine the deemed employment status of the contractor we must apply specific employment status tests to the arrangement. The key tests have been refined by case law over time and are considered to be control, personal service and mutuality of obligation (the irreducible minimum). If the irreducible minimum is met then other factors need to be considered that could, on balance, push the arrangement away from being considered deemed employment.]*

*[The sub-clauses are drafted with the aim of evidencing that one or more of the irreducible minimum factors are* ***not*** *met and to give other indicators that are consistent with sell employment, with the result that the arrangement with the contractor is not one of deemed employment. However, you will need to consider carefully whether this drafting is applicable to the arrangement with your contractor, as HMRC will look at the reality of the arrangement and not just the drafting of this contract. If for example you know that substitution will never be allowed, or only allowed in very narrow circumstances, then the drafting of the substitution clause may not be appropriate. Similarly if the job role has to be undertaken at a specific location or at specific times, or that the contractor will not have a significant degree of autonomy then the flexibility envisaged by the drafting will not be correct*.]

* 1. Upon completion or termination of the Engagement, the Authority shall be under no obligation to offer the Supplier further work, nor shall the Supplier be under any obligation to accept any offer of work made by the Authority.
	2. During the Engagement the Supplier shall, and (where appropriate) shall ensure that each individual contractor shall:
		1. provide the Services at such locations as are appropriate in the Supplier’s judgment to deliver the Services effectively. When necessary the Authority will provide the Supplier with appropriate access to the Authority’s facilities as is necessary for the effective conduct of the Services;
		2. provide the Services at such times and on such days as it shall decide but shall ensure that the Services are provided at such times as are necessary for the proper performance of the Services.
		3. [provide at its own cost, all such necessary equipment as is reasonable for the satisfactory performance of the Services];
		4. if, as a matter of convenience, or security, the Supplier is provided with equipment by the Authority for the purposes of carrying out the Services, be responsible for ensuring that it preserves the security and condition of such equipment. If and to the extent that any equipment is lost while in the Supplier’s possession, the Supplier shall be responsible for the cost of any necessary repairs or replacement.
	3. Both parties recognise that the contractor is a professional who will use their own initiative as to the manner in which the Services are delivered, provided that in doing so both they and the Supplier shall co-operate with the Authority and comply with all reasonable and lawful requests of the Authority and any specific service standards.
	4. If the individual contractor is unable to provide the Services due to illness or injury, the Supplier shall advise the Authority of that fact as soon as reasonably practicable. For the avoidance of doubt, no fee shall be payable in respect of any period during which the Services are not provided by any individual contractor.
	5. The Supplier may, with the prior written approval of the Authority, appoint a suitably qualified Substitute of equivalent levels of relevant skills and experience to the individual contractor to perform the Services instead, provided that the Substitute will be required to enter into direct undertakings with the Authority, including with regard to confidentiality. If the Authority accepts the Substitute the Supplier shall continue to invoice the Authority in accordance with the Charges, Payment and Invoicing Schedule and shall be responsible for the remuneration of the Substitute.
1. Charges
	1. Where the Off-Payroll Rules apply to the Engagement the Supplier acknowledges and agrees that the Authority shall deduct from the Charges payable to the Supplier, such sums due in respect of PAYE Income Tax and National Insurance Contributions, calculated in accordance with the Off-Payroll Rules, prior to payment of the Supplier’s invoice. The Authority shall remit such sums deducted under this clause, together with Employer NICs of the relevant amount to HM Revenue and Customs to comply with its duties under the PAYE Regulations.
2. The Status Determination Statement
	1. The Authority may review and update any Status Determination Statement at any time if it considers that there has been a material change in the working practices of the relevant contractors that would affect the Authority’s original determination. Such updated Status Determination Statement will replace the Status Determination Statement previously provided in respect of any contractor.
	2. The Authority will not be liable to the Supplier or any individual contractor for Losses that they may incur as a result of the Authority’s conclusions in any Status Determination Statement.
3. Status
	1. The relationship of the Supplier (and the individual contractor) to the Authority will be that of an independent contractor and nothing in this Schedule or the Agreement shall render the Supplier, the individual contractor, or any substitute an employee, worker, agent or partner of the Authority and the Supplier shall not hold itself out as such and shall procure that the individual contractor or any substitute shall not hold himself out as such.
	2. This Agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Supplier shall be fully responsible for and shall indemnify the Authority for and in respect of:
		1. any income tax, National Insurance and Social Security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where such recovery is not prohibited by law. The Supplier shall further indemnify the Authority against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Authority in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and
		2. any liability for any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the contractor or any substitute against the Authority arising out of or in connection with the provision of the Services.
	3. The indemnity in clause 7.2.1 does not apply to any income tax or National Insurance contributions deducted by the Authority from the Charges due under the Charges, Payment and Invoicing Schedule prior to payment to the Supplier if the Engagement is within scope of the Off-Payroll Rules.
	4. The Authority may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Supplier.

**Facility Management Integrator Schedule[[1]](#footnote-1)**

1. Defined Terms

Where this Schedule is selected by the Authority in the Contract Summary at the start of this Agreement, the following definitions shall apply:

|  |  |
| --- | --- |
| **Authority Representatives** | has the meaning given in the Contract Summary and paragraph 3.2 of this Facility Management Integrator Schedule and references to **Authority Representative** shall be construed accordingly. |
| **Authority Supply Chain Contracts** | a contract between (1) the Authority and (2) an Authority Supply Chain Member |
| **Authority Supply Chain Member** | a principle supplier to the Authority including, without limitation, the Supplier but excluding the Integrator. |
| **Authority System** | the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with this Agreement which is owned by the Authority or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Services. |
| **Integrator** | Sodexo Limited a company registered in England and Wales under company number 00842846 or such other party as the Authority may, from time to time, appoint. |
| **Integrator Agreement** | an agreement between (1) the Authority and (2) the Integrator relating to the provision of certain property services by the Integrator to the Authority Premises and dated 22 April 2022 or any new or replacement agreement the Authority may enter into from time to time for the provision of such property services. |
| Integrator Equipment | the hardware, computer and telecoms devices and equipment used by the Integrator or its subcontractors (but not hired, leased or loaned from the Authority) for the provision of the Integrator Services. |
| Integrator Services | the services to be provided by the Integrator under or in connection with the Integrator Agreement. |
| Integrator System | the information and communications technology system used by the Integrator in implementing and performing the Integrator Services including the Software, the Integrator Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System). |
| Proscribed Conduct | the following activities or circumstances:1. performing or delivering any works or services in or in relation to Authority Premises other than the Services;
2. agreeing, permitting or entering into any arrangement (whether by contract, joint venture or otherwise) other than by this Agreement to provide or carry out any Integrator Services, either as an Authority Supply Chain Member or as a sub-contractor (of any tier) of the Integrator;
3. receiving or being entitled to receive any benefit, financial, commercial or otherwise which is derived expressly or impliedly from any Authority Premises save for the consideration and/or benefit expressly provided for or impliedly permitted by this Agreement;
4. being connected by a shareholding (controlling or otherwise) or by any arrangement (whether written or oral, by contract (other than this Agreement), joint venture or otherwise) with or to the Integrator;
5. allowing the Integrator to exercise any control or influence over the Supplier or any Supplier Personnel and any Sub-contractor save as expressly or impliedly permitted by this Agreement;
6. exercising any control or influence over or permitting any Supplier Personnel and Sub-Contractor to exercise any control or influence over the Integrator save as expressly or impliedly permitted by this Agreement; or
7. appointing the Integrator as a Sub-contractor.
 |
| Software | means:* + - 1. any software created by the Integrator or a third party on behalf of the Integrator for the purposes of the Integrator Agreement;
			2. software which is proprietary to the Integrator or an affiliate of the Integrator for the purposes of providing the Integrator Services; or
			3. software which is proprietary to any third party (other than a affiliate of the Integrator) which is (or is proposed to be) used in the provision of the Integrator Services..
 |
| **Supplier System** | the information and communications technology system (including the Supplier’s computers) used by the Supplier in implementing and performing the Services including software, the equipment, configuration and management utilities, calibration and testing tools and related cabling but excluding the Authority System and the Integrator System. |
| **[****Work Order[[2]](#footnote-2)** | a formal notification of activity required as issued by an Authority Representative via the Integrator System to [the Supplier] [[[3]](#footnote-3)certain Authority Supply Chain Members]. This shall include [[[4]](#footnote-4)reactive work required from time to time and also all planned work (including statutory work and testing) scheduled to be undertaken throughout the Initial Period and any Extension Period]]. |

1. Order of precedence

In the event of any conflict or inconsistency between the terms of this Schedule and the remaining provisions of this Agreement, the provisions of this Schedule shall prevail.

* 1. Clause 2.1 of this Agreement shall be amended as follows:

“In the event of, and only to the extent of, any conflict or inconsistency between the clauses of this Agreement, the Schedules and any other documents referred to in or attached to this Agreement, the conflict or inconsistency shall be resolved in accordance with the following order of precedence:

* + 1. first priority, the Facility Management Integrator Schedule;
		2. second priority, the clauses of this Agreement;
		3. second third priority, the Schedules (other than the Facility Management Integrator Schedule and excluding any tender submission, the Service Description Schedule or any other document supplied by the Supplier);
		4. third fourth priority, any other Authority document referred to in or attached to this Agreement including the Contract Summary; and
		5. fourth fifth priority, the Supplier's tender submission or any other document supplied by the Supplier as set out in the Service Description Schedule.”
1. The Integrator
	1. The Supplier acknowledges that the Authority has appointed the Integrator to act as its agent in respect of each Authority Supply Chain Contracts (including this Agreement) including, *inter alia*, in respect of management, monitoring and administration of Authority Supply Chain Members and further acknowledges that the Authority may, in writing from time to time, confirm or amend the scope of the Integrator’s agency hereunder.
	2. The Integrator shall have authority to act as an Authority Representative under or in connection with this Agreement.
	3. Subject always to paragraph 3.5 below [and save where otherwise expressly provided for in this Integrator Schedule[[5]](#footnote-5)], the Supplier shall accept instructions from the Integrator as an Authority Representative as if such instructions has been received directly from the Authority.
	4. The Supplier shall provide copies of all documents and/or information sent to the Integrator as an Authority Representative to the Authority unless instructed otherwise in writing by the Authority.
	5. The Supplier acknowledges that the Integrator:
		1. shall not amend or waiver any terms of this Agreement without the prior written consent of the Authority; and
		2. shall not be entitled to terminate this Agreement on behalf of the Authority without the Authority’s prior written consent.
	6. The Supplier shall undertake and perform its obligations under this Agreement so that no act or omission or breach of this Agreement by the Supplier shall:
		1. cause, contribute or otherwise give rise to any breach of the Authority of any of its obligations under the Integrator Agreement;
		2. cause, contribute or otherwise give rise to any other liability on the part of the Authority to the Integrator under or in relation to an Integrator Agreement; or
		3. prejudice or lead to the diminution or loss of any other rights, entitlements or other benefits of the Authority under an Integrator Agreement or any other connected documents.
2. Working with the Authority and other parties
	1. Compliance by the Supplier with this paragraph 4 (Working with the Authority and other parties) is without additional cost to the Authority. The Supplier shall not be entitled compensation or otherwise to additional time, costs or expenses as a consequence of any failure by the Supplier to observe this paragraph nor by the failure of other Authority Supply Chain Members to observe similar provisions in their Authority Supply Chain Contracts.
	2. [[6]](#footnote-6)The Supplier shall:
		1. provide access and co-operation to other Authority Supply Chain Members and any Authority Representative (including, without limitation, the Integrator) as required by the Authority Representatives (from time to time);[[7]](#footnote-7)
		2. co-ordinate and integrate the execution of the Services with works and/or services of other Authority Supply Chain Members or other third parties including those engaged by the Authority under any contract which the Authority may enter into in relation to the Authority Premises;
		3. comply with such instructions as issued by the Authority Representatives (including, without limitation, the Integrator) to co-ordinate the Supplier's execution of the Services with the work of other Authority Supply Chain Members or other third parties (including, without limitation, the Integrator);[[8]](#footnote-8)
		4. plan and coordinate the Services in accordance with the requirements of the Authority Representatives (including, without limitation, the Integrator), taking into account the presence of other Authority Supply Chain Members and acknowledging in particular the need to communicate and cooperate with other Authority Supply Chain Members and the Authority Representatives (including, without limitation, the Integrator) so that the Services and the services provided by other Authority Supply Chain Members, the Integrator and other third parties are delivered in a coordinated and efficient manner without delay or disruption to the Services and avoiding unnecessary disruption or inconvenience to the users of the Authority Premises through lack observance of the requirements of this paragraph;[[9]](#footnote-9)
		5. affords reasonable facilities for other Authority Supply Chain Members, the Authority Representatives (including, without limitation, the Integrator) and other third parties who are properly authorised or who are statutory bodies employed in the execution on or near the Authority Premises of any work not in the Agreement or which is required under any contract which the Authority may enter into in relation to the Authority Premises;[[10]](#footnote-10)
		6. provides or assists in provision of all information, data, know-how and calculations necessary for the Authority, the Authority Representatives (including, without limitation, the Integrator) and/or any person appointed by the Authority to carry out any works or services in a timely, economic and efficient manner without delay and disruption and shall keep the Authority informed at all times of all relevant matters pertaining to the Authority Premises;[[11]](#footnote-11)
		7. is fully responsible for identifying and obtaining all information, data, know-how, calculations, drawings, documents, reports, investigations and surveys used for or in connection with the Authority Premises the provision of which is undertaken by other Authority Supply Chain Members, Authority Representatives (including, without limitation, the Integrator) or other third parties in order that the Services are executed in a timely, economic and efficient manner without delay and disruption to the business of the Authority;[[12]](#footnote-12) and
		8. jointly and severally with other Authority Supply Chain Members, the Authority Representatives (including, without limitation, the Integrator) or other third parties engaged by the Authority co-operates and manages the interface of the Services with the works and/or services of such other Authority Supply Chain Members, the Integrator or other third parties and shall provide all management services, labour, materials, goods, plant and services necessary for the Supplier’s cooperation and management.[[13]](#footnote-13)
	3. It is agreed and declared that the Supplier can reasonably foresee the activities of other Authority Supply Chain Members, the Integrator or other third parties engaged by the Authority and statutory undertakers on or near the Authority Premises.
	4. The Supplier provides attendance for other Authority Supply Chain Members, the Integrator or other third parties as may be directed by the Authority. For this purpose attendance shall be deemed to cover all expenses incurred by the Supplier in:
		1. planning, programming and co-ordinating the Services with that of other Authority Supply Chain Members, the Integrator or other third parties; and
		2. accepting delivery, unloading and storing material for other Authority Supply Chain Members, the Integrator or other third parties as required.
3. Conflicts of Interest
	1. The Supplier shall disclose to the Integrator as Authority Representative any actual or potential conflict of interest arising from the Supplier’s provision of the Services as soon as practicable after becoming aware of such actual or potential conflict.
	2. The Supplier shall immediately notify the Integrator of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the Supplier and/or the Authority (including without limitation its reputation and standing) of which it is aware or anticipates may justify the Supplier taking action to protect its interests.
4. Independence
	1. The Supplier carries out (and procures that the Supplier Personnel and Sub-Contractors carry out) the Services in the Authority's best interests.
	2. Without prejudice to the Supplier's obligations under clause 44 (Change of Control of Supplier) and paragraph 5 (Conflicts of Interest), the Supplier shall not and procures that the Supplier Personnel and Sub-contractors shall not engage in Proscribed Conduct and shall notify the Authority immediately on any breach of this requirement.
	3. Without prejudice to the Authority's rights and remedies under this Agreement (including, without limitation, under clause 52 (Termination)), where the Supplier breaches clause 44 (Change of Control of Supplier), paragraphs 5 (Conflicts of Interest) 6.1 and/or 6.2 (Independence), the Supplier shall within five (5) days of any breach becoming apparent to it, provide proposals to the Authority for remedying and/or mitigating such breach. Upon any breach of clause 44 (Change of Control of Supplier), paragraphs 5 (Conflicts of Interest) 6.1 and/or 6.2 (Independence) becoming apparent to the Supplier (whether or not notified by the Supplier), the Authority may at the Supplier’s cost:
		1. remove any or all of the Services from the scope of this Agreement and carry out such Services itself and/or employ a third party to carry out such Services;
		2. require the Supplier to put such measures in place (including but not limited to information barriers) as required by the Authority in its absolute discretion to rectify and/or mitigate the effect of any breach of clause 44 (Change of Control of Supplier), paragraphs 5 (Conflicts of Interest) 6.1 and/or 6.2 (Independence); and/or
		3. instruct or commence increased monitoring in accordance with paragraph 14 (Increased Monitoring).
	4. Save in the event of termination of all or part of the Services, where as a result of the matters leading or contributing to a breach of clause 44 (Change of Control of Supplier), paragraphs 5 (Conflicts of Interest) 6.1 and/or 6.2 (Independence) the Supplier or any Related Party realises a profit or other financial benefit:
		1. the Supplier shall account to the Authority in respect of the same on a monthly basis; and
		2. the Authority is entitled to set off an amount equivalent to that financial benefit (as accounted for by the Supplier or otherwise as the Authority may determine) from any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Authority in accordance with paragraph 15 (Set Off) of this Schedule.
5. Extension to the Term
	1. The Integrator as an Authority Representative may instruct the Supplier to extend the service period in accordance with the Contract Summary at the start of this Agreement.
6. KPI Reporting[[14]](#footnote-14)
	1. From the Commencement Date the Supplier shall report to the Integrator:
		1. the management and performance information (including, without limitation, the Management Reports) required pursuant to the terms of this Agreement; and
		2. its performance against each KPI and Service Levels

at monthly intervals (or such other period as may be agreed by the Supplier and the Integrator as Authority Representative).

* 1. In the event that any Achieved KPI falls short of the relevant Target KPI, without prejudice to any other rights the Authority may have, the provisions of clause 31 shall apply. Any documents to be provided to the Authority pursuant to clause 31 shall be provided to the Integrator as Authority Representative at the same time.
1. FOIA and Confidentiality
	1. Clause 15 (Freedom of Information) shall be amended as set out below:

“15 Freedom of information

15.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

 15.1.1 provide (and procure that any Sub-contractor provides) all necessary assistance and cooperation as reasonably requested by the Authority or the Integrator as Authority Representative to enable the Authority to comply with its Information disclosure obligations under the FOIA and EIRs;

 15.1.2 transfer to the Authority the Integrator as Authority Representative all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;

 15.1.3 provide (and procure that any Sub-contractor provides) the Authority Integrator as Authority Representative with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority Integrator as Authority Representative requires within five (5) Working Days (or such other period as the Authority the Integrator as an Authority Representative may reasonably specify) of the Authority’s or the Integrator as Authority Representative’s request for such Information;

 15.1.4 as requested by the Authority or the Integrator as Authority Representative and using the Information Commissioner's methodology to do so, redact all necessary information. The Supplier shall provide the Integrator as Authority Representative with redacted versions within fourteen (14) Working Days of the Commencement Date; and

 15.1.5 not respond directly to a Request for Information unless authorised in writing to do so by the Authorityor the Integrator as an Authority Representative.

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

1. Payment[[15]](#footnote-15)
	1. [[16]](#footnote-16)Notwithstanding any other provision of the Agreement (including, without limitation, clause 46 (Charges and payment) or the Charges, Payment and Invoicing Schedule), the Supplier acknowledges and agrees that it shall submit its invoices to the Integrator as the Authority Representative at: [*insert address / email address for submission of invoice to the* *Integrator for review*].
	2. The Integrator as Authority Representative shall review the invoice and confirm to the Authority whether the invoice complies with the requirements of this Agreement. Where the Integrator as an Authority Representative approves the invoice for payment, the Authority shall make payment to the Supplier in accordance with the terms of clause 46 (Charges and payment) or the Charges, Payment and Invoicing Schedule and the Integrator as Authority Representative shall confirm payment to the Supplier.
	3. [[17]](#footnote-17)[*On completion of a* *Work Order or at the end of each [[18]](#footnote-18)**period to which a* *Work Order relates (**as the case may be)], the* *Supplier shall submit to* *the* *Integrator as* *Authority Representative a payment request together with such supporting documentation as* *the* *Integrator as* *Authority Representative may require (from time to time) to determine the completion of the relevant Work Order pursuant to the terms of the* *Work Order and the Service Description Schedule. Where* *the* *Integrator as* *Authority Representative rejects the payment request, such payment request shall be resubmitted by the* *Supplier taking into account any request for further information or data to justify approval of the relevant payment request*.
	4. *Where* *the* *Integrator as* *Authority Representative certifies a payment request, the* *Supplier shall submit to* *the* *Integrator as* *Authority Representative an invoice for payment by the* *Authority**. The* *Integrator as* *Authority Representative shall review the invoice and confirm to the* *Authority whether the invoice complies with the requirements of this Agreement and is consistent with the payment request submitted by the* *Supplier and approved by the Integrator as an Authority Representative pursuant to this* *paragraph 11. Where* *the* *Integrator as an* *Authority Representative approves the invoice for payment, the* *Authority shall make payment to the* *Supplier in accordance with the terms of [insert applicable clause and payment schedule references][[19]](#footnote-19)**and the* *Integrator as* *Authority Representative shall confirm payment to the* *Supplier*.]
	5. A payment shall be made by the Supplier to the Authority if the amount due is an amount due to the Authority.
	6. Payments under or in connection with this Agreement shall be made in pounds sterling.
2. Assignment
	1. The Supplier and the Authority acknowledge and agree that clause 37 of the Agreement shall be amended as follows:

“**37 Assignment**

37.1 The Supplier shall not assign, Sub-contract or in any other way dispose of this Agreement or any part of it without prior written consent of the Authority or the Integrator as Authority Representative (as the case may be).

37.2 Sub-contracting any part of this Agreement shall not relieve the Supplier of any of its obligations or duties under this Agreement.

37.3 The Supplier shall only Sub-contract its obligations under this Agreement to a Key Sub-contractor in accordance with the Key Sub-contractor Schedule or, where there is a requirement for an additional Key Sub-contractor, with the prior written consent of the Authority or the Integrator as Authority Representative (as the case may be) in accordance with the following provisions of this clause.

37.4 Without prejudice to the generality of clause 37.3, the Authority or the Integrator as Authority Representative in its absolute and sole discretion may withhold or delay its consent to an additional Key Sub-contractor where it the Authority, in its absolute and sole discretion, considers that:

37.4.1 the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;

37.4.2 the proposed Key Sub-contractor is considered to be unreliable and/or has not provided reasonable services to its other customers; and/or

37.4.3 the proposed Key Sub-contractor employs unfit persons.

37.5 In making a request pursuant to clause 37.5 the Supplier shall provide the Authority and the Integrator as Authority Representative with the following information about the proposed Key Sub-contractor:

37.5.1 its name, registered office and company registration number;

37.5.2 a copy of the proposed Sub-contract;

37.5.3 the purposes for which the proposed Key Sub-contractor will be employed, including the scope of any Services to be provided by the proposed Key Sub-contractor;

37.5.4 if relevant, confirmation that the Sub-contract requires the proposed Key Sub-contractor to comply with any relevant service levels;

37.5.5 where the proposed Key Sub-contractor is also an affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority or the Integrator as Authority Representative (as the case may be) that the proposed Sub-contract has been agreed on arm's-length terms;

37.5.6 an evaluation if the Key Sub-contractor's financial stability;

37.5.7 all information reasonably required by the Authority or the Integrator as Authority Representative (as the case may be) to determine whether the performance by the Key Sub-contractor of the sub-contracted Services will comply with the service standards and security requirements of this Agreement; and

37.5.8 any further information reasonably requested by the Authority or the Integrator as Authority Representative (as the case may be).

37.6 The Supplier shall ensure, except where the Authority or the Integrator as Authority Representative (as the case may be) has given its their prior written consent that each material Sub-contract shall include:

37.6.1 a right under the Contracts (Rights of Third Parties) Act 1999 for the Authority to enforce the terms of that Sub-contract as if it were the Supplier;

37.6.2 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the sub-contract to the Authority;

37.6.3 a provision requiring the Sub-contractor to enter into a direct confidentiality agreement with the Authority on the same terms as set out in clause 11 (Confidentiality) of this Agreement;

37.6.4 a provision requiring the Sub-contractor to comply with protection of data requirements pursuant to the Data Processing Schedule to this Agreement;

37.6.5 a provision requiring the Sub-contractor to comply with the prevention of corruption obligations pursuant to clause 27 (Corruption and fraud) of this Agreement;

37.6.6 a provision restricting the ability of the Sub-contractor to further Sub-contract elements of the service provided to the Supplier without first seeking the consent of the Authority; and

37.6.7 payment terms as set out in clause 46 (Charges and payment) of this Agreement.

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

37.8 The Authority or the Integrator as Authority Representative (as the case may be) may require the Supplier to terminate any Approved Sub-contract where the acts or omissions of the relevant Approved Sub-contractor have given rise to the Authority's right of termination under this Agreement.

37.9 The Authority or the Integrator as Authority Representative (as the case may be) may require the Supplier to terminate the relevant Approved Sub-contract if there is Change of Control of an Approved Key Sub-contractor.

37.10 If the Authority is able to obtain from any Sub-contractor or any other third party more favourable commercial terms with respect to the supply of any Related Supply, then the Authority may:

37.10.1 or the Integrator as Authority Representative (as the case may be) may require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant Related Supply; or

37.10.2 may subject to clause 37.12, enter into a direct agreement with that Sub-contractor or third party in respect of the relevant Related Supply.

37.11 If the Authority exercises either of its options pursuant to clause 37.10, then the Charges shall be reduced by an amount that is agreed in accordance with the relevant process for varying the Agreement.

37.12 The Authority's right to enter into a direct agreement for the supply of the relevant Related Supply is subject to:

37.12.1 the Authority making the relevant Related Supply available to the Supplier where this is necessary for the Supplier to provide the Services; and

37.12.2 any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted Related Supply, including in respect of any licence fees or early termination charges.

37.13 Despite the Supplier's right to Sub-contract pursuant to this clause 37, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that its employees, staff, agents and Sub-contractors' employees, staff and agents also do, or refrain from doing, such act or thing.

37.14 The Authority may at any time assign, mortgage, charge, Sub-contract, delegate, declare a trust over or deal in any other manner with any or all of its rights under this Agreement, provided that it gives prior written notice of such dealing to the Supplier.”

1. Access to Authority Premises
	1. The following clauses shall be inserted into clause 20 of the Agreement:

“19.8 The Supplier submits to the Integrator as Authority Representative details of people who are to be employed by the Supplier and any Sub-contractor in connection with the delivery of the Services. The details include a list of names and addresses, the capabilities in which they are employed, and other information required by the Integrator.

19.9 The Integrator as Authority Representative may (from time to time) instruct the Supplier to take measures to prevent unauthorised persons being admitted to Authority Premises. [The instruction is a compensation event if the measures are additional to those required by the Service Description Schedule [[20]](#footnote-20)]

19.10 Employees of the Supplier and its Sub-contractors are to carry an Authority’s pass at all times whilst they are on the Authority Premises.

19.11 The Supplier shall submit to the Authority for acceptance a list of the names of the people for whom passes are required. The Authority shall issue the passes to the Supplier. The Supplier shall ensure that each such pass is immediately returned to the Authority when the employee no longer requires access to that part of the Authority Premises or after the Authority or an Authority Representative has given notice that the employee is not to be admitted to the Authority Premises.

19.12 The Supplier shall:

19.12.1 not (and shall procure that each Sub-contractor shall not) take photographs of any Authority Premises or of work carried out under or in connection with the Services unless the Supplier has obtained the prior written consent of the Authority; and

19.12.2 take all such measures needed to prevent Supplier Personnel and each Sub-contractor’s employees, agents and consultants taking, publishing or otherwise circulating such photographs.

19.14 The Supplier shall ensure that all Supplier Personnel and Sub-contractors being admitted to the Authority Premises are vetted in accordance with the terms of this Agreement including, the terms of the Security Policy and shall comply with the terms of this Agreement (and shall procure each Sub-contractor complies with such terms) including such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel and all reasonable requirements of the Authority and/or the Integrator as Authority Representative (as the case may be) concerning conduct at or outside of the Authority Premises.

 19.15 If the Authority or an Authority Representative reasonably believes that any person identified by the Supplier as requiring access to the Authority Premises is unsuitable to undertake work or access the Authority Premises they may refuse admission to the Authority Premises and/or direct the Supplier to end the involvement of the relevant person(s) in the supply of the Services.”.

1. Supplier systems
	1. [The Supplier shall ensure that (at no additional cost to the Authority) the Supplier System on which the Supplier holds any Authority Data[[21]](#footnote-21) fully integrates and interoperates with any system of the Authority and Integrator (including but not limited to the Authority's System and the Integrator System) such that the Authority Data is available to the Authority and the Integrator via the systems of the Authority and Integrator (including but not limited to the Authority System and the Integrator System). The Supplier shall not store or process any Authority Data on its own systems alone without such Authority Data being also available to the Authority and the Integrator through the interface with the system of the Authority and the Integrator including but not limited to the Authority System and the Integrator System. The Supplier and the Integrator shall work together to ensure that their respective systems on which Authority Data is stored and processed interface and interoperate appropriately.][[22]](#footnote-22)

***OR***

* 1. [[23]](#footnote-23)[The Supplier shall ensure that (at no additional cost to the Authority):
		1. it updates the Integrator System with complete and accurate information and in accordance with the requirements of the Service Description Schedule; and
		2. if and to the extent the Supplier holds any Authority Data,[[24]](#footnote-24)any such Authority Data is available to the Authority and the Integrator via the systems of the Authority and Integrator. The Supplier shall not store or process any Authority Data on its own systems without such Authority Data being also available to the Authority and the Integrator.]
	2. [[25]](#footnote-25)The Supplier, via the Supplier System or otherwise, shall have systems and processes in place to receive and process requests from the Integrator in accordance with and within any timescales stipulated in the Service Description Schedule or this Agreement.
1. Increased Monitoring
	1. Without prejudice to the clause 51 (Monitoring):
		1. at any time the Authority may (or may procure that an Authority Representative may) notify the Supplier that the Authority is increasing its level of monitoring of the Supplier and/or (at the Authority’s option) of the Supplier's monitoring of its own performance under this Agreement until such time as the Supplier demonstrates to the reasonable satisfaction of the Authority that is performing its obligations under this Agreement; and
		2. where the Authority or an Authority Representative issues a notice under paragraph 14.1.1 (Increased Monitoring) as a result of any failure by the Supplier to perform its obligations under this Agreement, the Supplier shall bear its own costs and indemnifies and keeps indemnified the Authority at all times from and against all reasonable costs and expenses incurred by or on behalf of the Authority (including management costs, professional fees and costs and expenses incurred by an Authority Representative) in relation to such increased monitoring PROVIDED ALWAYS THAT where the Authority (or an Authority Representative) issues a notice under paragraph 14.1.1 other than as a result of any failure by the Supplier to perform its obligations under this Agreement, the Authority shall bear its own costs and shall indemnify and keep indemnified the Supplier at all times from and against all reasonable costs and expenses incurred by or on behalf of the Supplier in relation to such increased monitoring.
2. Set Off
	1. The Authority may set off any liability of the Supplier to the Authority against any liability of the Authority, whether such liability is present or future, liquidated or unliquidated and whether or not such liability arises under this Agreement.
3. Prohibited Acts
	1. A new clause 27.8 shall be inserted into the Agreement as follows:

“27.8 The Supplier shall establish, maintain and enforce (and require that each Sub-contractor shall establish, maintain and enforce) policies and procedures which are adequate to ensure compliance with the Relevant Requirements (including any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010) and prevent the occurrence of a Prohibited Act. The Supplier shall provide such information as the Integrator requires to ensure its compliance with its obligations under this Agreement.”

Security Policy

PART 1 – STANDARD SECURITY

1. **Definitions**

In this Schedule, the following definitions shall apply:

|  |  |
| --- | --- |
| “Authority Assets” | means documents, information, items and materials in any form (whether owned by the Authority or a third party), which are provided by the Authority to the Supplier in connection with the Services, any specially written material, the Authority infrastructure and any other data, software, assets, equipment or other property owned by the Authority and/or is or may be used in connection with the provision or receipt of the Services |
| "Authority Security Requirements” | as set out in Annex 1 (including vetting) |
| "Breach(es) of Security" | the occurrence of:1. Data Breach (as defined in the Data Processing Schedule);
2. any unauthorised access to or use of the Services, the Authority Premises, the Authority Assets, the Supplier system, the Authority system (to the extent that it is under the control of the Supplier) and/or any IT, information or data (including the Confidential Information) used by the Authority and/or the Supplier in connection with this Agreement; and/or
3. any unauthorised access to or use of the Sites relating to or connected with the provision of the Services;
4. the loss and/or unauthorised disclosure of any information or data (including the Confidential Information), including any copies of such information or data, used by the Authority and/or the Supplier in connection with this Agreement,

in either case as may be more particularly set out in the Security requirements in the Service Description Schedule and the Authority Security Requirements |
| “Confidential Information” | all confidential information (however recorded or preserved) disclosed by a party or its representatives to the other party and that party's representatives in connection with this Agreement, including but not limited to:1. any Authority government security classified information;
2. any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, Authority’s, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
3. any Authority Data (as defined in the Data Protection Schedule) relating to the Authority including information developed by the parties in the course of carrying out this Agreement;
4. any Personal Data (as defined in the Data Processing Schedule);
5. any Sensitive Data (as defined below)
 |
| "Controller” “Process", "Processed", "Processing", and "Processor" | as defined in the Data Processing Schedule  |
| "ISMS" | the information security management system  |
| “ISMM” | the information security management meeting |
| "Risk Management Board” or “RMB" | or equivalent board as set out in the Governance Schedule |
| "Security Audits" | the review, assessments and tests to validate the effectiveness of specific areas defined in a scope document outlining the areas of interest and to which the tests will be applied. Areas could include for example, the organisation of information security, the effectiveness of the governance over information security and information technology and delivery of It services, the ISMS and security of all relevant processes, systems, and assets, the effectiveness of information security controls and those information technology functions and processes important for security, and all measures, plans, patches to vulnerabilities and mitigations to Breaches of Security |
| "Sensitive Data" | for the purposes of this Agreement, is any data which the Authority considers to be sensitive and includes, without limitation:1. information about officers and staff;
2. information about victims, witnesses, suspects;
3. anything that might compromise the Authority's operations;
4. anything that might compromise evidence or the Criminal Justice Process;
5. criminal intelligence; and
6. any information deemed ‘sensitive’ within the definition of sensitive personal information in the Data Protection Act 2018.
 |

1. **General**
	1. The Supplier shall ensure the discharge and performance of the Service is in accordance with Applicable Laws and this Agreement.
	2. The Supplier shall in the performance of the service and discharge of its duties as a minimum demonstrate Good Industry Practice.
	3. The Supplier shall in the performance of the service and discharge of its duties, comply with the Authority Security Requirements.
	4. The Supplier shall ensure the up-to-date maintenance of a security policy relating to the operation of its own organisation and systems (*this is also referred to as the “Security & Cyber Policy” in Part 2*). The Supplier shall notify the Authority of all material changes to such security policy and shall, within five (5) Working Days of the Authority's request, provide to the Authority a copy of such security policy. The Supplier shall provide such input and assistance as the Authority may reasonably require to enable the Authority to develop the Authority's security policies.
	5. The Supplier shall use as a minimum Good Industry Practice in the design, development, transition into production and the operation of any system (to the extent that it is within the control of the Supplier) holding, transferring or processing Authority Data and any system (to the extent that it is within the control of the Supplier) that could directly or indirectly have an impact on that information, and shall ensure that Authority Data remains under the effective control of the Supplier at all times.
	6. In providing the Services, the Supplier shall procure that its employees, agents and/or representatives shall (as may also be as identified and/or directed by the Authority):
		1. ensure that any computer systems, hardware and/or software that it or any of its employees, agents and/or representatives uses and/or supplies to the Authority are free from corrupt information, viruses, worms and any other computer programmes which might cause harm or disruption to the Supplier’s and/or the Authority’s computer systems; and
		2. comply with all IT security measures such as back-up, virus checking procedures, etc, including, but not limited to, those relating to the use of personal computer systems, hardware and/or software by the Supplier’s employees, agents and/or representatives.
	7. The Supplier warrants that all hardware and/or software supplied by or on behalf of the Supplier or to which the Authority is granted access to in relation to this Agreement (“**Computer Systems**”):
		1. have been obtained from a reputable and reliable software developer and not through any interest group or multi-organisational software sharing scheme; and
		2. will comply with and function substantially in accordance with their related user documentation.
	8. The Supplier shall grant to the Authority and its authorised agents, all reasonable access to the records (together with the right to make copies), and to its premises and Sites (and the Supplier hereby irrevocably licenses the Authority, its employees and agents to enter any such premises for such purpose), and to its staff and shall provide all purposes of carrying out an audit to ensure the Supplier’s compliance with this Agreement including all activities, charges, performance and security measures in connection therewith.
	9. The Authority and its agents shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier save insofar as the Supplier accepts and acknowledge that control over the conduct of audits carried out by the Audit Commission or the National Audit Office is outside the control of the Authority.
	10. Where misconfigurations, weaknesses, breaches, failures, issues, vulnerabilities or other nonconformity or failure, affecting the security of the Service or its information assets, in the information security management system or the information technology processes, and technologies and services come to light, the Supplier will notify the Authority and undertake through the ISMS a root cause analysis. The results of the root cause analysis and recommendations and proposed preventive and corrective actions will be raised at the ISMM or directly with the Authority for progression and action.
	11. The Authority and the Supplier acknowledge that information security risks are shared between the parties and that:
		1. a compromise of either the Supplier or the Authority's security provisions represents an unacceptable risk to the Authority requiring immediate communication and co-operation between the parties; and
		2. the Supplier shall notify the Authority immediately upon becoming aware of any compromise of the Supplier or the Authority's security provisions.
	12. The Supplier shall indemnify, keep indemnified and hold the Authority harmless against any and all losses, damages, costs, claims, proceedings, or expenses sustained or incurred directly or indirectly by the Authority as a result of the Supplier’s breach of any of the security warranties set out in this Agreement.
2. **Confidential Information**
	1. In order to ensure that no unauthorised person gains access to any Confidential Information, Authority Premises or Authority Assets obtained in the delivery of this Agreement the Supplier undertakes to maintain adequate security arrangements with all due skill, care and diligence and in accordance with Good Industry Practice.
	2. The Supplier will immediately notify the Authority in writing of any breach or loss of Confidential information in relation to this Agreement and will keep a record of all such breaches.
	3. Where there is an actual or potential breach or loss of Confidential Information, the Supplier shall inform the Authority as soon as practical upon detection (and in any case within 24 hours). The Authority shall be responsible for liaison with, and reporting to, the Information Commissioners Office if required.
	4. Where the Breach of Security relates to the compromise of Confidential Information processed within an IT system, the Supplier will use its best endeavours to recover such Confidential Information however it may be recorded. The Supplier will also use its best endeavours to recover such Confidential Information where compromised, which is managed manually (i.e. ‘paper-based’ etc).
	5. Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in this Schedule which are, or may result in, a breach or loss of Confidential Information, the Supplier shall immediately activate its incident response team and take all reasonable steps (which shall include any action or changes reasonably required by the Authority) necessary to:
		1. minimise the extent of actual or potential harm caused by any such breach or loss of Confidential Information;
		2. remedy such breach to the extent possible and protect the confidentiality, integrity and availability of the Supplier’s systems any Authority Assets and Confidential Information processed to the extent within its control;
		3. activate any Business Continuity or Contingency Plan to minimise the impact to the delivery of any core services to the Authority;
		4. supply any requested data to the Authority or to any Government or Regulatory body on the Authority’s request within two (2) Working Days and without charge (where such requests are reasonably related to a possible incident or compromise).
		5. apply a tested mitigation against any such loss or breach or attempted breach Confidential Information and, provided that reasonable testing has been undertaken by the Supplier, if the mitigation adversely affects the Supplier's ability to deliver the Services so as to meet target performance levels (including KPIs), the Supplier shall be granted relief against any resultant under-performance for such period as the Authority, acting reasonably, may specify by written notice to the Supplier;
	6. Subsequent to the initial breach notification issued by the Supplier to the Authority (in accordance with Paragraph 2.3), as soon as reasonably practicable the Supplier shall:
		1. provide to the Authority full details (using the defined reporting mechanism) of the breach or loss of Confidential Information or attempted breach, including a root cause analysis and any remedial action plans where required by the Authority; and
		2. apply organisational learning and awareness training to prevent a further breach of Confidential Information or attempted breach of Confidential information in the future exploiting the same root cause failure.
	7. The Supplier will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of Confidential Information.
	8. The Supplier shall, at its own expense, alter any security systems’ measures at any time whilst this Agreement is in force at the Authority’s request if the Authority believes the Supplier has failed to comply with this Paragraph 5.
3. **Risk management and processes**
	1. The Authority manages the security of its business activities through a process of risk management and this process defines the necessary security requirements. The Supplier must:
		1. bring to the attention of the Authority any developments (i.e. incidents) likely to give rise to risk to the business of the Authority as a result of the provision of Services;
		2. ensure that they maintain the confidentiality, integrity and (where relevant) availability of any Authority Assets, Confidential Information and Authority Premises (i.e. information, equipment, premises, etc), which forms part of the provision of Services to which the Supplier’s representatives have access;
		3. implement appropriate security and business continuity arrangements (as agreed with the Authority) in order to protect the Authority assets and to guarantee service delivery schedules are met;
		4. assign a designated security contact (to be referred to as the “**Designated** **Security Co-ordinator**” (or “**DSC**”)) for the provision of Services who will have overall responsibility for security. If the DSC assigned is not at Board level alternatively there must be a member of the Board to whom representation of the Authority security implications relating to the provision of the Services can be directed.
		5. The DSC must be able to demonstrate an appreciation of security and be able to promote/foster a good security culture where it relates to the management of this Agreement. Where deemed appropriate, the Authority may require that the individual (and any other relevant employees) to attend agreed security awareness training, which will be at the expense of the Supplier. Where the Supplier deems it relevant, the DSC may assign a Single Point of Contact (“**SPOC**”) for the responsibility of the day-to-day security management. However, the SPOC must report to the DSC;
		6. ensure no asset relating to the provision/use of Services is disclosed to a third party without the prior written consent of the Authority;
		7. advise the Authority immediately of any potential and/or actual security incidents that may directly and/or indirectly affect the secure delivery of the provision of Services;
		8. agree to their Sites, operations, policies, procedures and security arrangements used in connection with the delivery of the provision of Service, being subject to audit and inspection by the Authority and/or its representatives, at any time during the term of the Agreement;
		9. where it is identified as a requirement, give Authority auditors appropriate access to systems which may have been used as part of the delivery of the provision of Services to enable them to carry out their audit responsibilities;
		10. where there is a requirement for such access to be 'on-line', the Supplier shall work with the Authority to ensure it is able to implement an acceptable way of achieving this;
		11. ensure that no information is copied from an Authority computer system or Authority Asset into a Supplier’s computer system without the prior written consent of the Authority; and
		12. agree that the Supplier shall have no access to work orders or payment information once a work order has been successfully completed and payment received.
4. **Amendment and revisions to the Security Policy, ISMS and Security Management Plan**
	1. The Information Security Policy, ISMS and Security Management Plan shall be fully reviewed by the Supplier at least annually in relation to:
		1. emerging changes in Good Industry Practice;
		2. any change or proposed change to the ICT Environment (impacting delivery of the Services by the Supplier including any security aspects thereof), the Services and/or associated processes;
		3. any new perceived or changed security threats; and
		4. change in requirement requested by the Authority.
	2. The Supplier shall provide the Authority with written confirmation that an annual review has been conducted, the results of such review as a document as soon as reasonably practicable after completion and any amendments required and the timeline for doing so. The results of the review shall include a schedule for the review of all standing documents which underpin or are referenced by the Information Security Policy, ISMS and Security Management Plan, and a review of all relevant security documents, policies and procedures;
		1. suggested improvements to the effectiveness of the Information Security Policy and the ISMS;
		2. updates to the risk assessments, the residual risk scores and levels;
		3. proposed modifications to respond to events that may impact on the ISMS including the security incident management process, incident response plans and general procedures and controls that affect information security; and
		4. suggested improvements in measuring the effectiveness of controls.
	3. Any change which the Supplier proposes to make to the Information Security Policy, ISMS and/or Security Management Plan pursuant to Paragraph 7.2, an Authority request, a change to the Service Description Schedule or otherwise shall be subject to the Change Control Procedure and shall not be implemented until approved in writing by the Authority.
	4. The Authority may, where it is reasonable to do so, approve and require changes or amendments to the Information Security Policy, ISMS or Security Management Plan to be implemented on timescales faster than set out in the Change Control Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Agreement.
5. **Breach of Security**
	1. Either Party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any Breach of Security or concerted attempted Breach of Security.
	2. Without prejudice to the security incident management process, and the requirement for breach or attempted breach of Confidential information as set out in Paragraph 2 of this Schedule) upon becoming aware of any of the circumstances referred to in this Schedule which are, or may result in, a Breach of Security, the Supplier shall:
		1. as soon as reasonably practicable provide to the Authority full details (using the reporting mechanism defined by the ISMS) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.
		2. immediately activate its incident response team and take all reasonable steps (which shall include any action or changes reasonably required by the Authority) necessary to:
			1. minimise the extent of actual or potential harm caused by any Breach of Security;
			2. remedy such Breach of Security to the extent possible and protect the confidentiality, integrity and availability of the Supplier’s IT environment, Sites, Authority Assets, Authority Premises and Authority Data to the extent within its control against any such Breach of Security or attempted Breach of Security;
			3. apply a tested mitigation against any such Breach of Security or attempted Breach of Security;
			4. activate and comply with the Business Continuity and Disaster Recovery Plan Schedule to minimise the impact to the delivery of any core services to the Authority; and
			5. supply any requested data to the Authority and/or to any Government or regulatory body and/or the Computer Emergency Response Team for UK Government ("**GovCertUK**") on the Authority's request within two (2) Working Days and without charge (where such requests are reasonably related to a possible incident or compromise); and
			6. prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure – including apply organisational learning and awareness training;
	3. In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the ISMS with the Authority Security Requirements or other security requirements (such as those set out in Service Description Schedule) or the requirements of this Schedule, then any required change to the ISMS shall be at no cost to the Authority.
	4. Subsequent to the initial breach notification, as soon as reasonably practicable the Supplier shall provide to the Authority full details (using the defined reporting mechanism of the Breach of Security or attempted Breach of Security, including a root cause analysis and any remedial action plans where required by the Authority.
	5. In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance with the Authority Security Requirements or the security requirements of this Schedule, then any required change in order to comply and/or as requested by the Authority to the Supplier’s processes shall be at no cost to the Authority.
	6. Where any part of the Services are Sub-contracted, the Supplier shall ensure these same security clauses (as set out in this Schedule) apply to those Sub-contracts and are complied with by all of the Supplier’s Sub-contractors.
6. **Vulnerabilities and corrective action – General**
	1. The Authority and the Supplier acknowledge that personnel, procedural, physical, and ICT vulnerabilities, including application software, operating software, firmware, system configuration and application configuration vulnerabilities may place the Authority Data and Services at risk.
	2. The Supplier shall continuously and actively identify, assess, manage and mitigate the risks posed by personnel, procedural, physical and ICT vulnerabilities in the delivery, support and coordination of the Service.
	3. The Supplier shall ensure its vulnerability management policy shall be consistent with the Authority's vulnerability management policy (as notified to the Supplier by the Authority) and with the Security Management Plan.
7. **Statutory compliance**
	1. In addition to any other requirements in this Agreement and/or as outlined within other associated documentation (e.g. the Statement of Requirements document, etc.), the Supplier must comply with Applicable Law – in particular the provisions of (but not limited to) the:
		1. Computer Misuse Act 1990;
		2. Copyright, Designs and Patents Act 1988;
		3. Data Protection Act 2018;
		4. The Serious Crime Act 2015;
		5. The Police and Justice Act 2006;
		6. Freedom of Information Act 2000; and
		7. Official Secrets Act 1911 and 1989.
8. **Miscellaneous**
	1. The references to standards, guidance and policies set out in this Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
	2. In the event that the Supplier becomes aware of any inconsistency in the provisions of the terms, standards, guidance and policies set out or referred to in this Schedule, the Supplier shall immediately notify the Authority Representative of such inconsistency and the Authority Representative shall, as soon as practicable, determine and notify the Supplier which provisions Supplier shall comply with.

PART 2 – DATA AND CYBER SECURITY

1. **Data Protection General**
	1. The Supplier shall comply with and shall ensure that all Sub-contractors comply the following technical and organisational measures.
	2. The Supplier shall provide the Authority with copies of its physical security and data security policies (together the "**Security & Cyber Policy**") for review, which shall contain an analysis of the processing to be undertaken and a discussion of the appropriate technical and organisational measures conducted in accordance with Article 32 GDPR.
	3. Where the Authority reasonably considers that the Security & Cyber Policy does not meet industry standards taking into account their application for the Authority, it may notify the Supplier and the Supplier the Supplier shall make such reasonable changes to the Security and Cyber policy as required by the Authority.
	4. With respect to implementing technical and organisational measures to secure processing the Security & Cyber Policy shall consider the following and implement, without limitation, as required:
		1. the pseudonymisation and encryption of personal data;
		2. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
		3. the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
		4. a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
		5. a security and cyber awareness training programme;
		6. controls in place to detect any security incident;
		7. details of vetting procedures on all personnel who have access to the data;
		8. procedures to be followed in the event of a breach of the Security & Cyber Policy;
		9. a security incident management plan;
		10. a disaster recovery and business continuity plan;
		11. notification protocols for notice to the Authority of any incidents;
		12. encryption controls for protecting the data, in line with its security classification, when being stored processed or transported;
		13. physical and logical access controls;
		14. safeguards for systems to prevent and protect from vulnerabilities and malware;
		15. anti-virus software, other security and cyber software controls (such as firewalls, anti-malware, intrusion detection);
		16. a table-top data security incident rehearsal plan including any third parties necessary that could be anticipated to participate in such rehearsal;
		17. regular security and cyber penetration testing policy;
		18. a programme and controls for testing and applying all software and hardware upgrades recommended by the publisher/manufacturer for security; and
		19. software and system development and testing controls designed to ensure security.
	5. Prior to the commencement of any processing of Authority Data, the Supplier shall provide the Authority with a certificate confirming that that it has considered and implemented appropriate all of the technical and organisational measures to ensure the security of the processing conducted and has implemented the Security & Cyber Policy.
	6. The Supplier shall maintain a widely recognised organisational security certification awarded by an independent third party after assessment commensurate with the risks associated with the data processing undertaken. Prior to conducting any processing hereunder (and annually thereafter) the Supplier shall provide the Authority with proof of its on-going maintenance of such security certified status.
	7. The Supplier shall ensure that all of its Sub-contractors, employees, directors and consultants or any third party with any access to the data processed hereunder shall execute a confidentiality agreement protecting the confidentiality of the data processed and containing an agreement not to access or process any data unless specifically instructed and authorised by the Authority to do so.
	8. The Supplier’s DSC shall be primarily responsible for the implementation and compliance with the Security & Cyber Policy the DSC shall be available to the Authority for the evaluation of the Security & Cyber Policy and the resolution of any issues identified thereunder.
	9. At any time during the Agreement the Authority may audit the Supplier's compliance with the Security & Cyber Policy. At its own cost, the Supplier shall provide the Authority with:
		1. all support required to conduct the audit;
		2. a written plan to rectify any discrepancy discovered as a result of the audit; and
		3. carry out such rectifications within the time periods identified in the plan and approved by the Authority
	10. No less than annually and at its own cost, the Supplier shall update their Security & Cyber Policy to reflect the state of the art and conduct a refresh of all elements thereunder. The Supplier shall provide the Authority with an opportunity to comment during the annual review of the Security & Cyber Policy. The Supplier shall update and provide the Authority with the revised Security & Cyber Policy and implement any new measures in accordance with a plan provided to the Authority.

PART 3 – PERSONNEL AND ESTATE SECURITY

1. **Personnel and Estate Security**
	1. The Supplier must:
		1. ensure all persons requiring access to any assets for the provision of Services are authorised to do so by the DSC following consultation (where relevant) with the Authority Representative. The Supplier must keep records of all persons (including agents and/or sub-suppliers) who have been authorised;
		2. ensure in line with Good Industry Practice, that all persons engaged on any part of the provision of Services are subjected to Employment Checks, which are regularly reviewed;
		3. ensure that the Supplier Security Controller (SC) and any appointed Single Point of Contact (SPOC) ensure that they and all personnel involved in the delivery of the Supplier’s service will be formally security cleared by the Authority prior to any access being granted to the Authority’s assets, the Authority Premises and otherwise engaged on any aspect of the contract. The minimum level of security clearance that is required to access the Authority Premises and have access to Authority data and information assets is:
			1. A National Security Vetting clearance at Counter Terrorism Check (CTC level) and a Non-Police Personnel Vetting (NPPV) clearance at Level Two (2).
		4. where the Agreement specification, as defined by the Authority, requires enhanced levels of security clearance beyond the default in Paragraph 1.1.3 these will be;
			1. a National Security Vetting clearance at Security Check (SC) level and a Non-Police Personnel Vetting (NPPV) clearance at Level Three (3); and/or
			2. a National Security Vetting clearance at Developed Vetting (DV) level and a Non-Police Personnel Vetting (NPPV) clearance at Level Three (3);
		5. ensure that the DSC ensures that all security clearance applications (whether issued on application forms or via Authority vetting application portals or otherwise) are provided to the Authority free of errors and omissions as far as is reasonably practicable and that they are provided within the timescales as advised by the Authority. The Authority will return security clearance applications to the DSC where the information provided by the DSC is incomplete, incorrect or where supporting documentary evidence does not meet the requirements as notified to the Supplier and DSC by the Authority;
		6. ensure that the DSC maintains an auditable security clearance record of all persons (including agents and/or sub-suppliers) under the Agreement in a format as provided by the Authority. The DSC will provide this information to the Authority on a monthly basis for the duration of the Agreement. This record will include all agents, sub-suppliers, specialists etc, employed under the Agreement by the Supplier;
		7. ensure that the DSC will ensure that the personal circumstances of the employees, agents and sub-suppliers employed by the Supplier are subject to system and processes which will identify and then immediately report to the Authority any significant changes in the circumstances of individuals, where such a change may affect the ongoing provision of security clearance e.g. change of name, marriage, divorce, financial difficulties, arrest by enforcement authorities of themselves or close relatives, etc. A decision on whether to suspend or revoke the individual’s security clearance will be made by the Authority, with the DSC duly informed thereafter;
		8. ensure that the Authority are notified immediately by the DSC of any employee, agent or sub-supplier who stops working on the contracted Services at any time to ensure that security clearance is cancelled or where the individual’s role has changed requiring the Authority to review the vetting status of the individual;
		9. ensure retrieval of cards;
		10. ensure that only those employees, agents and sub-suppliers directly engaged on the delivery of the Services are selected by the DSC for the security clearance process by the Authority and that over-vetting, as determined by the Authority, does not occur;
		11. remove any persons without delay from working on or in relation to the contracted Services, if in the opinion of the Authority, any persons/Supplier representative engaged in the provision of the contracted Service has misconducted themselves, or if it is not in the public interest for such persons to be employed or engaged by the Supplier on any part of the provision of contracted Services;
		12. immediately remove all access rights, and actual access, granted to such persons if the Authority chooses to suspend or terminate authorisation for specific member(s) of the Supplier Personnel to access Authority Data Assets and provide prompt confirmation of the same to the Authority;
		13. ensure sufficient persons, who are adequately trained, are appropriately certified and security cleared to the correct level by the Authority for their respective roles, are available at all times to ensure the resilience of the Service and ensure that the use of Authority Identity and access passes with visitor escorting rights are not required to facilitate and support contract activities save for where specifically authorised by the Authority in accordance with the remainder of this Paragraph:
			1. the Authority may, at its discretion, provide ‘Allowed to Escort’ access passes for specified individuals engaged by the Supplier while serving the Agreement for particular purposes on application to the Authority by the DSC. For example,, Allowed to Escort access passes may be provided to facilitate the entry to the Authority Premises of un-cleared individuals where a one-off business critical activity must be completed which either cannot be delivered by the security cleared resources available to the Supplier at the time of the need arising or which shall be deemed by the Authority to have not been reasonably foreseeable. Any Allowed to Escort scort access pass which is issued, may only be used by the individual specified and strictly in accordance with the purposes for which it was provided;
			2. the Supplier shall not allow escorting of visitors or other contractors where this could circumvent Authority security clearance policy in relation to access to the Authority Premises, Authority Assets or other information, including, without limitation, regular escorting of individuals who would otherwise be the subject of the Authority security clearance process, escorting of persons currently undergoing security clearance and escorting of persons who are under training by the Supplier have been refused clearance or the subject of an appeal against a vetting refusal;
			3. the issue and use of ‘Allowed to Escort’ access passes is strictly controlled and monitored and is subject to audit by the Authority. It is the responsibility of the Supplier to record the details of all instances where an ‘Allowed to Escort’ access pass has been used to facilitate access to the Authority Premises by non-cleared individuals. This shall include the:
				1. date and time of the visit;
				2. name of the Authority location visited;
				3. purpose of the visit and the reason escorted access was required;
				4. name of the Allowed to Escort access pass holder;
				5. name(s) of the escorted person(s) including Sub-contractor or agency supplier details; and
				6. formal job or task reference;
		14. ensure that where the Authority provides an ‘Allowed to Escort’ access pass and it is used to facilitate access to the Authority Premises by non-cleared individuals in any month, the DSC provides the information listed in the above Paragraph 1.1.2.12(l) to the Authority within seven working days of the end of that month. The Authority reserves the right to withdraw ‘Allowed to Escort’ pass status from individuals at any time;
		15. ensure that Authority identity and access passes that are provided to the Supplier for the purpose of entering the Authority Premises shall be returned immediately by tracked means to the Authority representative immediately in any of the following circumstances:
			* 1. card expiry;
				2. cancellation or suspension of Authority security clearance;
				3. the holder leaving the Authority contract (in which case the pass shall be returned on the same day);
				4. a change of the name of the card holder;
				5. as part of the replacement process of a malfunctioning card.
		16. maintain procedures to avoid undue dependence on the experience and expertise of any individuals/Supplier representatives;
		17. maintain definitions of all individuals’/Supplier representative’s security responsibilities including those responsibilities relating to individuals working on systems supporting its administrations;
		18. maintain security procedures covering all aspects relating to the delivery of the provision of Services and ensuring that all such procedures are available to all and observed by all such personnel engaged in the provision of Services;
		19. ensure that all persons/Supplier representatives working on the provision of Services at the Supplier’s location/s are identifiable at all times as approved individuals to be within any designated area, which have been approved by the Authority. This also includes location/s relating to any sub-suppliers’, agents, specialists, etc which will form part of the provision of Services;
		20. ensure that all persons/Supplier representatives required to visit the Authority Premises as part of the provision of Services are identifiable at all times by wearing and presenting a Authority-issued identity access pass;
		21. ensure that the SC ensures that persons/Supplier representatives arrange for their personal and timely attendance at a facility designated by the Authority for the purposes of (at the Authority’s discretion) the provision of an Authority Identity and access pass;
		22. ensure that any loss of an Authority identity and access passes, including the circumstances of the loss, is reported immediately in writing to the Authority;
		23. maintain an effective ongoing security awareness and education programme where it relates to the provision of Services;
		24. collaborate with the Authority on any security training and awareness initiatives that the Authority requires from time to time;
		25. ensure that all applicable security administration policies, processes and procedures are made available to all relevant Supplier Personnel, subject to the required level of security clearance being attained.
		26. ensure that all Supplier Personnel are fully aware of, and comply at all times with their security obligations set out in this Agreement and/or notified to them by the Authority from time to time.
		27. ensure that all vehicle operatives employed by the Supplier on the Contract comply with site delivery pre-notification protocols as advised by the Authority. Failure to comply with Authority delivery protocols will result in the refusal of permission to enter the Authority Premises. Suppliers shall instruct all employees that the Authority requires all vehicle passengers to dismount prior to entry being granted to a site and submit themselves to site-based access control protocols for pedestrian visitors;
		28. acknowledge that the Supplier’s employees, agents, Sub-contractors, their belongings and their vehicles are subject to security search as a requirement of entry to the Authority Premises. Failure to submit to search or non-cooperation by individuals during the search process will result in the refusal of entry and be reported to the Authority for further investigation. The detection of any prohibited or offensive items will be the subject of police enforcement action;
		29. acknowledge that vehicle borne deliveries to specified Authority properties within the Authority Premises may be subject to mandatory off-site searching arrangements which will require the Supplier to deliver to a nominated address and not the specified Authority property. The Supplier will cooperate fully with the instructions and process as notified by the Authority and adhere to specified opening times and identity requirements.

PART 4 – STATUTORY COMPLIANCE

1. **Statutory compliance**
	1. In addition to any requirements outlined within other associated documentation (e.g. the Statement of Requirements document, etc.), the Supplier must comply with current legislation in particular the provisions of (but not limited to ) the:
		1. Computer Misuse Act 1990;
		2. Copyright, Designs and Patents Act 1988;
		3. Data Protection Act 2018;
		4. Freedom of Information Act 2000; and
		5. Official Secrets Act 1911 and 1989.
2. : AUTHORITY SECURITY REQUIREMENTS
3. **Information Classifications**
	1. Authority information may be classified as TOP SECRET, SECRET or OFFICIAL in line with the MPS Government Security Classification scheme (**"****MPS GSC"**). Where more sensitive OFFICIAL information requires greater control it may include the caveat OFFICIAL-SENSITIVE.
	2. Notwithstanding Paragraph 1 of this Appendix A of Security Policy, the Supplier acknowledges and agrees that it will from time to time come into contact with material marked under the old Government Protective Marking Scheme ("**GPMS**"). The Supplier shall, at all times, adhere to the requirements for handling, storing and disposing of any material marked as PROTECT, RESTRICTED and CONFIDENTIAL set out in the GPMS and shall treat all information in a manner commensurate with its protective marking, consulting with the Authority where necessary.
	3. The Supplier shall, at all times, adhere to the requirements for handling, storing and disposing of RESTRICTED, PROTECTED, OFFICIAL, OFFICIAL-SENSITIVE and CONFIDENTIAL information (**"Protectively Marked Material"**) as set out in this Annex 1 of Security Policy.
	4. The Supplier shall not handle Authority information classified as SECRET, TOP SECRET except if there is a specific requirement and in this case prior to receipt of such information the Supplier shall seek additional specific guidance from the Authority.
	5. If the Supplier becomes aware of any SECRET OR TOP SECRET, information on any element of the ICT Environment within its control (or which should be within its control), it shall:
		1. raise the presence of this information as a Security Incident in accordance with the relevant procedures set out in this Agreement;
		2. take any required immediate measures to protect the information; and
		3. seek the Authority's guidance on next steps to be taken with respect to such information.
4. **Communication of Protectively Marked Material**
	1. The Supplier shall not communicate Protectively Marked Material except in accordance with this Paragraph 2 and the Security Aspects Letter as issued from time to time.
	2. Where there is a conflict between this Paragraph 2 and the Security Aspects Letter the Security Aspects Letter shall prevail.
	3. Where RESTRICTED, PROTECTED, OFFICIAL or OFFICIAL-SENSITIVE information is sent by post (hard copy or CD/DVD) the Supplier shall ensure that:
		1. all files are encrypted using WinZip AES 256 before being placed on a CD/DVD. The crypto key must be sent separately (once receipt is confirmed) by another communication method (for example by e-mail, SMS, or telephone call) and must not be included in the CD/DVD packaging at all;
		2. the physical material (CD/DVD or document) is sent using the following "double envelope method":
			1. the inner envelope must be sealed and have individual contact details for the recipient (i.e. the individual's name and full postal address) and prominently show the protective marking;
			2. the outer envelope must be sealed and have contact details for the recipient (i.e. the individual's name and full postal address) but without the protective marking shown. The envelope must not in any way identify the enclosed contents; and
		3. method of post must be "Registered" or "Recorded" delivery (or other equivalent service requiring signature by the named individual the envelope is addressed to or an agreed nominated deputy).
	4. Where RESTRICTED, PROTECTED, OFFICIAL or OFFICIAL-SENSITIVE information is send by hand (hard copy or CD/DVD):
		1. Paragraphs 2.3 above shall apply; and
		2. the delivery must be signed for by the named individual the envelope is addressed to, or a previously agreed nominated deputy, with the receipt returned to the originator.
	5. If the Supplier has a Criminal Justice Secure eMail (**"CJSM"**) account, the Supplier may use this account for the purpose of sending information classified up to and including OFFICIAL-SENSITIVE, unless the Authority instructs the Supplier otherwise.
	6. Where OFFICIAL-SENSITIVE material is sent by e-mail (other than through CJSM), the Supplier shall ensure that:
		1. files are encrypted using WinZip AES 256 or to an equivalent standard before being attached to the e-mail; and
		2. the crypto key is sent separately (once receipt of the e-mail attaching the file(s) is confirmed) by another communication method (for example through SMS or telephone call) and must not be included in any e-mail at all.
	7. The Supplier may communicate OFFICIAL material via methods other than those described in Paragraphs 2.3 to 2.6 above, provided that such communications do not contain any content that is OFFICIAL-SENSITIVE or above, or that would normally be regarded as Sensitive Data.
	8. The Supplier shall not communicate CONFIDENTIAL information except where the Supplier has taken all actions, implemented all measures and met all standards which the Supplier deems necessary to fully comply with the HMG guidance for the treatment of CONFIDENTIAL information and any codes of practice issued by HMG in relation to such guidance (**"CONFIDENTIAL Guidance"**). If the Supplier intends to communicate CONFIDENTIAL information it shall provide a written description of the technical and organisational methods employed by the Supplier for achieving compliance with the CONFIDENTIAL Guidance.
5. **Disposal of Protectively Marked Materials**
	1. Where any Protectively Marked Material held by the Supplier in electronic form is no longer required or where the Authority has requested the deletion of any such material, the Supplier shall to the satisfaction of the Authority:
		1. delete any such Protectively Marked Material that is within the control (or should be within the control) of the Supplier from all possible storage locations, temporary and permanent, using a sufficient and appropriate mechanism recommended for its protective marking in accordance with the provisions as set out in the Security Aspects Letter.
		2. for any such Protectively Marked Material that is within the control of any other person:
			1. instruct the relevant person to delete all such Protectively Marked Material from all possible storage locations, temporary and permanent, using a sufficient and appropriate mechanism recommended for its protective marking; and
			2. obtain and record confirmation from the relevant person that the Protectively Marked Material has been deleted pursuant to 1.1.5(a).
	2. The Supplier shall not be obliged to comply with Paragraph 3.1.2 to the extent that the Supplier is required to retain the relevant Protectively Marked Material in accordance with the Governance and/or the Records Policy or Applicable Laws.
	3. If requested by the Authority, the Supplier shall use a method or tool specified by the Authority in order to demonstrate to the satisfaction of the Authority that a genuine deletion of the Protectively Marked Material has taken place from all possible storage locations.
	4. Except where the Supplier is required to retain any Protectively Marked Material in accordance with the Governance and/or the Records Policy or any Applicable Laws, where hard copy Protectively Marked Material held by the Supplier is no longer required, or at any time at the request of the Authority, the Supplier shall either:
		1. destroy any such hard copy Protectively Marked Material to the satisfaction of the Authority and in accordance with 3.5 below; or
		2. return any such hard copy Protectively Marked Material to the Authority via recorded delivery,

as directed by the Authority at the time.

* 1. Subject to Paragraph 3.6 below, if directed by the Authority pursuant to 3.4 above, the Supplier shall destroy any relevant hard copy documents or digital media using an appropriate mechanism as recommended in HMG guidance for its protective marking.
	2. If destruction of hard copy Protectively Marked Materials in the manner described in Paragraph 3.5 above is not possible, then the Supplier shall return all such materials securely to the Authority via recorded delivery.
	3. If required to do so by the Authority, the Supplier shall provide written confirmation of its compliance with this Paragraph 3.
1. **End User Devices**
	1. Only Authority Data marked as OFFICIAL or below may reside on a mobile, removable or physically uncontrolled device and when it does so, it must be stored encrypted using a recognised commercial grade (good practice) encryption mechanism.
	2. Protectively Marked Material classified as OFFICIAL must only be stored on a device that is:
		1. suitable for the storing of such material; and
		2. operate access control so that only authorised individuals may access the material in accordance with the privileges set out in 4.3 below.
	3. Devices used to access or manage Authority data and services must be under the management authority of the Authority or Supplier and have a minimum set of security policy configuration enforced. These devices must be placed into a 'known good' state prior to being provisioned into the management authority of the Authority. Unless otherwise agreed with the Authority in writing, all Supplier devices are expected to meet the set of security requirements set out in the CESG End User Devices Security Guidance (as amended from time to time). Where the guidance highlights shortcomings in a particular platform the Supplier may wish to use, then these should be discussed with the Authority and a joint decision shall be taken on whether the residual risks are acceptable. Where the Supplier wishes to deviate from, then this should be in accordance with the National Cyber Security Centre (<https://www.ncsc.gov.uk/collection/end-user-device-security>) this shall be agreed in writing on a case by case basis by the Authority.
2. **Data Processing, storage, management and destruction**
	1. The Supplier shall not store, process or manage Sensitive Data from a location outside Great Britain.
	2. The Supplier and Authority recognise the need for the Authority's information to be safeguarded under the UK Data Protection regime or a similar regime. To that end, the Supplier must at all times be able to state to the Authority the physical locations from which such data may be stored, processed or managed and to which legal and regulatory frameworks the Authority information will be subject.
	3. Only those organisations that have a signed "Declaration of Compliance" in the form set out in Annex 4 (*Declaration of Compliance*) of the Security Policy which has been confirmed by the Authority may be used for the storing, processing and management of Protectively Marked Material.
	4. The Supplier shall agree any change in location of data storage, processing and administration with the Authority in advance where the proposed location is outside Great Britain. Subject to the Authority’s prior written approval, its sole discretion, and provided that storage, processing and management of any Authority information is carried out offshore within:
		1. the European Economic Area (EEA); or
		2. in another country or territory outside the EEA if that country or territory ensures an adequate level of protection by reason of its domestic law or of the international commitments it has entered into which have been defined as adequate by the EU Commission,

and whether the receiving party has signed a "Declaration of Compliance" in the form set out in Annex 4 (*Declaration of Compliance*) of the Security Policy which has been confirmed by the Authority.

* 1. The Supplier shall:
		1. provide the Authority with all Authority Data on demand in an agreed open document format;
		2. have documented processes to guarantee availability of Authority Data in the event of the Supplier ceasing to trade;
		3. securely destroy all media that has held Authority Data at the end of life of that media in line with Good Industry Practice and appropriate MPS GCS and Government guidance from time to time in place; and
		4. securely erase any or all Authority Data held by the Supplier when requested to do so by the Authority.
1. **Networking**
	1. The Authority requires that any Authority Data transmitted over any public network (including the internet, mobile networks or un-protected enterprise network) or to a mobile device must be encrypted using a recognised commercial grade (good practice) encryption mechanism.
	2. The Authority requires that any OFFICIAL SENSITIVE information transmitted over any network must be encrypted using a recognised and appropriate encryption mechanism in accordance with MPS GSC Guidance.
	3. The Authority requires that the configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice and are fully in accordance with MPS GCS and Government guidance from time to time in place.
2. **Security Architectures**
	1. The Supplier shall apply the 'principle of least privilege' (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of IT systems which will process or store Authority Data.
	2. When designing and configuring the Supplier system or, where appropriate, any part of the ICT Environment the Supplier shall follow Good Industry Practice, fully comply with all applicable HMG guidance (including Confidential Guidance) and seek guidance from recognised security professionals with the appropriate skills and/or a CESG Certified Professional certification (as amended from time to time)
		1. for all bespoke or complex components of the Supplier solution; and
		2. for all parts of the ICT Environment which process, store or transport information above OFFICIAL classification.
3. **Personnel Security**
	1. The Supplier must comply with the requirements of Part 3 Personnel and Estate security, Paragraph 1.1.
4. **Document Security**
	1. Physical Authority Data (such as hard copy documents) must be locked in a secure locked filing cabinet when not in use. Access to such filing cabinets must only be granted to persons authorised in accordance with Paragraph 1.1.26 in Part 3 above.
	2. The Supplier shall not make copies of the Authority Data other than as required in order to perform the Services. Where copies have to be made, they must have the appropriate protective marking and be individually accounted for and managed under the conditions of this Annex to Security Policy.
5. **Audit and monitoring**
	1. The Supplier shall grant to the Authority and its authorised agents, all reasonable access to the records (together with the right to make copies), and to its premises (and the Supplier hereby irrevocably licenses the Authority, its employees and agents to enter any such premises for such purpose), and to its staff and shall provide all purposes of carrying out an audit of the Supplier’s compliance with this Contract including all activities, charges, performance and security measures in connection therewith.
	2. The Authority and its agents shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Services pursuant to this Contract save insofar as the Supplier accepts and acknowledge that control over the conduct of Audits carried out by the Audit Commission or the National Audit Office is outside the control of the Authority.
	3. Where it is identified as a requirement, grant Authority auditors appropriate access to systems, which may have been used as part of the delivery of the provision of services to enable them to carry out their audit responsibilities.

**Safety Rules Policy**

1. Definitions
	1. In this Schedule, the following definitions shall apply

|  |  |
| --- | --- |
| “**H&S**” | shall mean health and safety; |
| "**Principal Contractor**" | as defined in the Construction (Design and Management) Regulations 2015; |
| “**PSD**” | shall mean the property services department; |
| “**RAMS**” | shall mean risk assessment and method statements. |

1. **Introduction**
	1. The Authority is committed to maintaining high H&S standards for its employees, visitors, members of the public and contractors.
	2. The Authority will provide Suppliers with all the necessary information and instruction available to them, and ensure that effective communication, co-operation and co-ordination are maintained.
	3. It is Authority policy that all works undertaken on Authority Premises will be assessed and conducted to avoid, reduce, or control all foreseeable risks to H&S to a tolerable level for all persons potentially affected including operatives, Authority employees, visitors and members of the public.
	4. No permission or consent given by or on behalf of the Authority under this Schedule shall be construed so as to relieve the Supplier from its obligations under the Agreement or imposed by statute.
	5. Contravention of this document or H&S legislation will result in the suspension of a Supplier/ employee pending the outcome of an Authority led investigation. If in doubt about any aspect of safe working, the Supplier must contact the Authority Representative, and not make any assumptions.
2. **Supplier’s obligations**
	1. The Supplier and any appointed Sub-contractor shall:
		1. comply with the H&S procedures detailed in this Schedule while working under this Agreement. These procedures are not exhaustive and do not prejudice the requirements of the Health and Safety at Work etc. Act 1974, nor any applicable regulations made under it;
		2. make available suitable and sufficient RAMS for the proposed work including safe systems of work, staffing levels and supervision methods;
		3. take measures to ensure the H&S of Supplier Personnel, Authority employees, sub-contractors, members of the public, and anyone else who may be affected by the work activity;
		4. provide the Authority Representative with details of the Supplier’s Personnel responsible for H&S;
		5. only employ persons with relevant skills, knowledge and experience, adequately supervised at all times under the Agreement;
		6. adhere to Agreement terms and conditions;
		7. advise the department representation who in turn will seek authority from PSD of the details of any Sub-contractor who wishes to undertake building/infrastructure works on Authority Premises;
		8. complete Appendix 1 which is to be sent to the Authority Representative for approval. In turn, the Authority Representative will liaise with PSD to confirm whether works can commence;
		9. produce, prior to commencing work at each Site, satisfactory evidence of insurance cover in respect of its legal liabilities to the Authority, third parties and its own employees;
		10. co-operate with the Authority concerning any audits or inspections undertaken;
		11. ensure that appointed Sub-contractors are subject to regular monitoring and audit of H&S systems.
	2. An Authorised Representative of the Supplier must sign the “Acknowledgement of Receipt” at Appendix 3 of this Schedule and return it to the address shown.
3. **Risk assessments and method statements (RAMS)**
	1. The Supplier must carry out suitable and sufficient written RAMS for all work activities undertaken under this Agreement to identify the H&S risks and implement appropriate control measures, applying the hierarchy of controls to determine the safest practicable system of work and communicate it to all persons affected.
	2. Any personal protective equipment (“**PPE**”), work or access equipment deemed necessary must be provided and maintained in line with legislation. The Supplier must provide suitable training in its correct use and check that it is being worn and used correctly.
	3. It is expected that generic RAMS will be produced for common tasks, but the Supplier must check and amend these to make them site-specific, as the risk from individual jobs dictates.
4. **Prior to working on Authority Premises**
	1. The Authority Representative, will ensure that the risks posed to Supplier Personnel as a result of Authority undertakings are adequately assessed, significant risks recorded and communicated to the Supplier (and via their supervisor to their relevant employees) prior to works starting. Where works are inherently high-risk, a suitable permit-to-work system must be implemented. The Supplier must consider all such information when devising its own RAMS.
	2. The Supplier shall:
		1. ensure Supplier Personnel hold a valid Authority security clearance and display an Authority Supplier ID pass at all times.
		2. ensure that this Schedule is read and understood by all persons engaged under the Agreement, prior to commencing work.
		3. give advance notice of its anticipated arrival time at Authority Sites and sign in at reception, where available, to enable all Site occupiers to be accounted for in the event of an emergency.
		4. where applicable, report immediately to the nominated Authority Representative for the project.
		5. park any approved vehicles brought to Site where instructed and will not block any access or egress routes. Vehicles may not necessarily be allowed to park on Site.
		6. ensure Supplier Personnel and Sub-contractors are competent, have suitable equipment and are supervised properly. Training and competence records and certificates must be available for inspection, upon demand by Authority Representatives. The Supplier must demonstrate that Sub-contractors are subject to suitable and adequate H&S audits.
		7. consider the impact this work may have on any wildlife. For example, all British wild birds, their nests and eggs are protected under the Wildlife & Countryside Act 1981.
		8. request that a Contaminated Land Assessment is carried out if they suspect there is potential for ground contamination.
		9. review any known or suspected Site based risks or hazards prior to work e.g. lead contamination.
5. **Permit to work system**
	1. The Supplier will have a written Permit to Work (“**PtW**”) system in place for all high-risk activities including:
		1. work on electrical distribution systems;
		2. entry into any chamber, tank, pipe, boiler, flue or any similar confined space;
		3. work involving the use of cranage;
		4. overhead work including work requiring use of MEWPs and scaffolding.
		5. hot work, welding, cutting, grinding and burning.
		6. work on bulk gas storage tanks, associated pipe work and ancillary equipment.
		7. work on boilers, compressors, associated pipe work and ancillary equipment.
		8. some work in environments affected by non-ionising radiation.
		9. deep cleaning of armouries.
		10. any other circumstances when the degree of hazard or risk is deemed by PSD to justify operation of a PtW procedure.
	2. A competent person must assume responsibility for signing off permits prior to works commencing with agreement from the Authority Representative and on completion.
	3. A copy of the PtW must be held on site at all times for inspection by the Authority if required, and then retained for audit trail purposes.
	4. The Supplier must only work according to the conditions in the PtW.
6. **Safety equipment and tools**
	1. The Supplier:
		1. must obtain written permission from the Authority Representative, who will request from the PSD representative, if they need to adjust, alter or remove any protective safety measure or equipment present at the Site. Any such equipment must be reinstated/replaced immediately and confirmed to PSD after the work is completed;
		2. shall ensure that all plant, structures, scaffolding, equipment and tools used during the work at the Site are suitable for the task, regularly maintained, safe to use and compliant with relevant legislation;
		3. shall suppress noise from equipment e.g. pneumatic hammers and drills, to an acceptable level in line with legislation and guidance;
		4. shall not use Authority plant or equipment including, without limitation, ladders, tools, vehicles and electrical supply, without first obtaining permission in writing from PSD. The Supplier must take care in the use or transportation of any plant and/or equipment loaned to them by the Authority;
		5. all tools must be removed or secured at the end of each shift. No tools must be accessible to Authority employees or others, including members of the public or detainees, at any time;
		6. shall notify the Authority Representative if they encounter any deficiencies with any safety measures, equipment or issues on site.
7. **Asbestos**
	1. A large proportion of Authority Premises was constructed before1985 therefore it is reasonably foreseeable that Asbestos Containing Materials (“**ACM**”) may be present where work is undertaken. During the planning process, in line with the PSD Asbestos Management Plan (as issued to the Supplier from time to time), the Supplier must:
		1. inspect the asbestos register for the property to ascertain any identified ACM within the area of work;
		2. request for a suitable intrusive refurbishment and demolition survey or sampling to be undertaken if required by a competent Supplier.
	2. Where no ACMs are identified, the Supplier must not assume that no asbestos is present in the working area, as ACMs may be present in areas that were inaccessible at the time of the survey.
	3. Despite having sufficient asbestos management systems to prevent the unintentional disturbance of ACM or release of fibres in an uncontrolled area, a certain level of risk of this occurring remains. Emergency procedures must be in place prior to works commencing on or near ACMs, to follow in an emergency to mitigate the situation and reduce the risk to those in the area. These will include:
		1. stop work immediately;
		2. seal off the area to prevent further disturbance and the possibility of persons being exposed to dust or fibres, including shutting doors and windows and turning off air movement or air conditioning plant;
		3. inform people in the immediate area e.g. via notices warning individuals to keep away;
		4. decontaminate any individual who has been exposed to asbestos fibres or potential asbestos fibres;
		5. notify the Shared Support Services’/Intelligent Contact Centre Helpdesk (for out of hours on-call contact), the Authority Representative, PSD representative and the Property Services Compliance Team (“**PSCT**”) immediately;
		6. check the asbestos survey register to establish whether ACM was previously identified;
		7. request samples to be taken and air tests conducted by the Authority’s UKAS accredited analyst via the SSS/ICC Helpdesk keeping the Authority Representative, PSD representative and PSCT updated.
	4. Appropriate RAMS and control procedures, agreed with PSD safety team/advisor, must be implemented to avoid further ACM exposure to building users. Encapsulation, repair or removal of disturbed ACMs will be carried out in accordance with current legislation before areas are re-occupied. If the Site is controlled by a Principal Contractor, under the Construction (Design and Management) Regulations 2015 (“**CDM**”) and ACMs are discovered, the procedures contained in the Health & Safety Plan, available from the Authority Representative, must be followed and the Authority project lead and principal designer informed as soon as practical.
	5. Copies of any asbestos survey, sampling or removal information must be provided to the PSD representative as soon as reasonably practical.
8. **Construction work including repair, refurbishment and demolition**
	1. The Supplier is responsible for ensuring that all construction work is carried out in accordance with the requirements of CDM and that adequate provisions are taken to ensure the H&S of all persons in the vicinity of, or affected by, the work.
	2. The Supplier shall provide guard rails, toe boards, and debris netting on all working platforms and gangways as necessary to prevent persons and/or tools or materials from falling and causing injury.
	3. Articles must not be thrown or dropped from heights, but must be properly lowered. Appropriate steps must be taken at all times to prevent any possible injury to persons below.
	4. The Supplier must comply with the PSD’s local CDM process and any local operating procedure as applicable.
9. **Control of dust, fumes and noise**
	1. All processes generating dust or fumes should be avoided. If no alternative methods of work are practicable, work shall be carried out using point-of-use dust and fume extraction units.
	2. Where fire protection measures are disconnected or compromised (i.e. smoke/heat detection covered, disabling fire alarms etc.), the Supplier will be responsible for ensuring they are uncovered as soon as possible and before the end of the working day. The Supplier is also responsible for implementing an equally as good or better system of monitoring for fire while the fire protection is ineffective.
	3. These details must be recorded and issued to the Authority Representative, PSD fire officer and PSD representative for approval prior to implementation. The Authority Representative will advise the Authority building insurers and occupiers of the building of the action taken.
10. **Storage and use of hazardous, harmful and flammable, explosive materials**
	1. Materials and equipment may only be stored on site with the prior permission of the Authority Representative and PSD representatives. The Authority accepts no responsibility for the safety or security of such materials/equipment unless a contrary intention is expressly stated by the Authority in writing.
	2. Stored materials must be kept within the designated site compound, preferably within a lockable storage container.
	3. Any hazardous or harmful substance must not be brought onto the site without a suitable and sufficient COSHH risk assessment, product data, prior consultation and written permission from the Authority Representative and PSD representative. All flammable and explosive substances must not be brought onto the site without a suitable and sufficient risk assessment, product data, prior consultation and written permission from the Authority Representative and PSD representative. Appropriate measures must be taken and safe systems of work implemented at site prior to their use.
	4. The Supplier shall ensure that all access and egress routes within its works areas remain free from obstructions and debris.
	5. All waste and debris must be cleared from site on a daily basis. The Authority Representative will advise if and where skips may be sited. Skips serviced from debris chutes must be kept covered at all time and contained within suitable barriers e.g. ‘Heras’ type fencing.
11. **Emergency arrangements**
	1. The Supplier shall appoint a suitable representative with responsibility for investigating accidents, incidents, near misses or other dangerous occurrences, which affect their employees, agents or Sub-contractors or anyone else on the Site.
	2. All accidents, dangerous occurrences and near miss incidents must be reported via the monthly H&S return via the Authority Representative. All major incidents and fatalities must be notified to the Authority Representative immediately.
	3. Additionally, Principal Contractors, appointed under CDM, shall highlight in the construction phase plan, their arrangements for the reporting of appropriate accidents and incidents to the Health and Safety Executive as required under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR). A copy of the notification must also be forwarded to the Authority Representative.
	4. The Supplier must provide suitable and sufficient first aid facilities for all his employees, agents and Sub-contractors unless arrangements are specifically agreed with the Authority Representative.
	5. Details of the fire evacuation procedure for each site can be found in the Fire Logbook located on site. The Supplier must follow instructions of the Authority security team and fire wardens at all times during and after an emergency evacuation.
	6. The Supplier must not wedge fire doors or exits open or obstruct them or any fire escape routes.
12. **Welfare**
	1. The Authority Representative will advise the Supplier before the Agreement commences as to which facilities operatives it may use. All facilities are offered on a privilege basis and must be left in a clean condition. If the facilities are abused then permission to use them will be withdrawn and the Supplier will have to provide full welfare facilities at its own cost.
	2. Paint brushes etc. must not be cleaned in hand washbasins and chemicals must never be poured down sinks or drains.
	3. Chemical toilets should only be considered as a short-term provision while the Supplier establishes a full site set-up. Suppliers should liaise with the Authority Representative who can liaise with PSD as required to determine service provisions i.e. water, electricity supplies etc. Where it is not possible to provide such connections then the Supplier shall be expected to identify alternative means of meeting its legal requirements e.g. generators, water tanks etc.
	4. Certain specialist Suppliers will always be expected to provide elements of its welfare facilities e.g. decontamination units for asbestos removal. This should be factored into any contract to undertake works within the Authority estate.
13. **Alcohol and drug policy and smoking on site**
	1. The use or possession of restricted drugs on Authority Premises, except those prescribed by a doctor is expressly forbidden. Operatives taking prescribed drugs must not operate any plant or machinery if they may impair their performance e.g. causes drowsiness.
	2. Supplier Personnel are forbidden from consuming alcohol during working hours.
	3. Any operative suspected of being under the influence of alcohol or drugs when arriving on site must not be permitted to commence work.
	4. The Authority operates a no-smoking policy within its buildings and sites which includes e-cigarettes. The Supplier must not smoke on any Authority Premises, except where authorised within designated areas.
	5. Any operatives found contravening any of the above requirements will be required to leave the Site.
14. **Dress and Behaviour**
	1. When working on Authority Premises and/or Sites the Supplier and any Sub-contractors are required:
		1. to behave in a responsible manner;
		2. to wear appropriate clothing and personal protective equipment, as required by the RAMS;
		3. not to use foul or abusive language under any circumstances;
		4. not to play music via any electronic device/radios, iPod/MP3 player or mobile phone;
		5. not to use mobile phones when operating plant or machinery, where operation is likely to endanger the operative or others or where the situation or location dictates or where to do so contravenes the requirements of the relevant security design standards as issued to the Supplier from time to time.
15. **Waste**
	1. The Supplier, when working on behalf of PSD, must ensure that waste and hazardous substances are stored, handled, transported and disposed of in a legally compliant and responsible way, reflecting waste duty of care requirements, in accordance with regulations and without risk to the environment or human health. The Supplier should reference the Authority Construction Code of Practice document contained within the Authority’s Sustainable Design Guide, available from the Authority Representative.
	2. The Supplier must retain the following documentation from waste management contractors and provide copies for the Authority where required:
		1. a copy of all environmental permits required for the transport and waste management of the waste, appropriate to type and quantity of waste removed from the project Site.
		2. a signed waste transfer or consignments notes for general and hazardous waste, as defined by Applicable Law. Wastes should be identified on the transfer notes by the correct six digit EWC code and the Standard Industrial Classification code where appropriate. All waste documentation must be retained for the required period as stated in relevant legislation.
16. **Monitoring & Returns**

The Supplier is required to complete the monthly contractor monitoring form at Appendix 2 and return this to the Authority Representative as part of the Supplier performance monitoring process. Concerns regarding performance should be raised by the Authority Representative with the relevant Supplier Representative and where necessary appropriate action taken to address concerns.

1. **Disciplinary Procedures**

Poor performance and failure to comply with any contract requirements including this Schedule may result in breach of the Agreement.

1. **Agreement with the Safety Rules for Authority Suppliers & Sub-contractors**

The Supplier is to acknowledge and agree to comply with these rules by completion of Appendix 3 which is to be sent back to the Authority Representative.

**Appendix 1: Building Works Plan**

|  |
| --- |
| Company Name |
| Name and address of clientContact details of architect or principal designer |
| What is the job?Is there anything the client has made you aware of? |
| Key dates: | Start | Finish | Other |
| Where are your welfare facilities? |
| Who else is on site - and their contact details? |
| Who will be the principal contractor? |
| How will you keep everyone on site updated during the job? |
| What are the main dangers on site, (amend to specific project hazards): | Hazard is present | What controls do you have? |
| Falls from height |  |  |
| Work in live operational environments |  |  |
| Confined or constrained spaces |  |  |
| Exposure of building dusts |  |  |
| Exposure to asbestos |  |  |
| Activities of workers requiring supervision |  |  |
| Electricity |  |  |
| Risks to members of the public, the client and others |  |  |
| Vehicular and traffic management issues |  |  |
| Other hazards - Please specify |  |  |

**Appendix 2: Supplier Performance Monitoring**

|  |  |
| --- | --- |
| Contractor Name |  |
| Contracted Services |  |
| Completed By |  |
| Date |  | Reporting Period |  |
|  |
|  |
| Total worker hours worked on contract in month (HQ and site hours, inc sub-contractor) |  |
| Details of contacts with Enforcement Authorities during month *(Provide number of contacts below)* |
| Visit |  | Guidance |  | Enforcement |  | Other |  |
|  |
| **Lagging incident statistics** (Only incidents which occurred whilst working on the Met contract) |
|  | Fatality | Reportable Dangerous Occurrence | 7+ day lost time incident | 3+ day lost time incident | First Aid incident | Near Miss incident |
| *Reporting Requirement* | *(Report to Met Representative within 4 hours)* | *\*(Report to Met Representative within 10 days)* | *(Report via the supplier monthly return to Met Representative by 10th of each month)* |
| Fall from height |  |  |  |  |  |  |
| Machinery |  |  |  |  |  |  |
| Struck by object |  |  |  |  |  |  |
| Vehicle |  |  |  |  |  |  |
| Slip/Trip |  |  |  |  |  |  |
| Assault |  |  |  |  |  |  |
| Struck against |  |  |  |  |  |  |
| Handling |  |  |  |  |  |  |
| All other kinds |  |  |  |  |  |  |
| Total |  |  |  |  |  |  |
|  |
| Of those incidents reported above please indicate which relate to a condition or behaviour: |
| Unsafe behaviour |  |  |  |  |  |  |
| Unsafe condition |  |  |  |  |  |  |
|  |  |
| Has the physical condition of a Met asset(s) or the behaviour of a Met employee(s) contributed to an incident involving a supplier employee? |  |
| Has the physical activities of the supplier or the behaviour of a supplier employee contributed to an incident involving a Met employee? |  |
|  |
| **Incident Description and Action Taken post incident investigation:** |
|  |
|  |
| **Contractor Inspection or audit** |
| **Date** |
| **Summary Findings:** |
| **Action Taken:** |

**All data requested with this monthly return should relate to work on the Met contract. It should be returned to Met representative**

**Appendix 3: Acknowledgement of Safety Rules for Authority Suppliers and Sub-contractors**

**NOTE: In the event of any contradiction between these safety rules and a particular contract’s preliminaries, advice must be sought from the Met representative.**

**Acknowledgement of Receipt**

We acknowledge receipt of this Safety Rules for Met Contractors and Sub-contractors document.

We agree to abide by the requirements contained in those procedures and precautions outlined within the document and bring them to the attention of our employees and sub- contractors.

It is understood that a failure to comply with these procedures and precautions may result in personnel being instructed to leave site.

|  |
| --- |
| Signed: |
| Print Name: |
| Position: |
| On behalf of (Company Name): |
| Date: |

**Complete, scan and email to: Appointed Met representative**

Records Policy

1. Reports

## Any or all of the following reports may be required from the Supplier who shall provide at the Supplier's expense (except in relation to paragraph1.1.10 below) such reports in accordance with the timings specified in this Agreement and, if no timing is specified, in the time reasonably requested by the Authority:

### delay reports;

### test reports;

### Management Information reports for all Services, including:

#### record of all Approved Change Requests agreed in accordance with the Change Control Procedure Schedule;

#### the risk register change management reports in respect of Contract Changes;

#### incident, problem, capacity, financial and other ITIL management reports; and

#### performance monitoring reports;

### annual report on the insurances to be maintained in accordance with this Agreement;

### security reports (including reports relating to the Supplier's compliance with any accreditation required under this Agreement);

### cost centre reports, reports relating to the afinancial model (where applicable) and other cost management report;

### Force Majeure Event reports;

### Business continuity and disaster recovery test reports;

### such other reports set out in this Agreement (including the Service Description Schedule); and

### any other reports the Authority may reasonably require from time to time (such other reports being subject to the Authority paying the Supplier for any pre-agreed and reasonable additional costs).

1. **R****ecords**
	1. The Supplier shall retain and maintain all the records (including superseded records) referred to in Appendix 1 of this Schedule:
		1. in accordance Good Industry Practice;
		2. in chronological order;
		3. in a form that is capable of audit; and
		4. at its own expense.
	2. The Supplier shall make the records referred to in Appendix 1 of this Schedule available for inspection by the Authority on request during the Term and thereafter for the periods specified in paragraphs 2.4 and 2.5 below, subject to the Authority giving reasonable notice.
	3. Wherever practical, original records shall be retained and maintained by the Supplier in hard copy form. True copies of the original records may be kept by the Supplier where it is not practicable to retain original records.
	4. The Supplier shall, during the Term and a period of at least seven (7) years following the expiry or termination (however arising) of this Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including all records (whether in electronic format or otherwise) referred to in Appendix 1 of this Schedule.
	5. Financial records referred to in Appendix 1 of this Schedule shall be retained and maintained in safe storage by the Supplier for a period of at least six (6) years after the expiry or termination (however arising) of this Agreement.
	6. Without prejudice to the foregoing, the Supplier shall provide the Authority:
		1. as soon as they are available, and in any event within sixty (60) Working Days (or such other period as the parties agree in writing) after the end of the first six (6) months of each financial year of this Agreement during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if appropriate, of consolidated un-audited interim accounts of the Supplier, its subsidiaries and holding company (if any and as such terms are defined by section 1159 Companies Act 2006) which would (if the Supplier were listed on the London Stock Exchange whether or not it is) be required to be sent to shareholders as at the end of and for each such six (6) month period; and
		2. as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than one hundred and thirty (130) days (or such other period as the parties agree in writing) after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if appropriate, the consolidated audited accounts of the Supplier and its associated companies (if any) in respect of that period, prepared in accordance with the Companies Act 2006 and generally accepted accounting principles and bases in the UK, consistently applied together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.

**Appendix 1: Records to be kept by the Supplier**

[to be amended or added to as required]

In accordance with the provisions of paragraph2 above, the Supplier shall maintain the following records:

1. this Agreement (including its Schedules) and all amendments and changes to such documents;
2. all other documents which this Agreement expressly requires to be prepared;
3. records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel;
4. notices, reports and other documentation relating to the Services submitted by an expert;
5. all operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and any relevant Supplier Equipment;
6. documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event;
7. all formal notices, reports or submissions made by the Supplier to the Authority Representative in connection with the provision of Services;
8. all certificates, accreditations, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services;
9. documents prepared by the Supplier in support of claims for the Charges;
10. documents submitted by the Supplier pursuant to and/or in accordance with the Change Control Procedure;
11. documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure;
12. documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier;
13. invoices and records related to VAT sought to be recovered by the Supplier;
14. financial records including audited and un-audited accounts of the Supplier and (if a Guarantee has been given) the guarantor;
15. records relating to the Services required to be retained by the Supplier by Law including in relation to health and safety matters and health and safety files and all consents;
16. all documents relating to the Insurances and any claims made in respect of them;
17. all other records, notices, accreditations or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement;
18. all journals and audit trial data referred to in the Security Policy; and
19. all monitoring or system logs (including incident logs).
1. Drafting note: this Schedule contains a number of drafting notes which may not be suitable for sharing with prospective second tier suppliers / Authority Supply Chain Members. MOPAC will need to consider the extent to which it amends or deletes such drafting notes before issuing this Agreement to bidders. [↑](#footnote-ref-1)
2. Drafting note: MOPAC to consider if this definition and paragraphs 10.3 and 10.4 are applicable to this Agreement. Please also check and confirm that the Service Description Schedule contains detailed provisions on the operation of Work Orders. Work Order Management may be more relevant to, for example, Hard FM services as opposed to cleaning services but this should be checked and confirmed with the Next Gen Integrator team at MOPAC. [↑](#footnote-ref-2)
3. Include this option rather than “the Supplier” where multiple second tier contractors / Authority Supply Chain Members will be operating on Work Orders. [↑](#footnote-ref-3)
4. Drafting note: description of activity to be considered. This is an example only. [↑](#footnote-ref-4)
5. Drafting note: see paragraph 12 below and amendment to clause 37.4. Will this be the Authority’s sole and absolute discretion? Are there any other areas where MOPAC wish to carve out / limit the role of the Integrator? [↑](#footnote-ref-5)
6. Drafting note: paragraph to be considered having due regard to the nature of the services to be provided (e.g. some aspects of this paragraph may not be relevant to the provision of catering services but could be relevant to a Total FM type contract). [↑](#footnote-ref-6)
7. Drafting note: likely to apply to all Authority Supply Chain Contracts / second tier contracts based on the Standard Terms and Conditions Complex Services Contract and relating to the Next Gen programme. [↑](#footnote-ref-7)
8. Drafting note: likely to apply to all Authority Supply Chain Contracts / second tier contracts based on the Standard Terms and Conditions Complex Services Contract and relating to the Next Gen programme. [↑](#footnote-ref-8)
9. Drafting note: likely to apply to all Authority Supply Chain Contracts / second tier contracts based on the Standard Terms and Conditions Complex Services Contract and relating to the Next Gen programme. [↑](#footnote-ref-9)
10. Drafting note: MOPAC to consider relevance on a contract by contract basis. [↑](#footnote-ref-10)
11. Drafting note: likely to apply to all Authority Supply Chain Contracts / second tier contracts based on the Standard Terms and Conditions Complex Services Contract and relating to the Next Gen programme. [↑](#footnote-ref-11)
12. Drafting note: likely to apply to all Authority Supply Chain Contracts / second tier contracts based on the Standard Terms and Conditions Complex Services Contract and relating to the Next Gen programme. [↑](#footnote-ref-12)
13. Drafting note: likely to apply to all Authority Supply Chain Contracts / second tier contracts based on the Standard Terms and Conditions Complex Services Contract and relating to the Next Gen programme. [↑](#footnote-ref-13)
14. Drafting note: before including this Schedule in a second tier agreement / Authority Supply Chain Contract, MOPAC should carefully consider the interface between KPIs under the Integrator Agreement and the relevant second tier agreement / Authority Supply Chain Contract [↑](#footnote-ref-14)
15. Drafting note: MOPAC to consider if the payment terms in the underlying contract are compliant with the Housing, Grants, Construction and Regeneration Act 1996 (as amended) – this will need to be considered where construction works (as defined under the Act) are envisaged. Please note this currently (April 2022) would include FM works as well as managing the delivery by a third party (e.g. a sub-contractor). [↑](#footnote-ref-15)
16. Drafting note: paragraphs 11.1 and 11.2 will likely be relevant to contracts based on the Standard Terms and Conditions Complex Services Contract and where Work Orders are less likely to apply. [↑](#footnote-ref-16)
17. Drafting note: paragraphs 11.3 and 11.4 are more likely to apply where the contract is task / Work Order driven. MOPAC to carefully consider approach on payment and payment terms under the relevant base contract to ensure consistency with the Housing, Grants, Construction and Regeneration Act – see comments on this act in footnote above. [↑](#footnote-ref-17)
18. Drafting note: reference to “period” will need to be checked and confirmed against the payment profile for the relevant contract and the way Work Order are intended to operate (which will need to be set out in detail in the Service Description Schedule). [↑](#footnote-ref-18)
19. Drafting note: MOPAC to check cross references [↑](#footnote-ref-19)
20. Drafting note: MOPAC considering further. It does not appear that the concept of Authority Cause applies to this Agreement (i.e. where a breach by the Authority causes the Supplier to be unable to deliver its obligations it may claim time and/or compensation from the Authority). If that is correct then the wording in yellow highlight should be deleted. MOPAC to consider what should be included in the Services Description on measures to prevent admission of unauthorised persons. [↑](#footnote-ref-20)
21. Drafting note: see comments on Authority Data / Authority Data above. MOPAC to review. [↑](#footnote-ref-21)
22. Drafting note: this drafting should be included where the Supplier has a CAFM system or equivalent. Where the Supplier’s system is not intended to have interoperability with the Integrator System then this paragraph 15.1 should be deleted and paragraph 15.2 used instead. [↑](#footnote-ref-22)
23. Drafting note: MJ to review and confirm if this is acceptable. [↑](#footnote-ref-23)
24. Drafting note: see comments on Authority Data / Authority Data above. MOPAC to review. [↑](#footnote-ref-24)
25. Drafting note: regardless of whether paragraph 15.1 or 15.2 is used, paragraph 15.3 should be included. [↑](#footnote-ref-25)