

Schedule 17

Governance

Schedule 17: Governance

1 Definitions

1.1 In this Schedule, the following definitions shall apply:

"Board Member"	the initial persons appointed by the Authority and Supplier to the Boards as set out in Annex 1 and any replacements from time to time agreed by the Parties in accordance with Paragraph 3.3;
"Boards"	the Service Management Board, Programme Board, Change Management Board, Technical Board and Risk Management Board and "Board" shall mean any of them;
"Change Management Board"	the body described in Paragraph 6;
"Project Managers"	the individuals appointed as such by the Authority and the Supplier in accordance with Paragraph 2;
"Risk Management Board"	the body described in Paragraph 8;
"Service Management Board"	the body described in Paragraph 4; and
"Technical Board"	the body described in Paragraph 7.

2 Management of the Services

- 2.1 The Supplier and the Authority shall each appoint a project manager for the purposes of this Contract through whom the Services shall be managed at a day-to-day level.
- 2.2 Both Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.

3 Boards

Establishment and structure of the Boards

- 3.1 The Boards shall be established by the Authority for the purposes of this Contract on which both the Supplier and the Authority shall be represented.
- 3.2 In relation to each Board, the:
- 3.2.1 Authority Board Members;
 - 3.2.2 Supplier Board Members;

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- 3.2.3 frequency that the Board shall meet (unless otherwise agreed between the Parties);
 - 3.2.4 location of the Board's meetings; and
 - 3.2.5 planned start date by which the Board shall be established, shall be as set out in Annex 1.
- 3.3 In the event that either Party wishes to replace any of its appointed Board Members, that Party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority Board Member has at all times a counterpart Supplier Board Member of equivalent seniority and expertise.

Board meetings

- 3.4 Each Party shall ensure that its Board Members shall make all reasonable efforts to attend Board meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Board meeting, that person shall use all reasonable endeavours to ensure that:
- 3.4.1 a delegate attends the relevant Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and
 - 3.4.2 that they are debriefed by such delegate after the Board Meeting.
- 3.5 A chairperson shall be appointed by the Authority for each Board as identified in Annex 1. The chairperson shall be responsible for:
- 3.5.1 scheduling Board meetings;
 - 3.5.2 setting the agenda for Board meetings and circulating to all attendees in advance of such meeting;
 - 3.5.3 chairing the Board meetings;
 - 3.5.4 monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings;
 - 3.5.5 ensuring that minutes for Board meetings are recorded and disseminated electronically to the appropriate persons and to all Board meeting participants within 7 Working Days after the Board meeting; and
 - 3.5.6 facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.
- 3.6 Board meetings shall be quorate as long as at least two representatives from each Party are present.
- 3.7 The Parties shall ensure, as far as reasonably practicable, that all Boards shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that Board Members

are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

4 Role of the Service Management Board

- 4.1 The Service Management Board shall be responsible for the executive management of the Services and shall:
 - 4.1.1 be accountable to the Programme Board for comprehensive oversight of the Services and for the senior management of the operational relationship between the Parties;
 - 4.1.2 report to the Programme Board on significant issues requiring decision and resolution by the Programme Board and on progress against the high level Implementation Plan;
 - 4.1.3 receive reports from the Project Managers on matters such as issues relating to delivery of existing Services and performance against Performance Indicators, progress against the Implementation Plan and possible future developments;
 - 4.1.4 review and report to the Programme Board on service management, co-ordination of individual projects and any integration issues;
 - 4.1.5 deal with the prioritisation of resources and the appointment of Project Managers on behalf of the Parties;
 - 4.1.6 consider and resolve Disputes (including Disputes as to the cause of a Delay or the performance of the Services) in the first instance and if necessary escalate the Dispute to the Programme Board; and
 - 4.1.7 develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same.

5 Role of the Programme Board

- 5.1 The Programme Board shall:
 - 5.1.1 provide senior level guidance, leadership and strategy for the overall delivery of the Services;
 - 5.1.2 be the point of escalation from the Change Management Board, the Technical Board and the Service Management Board; and
 - 5.1.3 carry out the specific obligations attributed to it in Paragraph 5.2.
- 5.2 The Programme Board shall:
 - 5.2.1 ensure that this Contract is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by the Authority and the commercial benefit derived by the Supplier;
 - 5.2.2 receive and review reports from the Service Management Board and review reports on technology, service and other developments that offer

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potential for improving the benefit that either Party is receiving, in particular value for money;

- 5.2.3 determine business strategy and provide guidance on policy matters which may impact on the implementation of the Services or on any Optional Services;
- 5.2.4 authorise the commissioning and initiation of, and assess opportunities for, Optional Services; and
- 5.2.5 provide guidance and authorisation to the Change Management Board on relevant Changes.

6 Role of the Change Management Board

- 6.1 The Change Management Board shall assess the impact and approve or reject all Change Requests. Changes which will have a significant impact on the Services shall be escalated to the Programme Board.
- 6.2 The Change Management Board shall:
 - 6.2.1 analyse and record the impact of all Changes, specifically whether the proposed Change:
 - (a) has an impact on other areas or aspects of this Contract and/or other documentation relating to the Services;
 - (b) has an impact on the ability of the Authority to meet its agreed business needs within agreed time-scales;
 - (c) will raise any risks or issues relating to the proposed Change; and
 - (d) will provide value for money in consideration of any changes to the Financial Model, future Charges and/or Performance Indicators and Target Performance Levels;
 - 6.2.2 provide recommendations, seek guidance and authorisation from the Programme Board as required; and
 - 6.2.3 approve or reject (close) all proposed Changes.

7 Role of the Technical Board

- 7.1 The Technical Board shall be accountable to the Programme Board for oversight of the technology used in the Supplier Solution and ensuring that technological choices are made to maximise the long term value of the Supplier Solution as a business asset of the Authority.
- 7.2 The Technical Board shall:
 - 7.2.1 ensure compliance with the Standards;
 - 7.2.2 grant dispensations for variations from such compliance where appropriate;

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- 7.2.3 assure the coherence and consistency of the systems architecture for the Supplier Solution;
- 7.2.4 monitor developments in new technology and reporting on their potential benefit to the Services;
- 7.2.5 provide advice, guidance and information on technical issues; and
- 7.2.6 assure that the technical architecture of the Supplier Solution is aligned to the Service Requirements and has sufficient flexibility to cope with future requirements of the Authority.

8 Role of the Risk Management Board

- 8.1 The Risk Management Board shall identify and manage risks relating to the performance of the Services.
- 8.2 The Risk Management Board shall:
 - 8.2.1 provide assurance to the Programme Board that risks are being effectively managed across the Services, including reporting the 'top 5' risks to the Programme Board on a monthly basis;
 - 8.2.2 identify the risks to be reported to the Programme Board via the regular risk reports;
 - 8.2.3 subject to the Change Control Procedure, accept or reject new risks proposed for inclusion in the Risk Register;
 - 8.2.4 ratify or refuse requests to close risks on the Risk Register; and
 - 8.2.5 identify risks relating to or arising out of the performance of the Services and provisional owners of these risks.

9 Contract Management Mechanisms

- 9.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Contract.
- 9.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Authority, processes for:
 - 9.2.1 the identification and management of risks;
 - 9.2.2 the identification and management of issues; and
 - 9.2.3 monitoring and controlling project plans.
- 9.3 The Risk Register shall be updated by the Supplier and submitted for review by the Risk Management Board.

10 Annual Review

- 10.1 An annual review meeting shall be held throughout the Term on a date to be agreed between the Parties.

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- 10.2 The meetings shall be attended by the Account Lead of the Supplier and the Commercial Lead and Service Owner of the Authority and any other persons considered by the Authority necessary for the review.

Annex 1: Representation and Structure of Boards

[REDACTED]

Schedule 18

Change Control Procedure

Schedule 18: Change Control Procedure

1. Definitions

1.1 In this Schedule, the following definitions shall apply:

"Authority Change Manager"	the person appointed to that position by the Authority from time to time and notified in writing to the Supplier or, if no person is notified, the Authority Representative;
"Change Request"	a written request for a Contract Change which shall be substantially in the form of Annex 1;
"Change Communication"	any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;
"Drafting Party"	the Party that will prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Receiving Party for its signature;
"Fast-track Change"	any Contract Change which the Parties agree to expedite in accordance with Paragraph 8;
"Impact Assessment"	an assessment of a Change Request in accordance with Paragraph 5;
"Impact Assessment Estimate"	has the meaning given in Paragraph 4.3;
"Receiving Party"	the Party which receives a proposed Change Authorisation Note for signature pursuant to Paragraph 6.2; and
"Supplier Change Manager"	the person appointed to that position by the Supplier from time to time and notified in writing to the Authority or, if no person is notified, the Supplier Representative.

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2. General Principles of Change Control Procedure

- 2.1 This Schedule sets out the procedure for dealing with Changes.
- 2.2 Operational Changes shall be processed in accordance with Paragraph 9. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.
- 2.3 The Parties shall deal with Contract Change as follows:
 - 2.3.1 either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;
 - 2.3.2 unless this Contract otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 5 before the Contract Change can be either approved or implemented;
 - 2.3.3 the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;
 - 2.3.4 the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;
 - 2.3.5 save as otherwise provided in this Contract, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2; and
 - 2.3.6 if a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.
- 2.4 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in Schedule 10 (*Testing Procedures*), and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify Milestones and/or a Key Milestone and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.
- 2.5 Until a Change Authorisation Note has been signed and issued in accordance with Paragraph 6.2, then:
 - 2.5.1 unless the Authority expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Contract as if the proposed Contract Change did not apply; and
 - 2.5.2 any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Contract.
- 2.6 Unless the Authority directs otherwise, the Supplier shall:
 - 2.6.1 within 10 Working Days of the final signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Contract updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant

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Contract Changes were agreed; and

2.6.2 thereafter provide to the Authority such further copies of the updated Contract as the Authority may from time to time request.

3. Costs

3.1 Subject to Paragraph 3.3:

3.1.1 the costs of preparing each Change Request shall be borne by the Party making the Change Request; and

3.1.2 the costs incurred by the Supplier in undertaking an Impact Assessment shall be borne by the Party making the Change Request provided that the Authority shall not be required to pay any such costs if:

- (a) such costs are below £5,000;
- (b) the Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services; or
- (c) such costs exceed those in the accepted Impact Assessment Estimate.

3.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Schedule 11 (*Charges and Invoicing*). The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.

3.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.

4. Change Request

4.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Annex 1 and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.

4.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within 10 Working Days of the date of issuing the Change Request.

4.3 If the Authority issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within 10 Working Days of the date of receiving the Change Request an estimate ("**Impact Assessment Estimate**") of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Authority within 10 Working Days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Authority.

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- 4.4 If the Authority accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Authority as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Authority and provided that sufficient information is received by the Authority to fully understand:

4.4.1 The nature of the request for clarification; and

4.4.2 The reasonable justification for the request;

the time period to complete the Impact Assessment shall be extended by the time taken by the Authority to provide that clarification. The Authority shall respond to the request for clarification as soon as is reasonably practicable.

5. Impact Assessment

- 5.1 Each Impact Assessment shall be completed in good faith and shall include:

5.1.1 details of the proposed Contract Change including the reason for the Contract Change; and

5.1.2 details of the impact of the proposed Contract Change on the Services, the Optional Services (if any) and the Supplier's ability to meet its other obligations under this Contract;

5.1.3 any variation to the terms of this Contract that will be required as a result of that impact, including changes to:

- (a) the Services Description, the Performance Indicators and/or the Target Performance Levels;
- (b) the format of Government Data, as set out in the Services Description;
- (c) the Milestones, Implementation Plan and any other timetable previously agreed by the Parties;
- (d) other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority's IT infrastructure;

5.1.4 details of the cost of implementing the proposed Contract Change;

5.1.5 details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;

5.1.6 a timetable for the implementation, together with any proposals for the testing of the Contract Change;

5.1.7 details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and

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- 5.1.8 such other information as the Authority may reasonably request in (or in response to) the Change Request.
- 5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the UK, in the event of the Personal Data being subject to UK GDPR, or the EU, in the event of the Personal Data being subject to EU GDPR, the preparation of the Impact Assessment shall also be subject to Clause 21 (*Protection of Personal Data*).
- 5.3 Subject to the provisions of Paragraph 5.4, the Authority shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Impact Assessment.
- 5.4 If the Authority receives a proposed Contract Change from the Supplier and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within 5 Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Authority within 10 Working Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this Paragraph 5.4 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.
- 5.5 The calculation of costs for the purposes of Paragraphs 5.1.4 and 5.1.5 shall:
 - 5.5.1 be based on the Financial Model;
 - 5.5.2 facilitate the Financial Transparency Objectives;
 - 5.5.3 include estimated volumes of each type of resource to be employed and the applicable rate card;
 - 5.5.4 include full disclosure of any assumptions underlying such Impact Assessment;
 - 5.5.5 include evidence of the cost of any assets required for the Change; and
 - 5.5.6 include details of any new Sub-contracts necessary to accomplish the Change.
- 6. **Authority's Right of Approval**
 - 6.1 Within 15 Working Days of receiving the Impact Assessment from the Supplier or within 10 Working Days of receiving the further information that it may request pursuant to Paragraph 5.4, the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:
 - 6.1.1 approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;
 - 6.1.2 in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with
 - 6.1.3 any Changes in Law. If the Authority does reject a Contract Change, then it shall

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explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or

6.1.4 in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within 5 Working Days of such request. Subject to Paragraph 5.4, on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract Change within 10 Working Days.

6.2 If the Authority approves the proposed Contract Change pursuant to Paragraph 6.1 and it has not been rejected by the Supplier in accordance with Paragraph 7, then it shall inform the Supplier and, unless otherwise directed by the Authority, the Supplier shall be the Drafting Party. Following receipt by the Receiving Party of the Change Authorisation Note, it shall sign both copies and return one copy to the Drafting Party. Unless otherwise specified, on the Receiving Party's signature the Change Authorisation Note shall constitute (or, where the Authority has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Contract.

6.3 If the Receiving Party does not sign the Change Authorisation Note within 10 Working Days of receipt, then the Drafting Party shall have the right to notify the Receiving Party and if the Receiving Party does not sign the Change Authorisation Note within 5 Working Days of such notification, then the Drafting Party may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

7. Supplier's Right of Approval

7.1 Following an Impact Assessment, if:

7.1.1 the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:

- (a) materially and adversely affect the risks to the health and safety of any person; and/or
- (b) require the Services to be performed in a way that infringes any Law; and/or

7.1.2 the Supplier demonstrates to the Authority's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within 5 Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 4.3.

8. Fast-Track Changes

8.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.

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8.2 If:

- 8.2.1 the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed 4 in any 12 month period; and
- 8.2.2 both Parties agree the value of the proposed Contract Change over the remaining Term and any period for which Termination Services may be required does not exceed £[insert figure] and the proposed Contract Change is not significant (as determined by the Authority acting reasonably),

then the Parties shall confirm to each other in writing that they shall use the process set out in Paragraphs 4, 5, 6 and 7 but with reduced timescales, such that any period of 15 Working Days is reduced to 5 Working Days, any period of 10 Working Days is reduced to 2 Working Days and any period of 5 Working Days is reduced to 1 Working Day.

- 8.3 The Parties may agree in writing to revise the parameters set out in Paragraph 8.2 from time to time or that the Fast-track Change procedure shall be used in relation to a particular Contract Change notwithstanding that the total number of Contract Changes to which such procedure is applied will then exceed 4 in a 12 month period.

9. Operational Change Procedure

- 9.1 Any Operational Changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:

- 9.1.1 have an impact on the business of the Authority;
- 9.1.2 require a Change to this Contract;
- 9.1.3 have a direct impact on use of the Services; or
- 9.1.4 involve the Authority in paying any additional Charges or other costs.

- 9.2 The Authority may request an Operational Change by submitting a written request for Operational Change ("**RFOC**") to the Supplier Representative.

- 9.3 The RFOC shall include the following details:

- 9.3.1 the proposed Operational Change; and
- 9.3.2 the time-scale for completion of the Operational Change.

- 9.4 The Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.

- 9.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Authority when the Operational Change is completed.

10. Communications

- 10.1 For any Change Communication to be valid under this Schedule, it must be sent to either the Authority Change Manager or the Supplier Change Manager, as applicable. The provisions of Clause 42 (*Notices*) shall apply to a Change Communication as if it were a

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notice.

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Annex 1: Change Request Form

CR No.:	Title:	Type of Change:
Contract:		Required by Date:
Action:	Name:	Date:
Raised By:		
Area(s) Impacted (<i>Optional Field</i>):		
Assigned for Impact Assessment by:		
Assigned for Impact Assessment to:		
Supplier Reference No.:		
Full description of requested Contract Change (including proposed Changes to the wording of the Contract):		
Details of any proposed alternative scenarios:		
Reasons for and benefits and disadvantages of requested Contract Change:		
Signature of requesting Change owner:		
Date of Request:		

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Annex 2: Change Authorisation Note

CR No.:	Title:	Date raised:
Contract:	Type of change:	Required by date:
[Key Milestone Date: [if any]]		
Detailed description of Contract Change for which Impact Assessment is being prepared and wording of related changes to the Contract:		
Proposed adjustment to the Charges resulting from the Contract Change:		
Details of proposed one-off additional Charges and means for determining these (e.g. fixed price basis):		
Signed on behalf of the Authority:	Signed on behalf of the Supplier:	
Signature:_____	Signature:_____	
Name:_____	Name:_____	
Position:_____	Position:_____	
Date:_____	Date:_____	

Schedule 19

Dispute Resolution Procedure

Schedule 19: Dispute Resolution Procedure

1 Definitions

1.1 In this Schedule, the following definitions shall apply:

"CEDR"	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre 1 Patternoster Lane, St Paul's, London, EC4M 7BQ;
"Counter Notice"	has the meaning given in Paragraph 7.2;
"Expert"	in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 to act as an expert in relation to that Dispute;
"Expert Determination"	determination by an Expert in accordance with Paragraph 6;
"Mediation Notice"	has the meaning given in Paragraph 4.2;
"Mediator"	the independent third party appointed in accordance with Paragraph 5.2 to mediate a Dispute;
"Multi-Party Dispute"	a Dispute which involves the Parties and one or more Related Third Parties;
"Multi-Party Dispute Representatives"	has the meaning given in Paragraph 9.6;
"Multi-Party Dispute Resolution Board"	has the meaning given in Paragraph 9.6;
"Related Third Party"	a party to: (a) another contract with the Authority or the Supplier which is relevant to this Contract; or (b) a Sub-contract; and
"Supplier Request"	a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

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2 Dispute Notices

2.1 If a Dispute arises then:

2.1.1 the Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and

2.1.2 if such attempts are not successful within a reasonable period, not being longer than 20 Working Days, either Party may issue to the other a Dispute Notice.

2.2 A Dispute Notice:

2.2.1 shall set out:

(a) the material particulars of the Dispute;

(b) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and

(c) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and

2.2.2 may specify in accordance with the requirements of Paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority) or considers (in the case of the Supplier) that the Dispute is a Multi-Party Dispute, in which case Paragraph 2.3 shall apply.

2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to Paragraph 2.2.2, then:

2.3.1 if it is served by the Authority it shall be treated as a Multi-Party Procedure Initiation Notice; and

2.3.2 if it is served by the Supplier it shall be treated as a Supplier Request, and in each case the provisions of Paragraph 9 shall apply.

2.4 Subject to Paragraphs 2.5 and 3.2 and so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:

2.4.1 first by commercial negotiation (as prescribed in Paragraph 4);

2.4.2 then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5); and

2.4.3 lastly by recourse to arbitration (as prescribed in Paragraph 7) or litigation (in accordance with Clause 44 (Governing Law and Jurisdiction)).

2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Contract and may also

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be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.

- 2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Contract regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under Paragraph 8 (*Urgent Relief*).

3 Expedited Dispute Timetable

- 3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within 5 Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
- 3.2.1 in Paragraph 4.2.3, 10 Working Days;
 - 3.2.2 in Paragraph 5.2, 10 Working Days;
 - 3.2.3 in Paragraph 6.2, 5 Working Days; and
 - 3.2.4 in Paragraph 7.2, 10 Working Days.
- 3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within 2 Working Days after the deadline has passed, the Authority may set a revised deadline provided that it is no less than 5 Working Days before the end of the period of time specified in the applicable Paragraphs (or 2 Working Days in the case of Paragraph 6.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

4 Commercial Negotiation

- 4.1 Following the service of a Dispute Notice, then, so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Authority and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Authority's Commercial Lead and the Supplier's Account Lead.
- 4.2 If:

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- 4.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;
- 4.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this Paragraph 4; or
- 4.2.3 the Parties have not settled the Dispute in accordance with Paragraph 4.1 within 30 Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation in accordance with Paragraph 5 (a "**Mediation Notice**").

5 Mediation

- 5.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with the version of CEDR's Model Mediation Procedure which is current at the time the Mediation Notice is served (or such other version as the Parties may agree).
- 5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within 20 Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.
- 5.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 5.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Change Control Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

6 Expert Determination

- 6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an IT, accounting or financing nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 or, if applicable, mediation in accordance with Paragraph 5, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an Expert for determination.
- 6.2 The Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 10 Working Days of the relevant request made pursuant to Paragraph 6.1, or if the person appointed is unable or unwilling to act, the Expert shall be appointed:

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- 6.2.1 if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);
- 6.2.2 if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
- 6.2.3 if the Dispute relates to a matter of a technical nature not falling within Paragraphs 6.2.1 or 6.2.2, on the instructions of the president (or equivalent) of:
 - (a) an appropriate body agreed between the Parties; or
 - (b) if the Parties do not reach agreement on the relevant body within 15 Working Days of the relevant request made pursuant to Paragraph 6.1, such body as may be specified by the President of the Law Society on application by either Party.
- 6.3 The Expert shall act on the following basis:
 - 6.3.1 they shall act as an expert and not as an arbitrator and shall act fairly and impartially;
 - 6.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
 - 6.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 30 Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
 - 6.3.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within 20 Working Days of the Expert's determination being notified to the Parties;
 - 6.3.5 the process shall be conducted in private and shall be confidential; and
 - 6.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

7 Arbitration

- 7.1 Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 6, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 7.5.
- 7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have 15 Working Days following receipt of such notice to serve a reply (a "**Counter**

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Notice") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such 15 Working Day period.

- 7.3 If the Authority serves a Counter Notice, then:
- 7.3.1 if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 7.5 shall apply; or
 - 7.3.2 if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.
- 7.4 If the Authority does not serve a Counter Notice within the 15 Working Day period referred to in Paragraph 7.2, the Supplier may either commence arbitration proceedings in accordance with Paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.
- 7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 7.1 to 7.4:
- 7.5.1 the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("**LCIA**") (subject to Paragraphs 7.5.5, 7.5.6 and 7.5.7);
 - 7.5.2 the arbitration shall be administered by the LCIA;
 - 7.5.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
 - 7.5.4 if the Parties fail to agree the appointment of the arbitrator within 10 Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
 - 7.5.5 the chair of the arbitral tribunal shall be British;
 - 7.5.6 the arbitration proceedings shall take place in London and in the English language; and
 - 7.5.7 the seat of the arbitration shall be London.

8 Urgent Relief

- 8.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

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- 8.1.1 for interim or interlocutory remedies in relation to this Contract or infringement by the other Party of that Party's Intellectual Property Rights; and/or
- 8.1.2 where compliance with Paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

9 Multi-Party Disputes

- 9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 9 (the "**Multi-Party Dispute Resolution Procedure**").
- 9.2 If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Supplier which sets out the Authority's determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice a "**Multi-Party Procedure Initiation Notice**".
- 9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with Paragraph 7, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority.
- 9.4 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within 5 Working Days whether the Dispute is:
 - 9.4.1 a Multi-Party Dispute, in which case the Authority shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
 - 9.4.2 not a Multi-Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 8.
- 9.5 If the Authority has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.
- 9.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the "**Multi-Party Dispute Resolution Board**") comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:
 - 9.6.1 the Authority;
 - 9.6.2 the Supplier;
 - 9.6.3 each Related Third Party involved in the Multi-Party Dispute; and

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9.6.4 any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,

(together "**Multi-Party Dispute Representatives**").

9.7 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:

9.7.1 the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;

9.7.2 the Multi-Party Dispute Resolution Board shall first meet within 10 Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within 5 Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and

9.7.3 in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.

9.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within 25 Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:

9.8.1 either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case Paragraph 5 shall apply;

9.8.2 either Party may request that the Multi-Party Dispute is referred to an Expert in which case Paragraph 6 shall apply; and/or

9.8.3 subject to Paragraph 9.9, Paragraph 7 shall apply to the Multi-Party Dispute,

and in each case references to the "Supplier" or the "Parties" in such provisions shall include a reference to all Related Third Parties.

9.9 If a Multi-Party Dispute is referred to arbitration in accordance with Paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any

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such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub Contractor, by the Supplier.

Schedule 20

Reports and Records Provisions

Schedule 20: Reports and Records Provisions

1 Other Reports

1.1 The Authority may require any or all of the following reports:

- 1.1.1 delay reports;
- 1.1.2 reports relating to Testing and tests carried out under Schedule 5 (*Security Management*) and Schedule 22 (*Service Continuity Plan and Corporate Resolution Planning*);
- 1.1.3 reports which the Supplier is required to supply as part of the Management Information;
- 1.1.4 annual reports on the Insurances;
- 1.1.5 security reports; and
- 1.1.6 Force Majeure Event reports.

2 Records

2.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 1 and Annex 1 (together "**Records**");

- 2.1.1 in accordance with the requirements of The National Archives and Good Industry Practice;
- 2.1.2 in chronological order;
- 2.1.3 in a form that is capable of audit; and
- 2.1.4 at its own expense.

2.2 The Supplier shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.

2.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.

2.4 The Supplier shall, during the Term and a period of at least 7 years following the expiry or termination of this Contract, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.

2.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least 7 years after the expiry or termination of this Contract.

2.6 Without prejudice to the foregoing, the Supplier shall provide the Authority:

- 2.6.1 as soon as they are available, and in any event within 60 Working Days after the end of the first 6 months of each financial year of the Supplier during the

Schedule 20 (Reports and Records Provisions)

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Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such 6 month period; and

- 2.6.2 as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than 130 Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.

3 Virtual Library

- 3.1 The Authority shall, no later than eight (8) weeks prior to the First Operational Service Commencement Date and without charge to the Supplier, host a Virtual Library on which the Supplier shall (subject to any applicable legislation governing the use or processing of personal data) make information about this Contract available in accordance with the requirements outlined in this Schedule.
- 3.2 Not used.
- 3.3 For the avoidance of doubt, the Virtual Library (excluding any Software used to host it) shall form a database which constitute Project Specific IPR which shall be assigned to the Authority pursuant to Schedule 27 (*Intellectual Property Rights*) of this Contract.
- 3.4 The Supplier shall upload complete and accurate information specified in Annex 2 by the Initial Upload Date (except where prior to the launch of the Virtual Library in which case the date at which the Virtual Library is made available in accordance with Paragraph **Error! Reference source not found.**) onto Virtual Library in the format specified.
- 3.5 Upon any document being uploaded to the Virtual Library, and where the Authority has been granted Access Permission to that document, the Supplier shall email on the same date as the upload, a copy of the document to the nominated Authority Commercial Manager and Contract Manager email addresses.
- 3.6 Except for notices under Clause 42.1 or items covered by Clause 42.4, where the Supplier is under an obligation to provide information to the Authority in a provision under this Contract, then the Supplier's upload of that information onto the Virtual Library shall satisfy the Supplier's obligation to provide the Authority with that information provided that the Authority has access in accordance with this Paragraph 3 and the uploaded information meets the requirements more particularly specified in the relevant provision.
- 3.7 Except to the extent that the requirements provide for earlier and more regular Authority access to up-to-date information, Annex 2 shall not take precedence over any other obligation to provide information in this Contract and the Supplier shall refer to the applicable clause for further details as to the requirement.
- 3.8 The Supplier acknowledges that the Authority shall be entitled to provide each specified

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person (as set out in column 6 of the table at Annex 2) access to view and download the specified information in the Virtual Library in Annex 2 subject upon the occurrence of the event specified in the column marked Access Permission in Annex 2 to this Schedule.

- 3.9 Where Access Permission is not listed (in column 6 of the table at Annex 2) as being subject to the occurrence of a certain event the Supplier shall grant access to the person and information specified (in column 6 of the table at Annex 2) from the Initial Upload Date.
- 3.10 Where Access Permission is specified as being granted to the Authority's Third Party Auditor it shall:
- 3.10.1 be entitled to access, view and download information specified in Annex 2 subject to it entering into a confidentiality agreement with the Supplier to keep the contents confidential (except to the extent disclosure of the confidential information is required under Paragraph 3.10.2 of this Schedule); and
- 3.10.2 report to the Authority (at its request) as to the completeness and accuracy of the information but not the substance of the information.
- 3.11 The Supplier shall not do anything to prevent the Virtual Library retaining in an accessible form all historic or superseded records of the information specified Annex 2. In order to maintain the integrity of the historic archive of the information and documentation and for the purposes of maintaining a clear audit trail, the Supplier shall not delete or overwrite any information that has been stored in the Virtual Library, except for the purposes of maintenance (provided no information is lost during maintenance) or to enable the Supplier to comply with Data Protection Legislation.
- 3.12 The Supplier warrants that the information uploaded to the Virtual Library is accurate, complete, up-to-date and in accordance with this Contract at the date of upload.
- 3.13 Where the Supplier becomes aware that any of the information provided on the Virtual Library is materially inaccurate, incomplete or out of date (other than in respect of historic versions of documents) the Supplier shall provide an update to the information within fourteen (14) days unless already due to be updated beforehand due to an Update Requirement specified in Annex 2.
- 3.14 In the event of a conflict between any requirement in this Contract (excluding Annex 2) for the Supplier to provide information to the Authority and the requirements set out in Annex 2 of this Schedule, the requirement elsewhere in this Contract shall prevail.
- 3.15 Not used.
- 3.16 No later than one (1) Month prior to the Operational Service Commencement Date, the Supplier shall provide training manuals to the Authority relating to the use of the Virtual Library.
- 3.17 On request by the Supplier the Authority shall provide the Supplier's nominated users with a reasonable level of training and ongoing support to enable them to make use of the Virtual Library.
- 3.18 Not used.

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- 3.19 The Authority may transfer responsibility for maintaining specific Records in the Virtual Library from the Supplier to itself or to Service Recipients or to an Other Supplier, upon notifying the Supplier of the Records which the Authority will transfer such responsibility for.

Annex 1: Records to be Kept by the Supplier

The records to be kept by the Supplier are:

- 1 This Contract, its Schedules and all amendments to such documents.
- 2 All other documents which this Contract 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 submitted by any Expert.
- 5 All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and the underlying IT Environment and Supplier Equipment.
- 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 the Services.
- 8 All certificates, 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 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 and/or the Guarantor, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.
- 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 Guarantor and the Supplier.
- 15 Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
- 16 All documents relating to the insurances to be maintained under this Contract and any claims made in respect of them.
- 17 All journals and audit trail data referred to in Schedule 5 (*Security Management*).
- 18 All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Contract.

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Annex 2: Records to Upload to Virtual Library

[REDACTED]

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[Subject to Contract]

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[REDACTED]

Schedule 20: Reports and Records Provisions

[Subject to Contract]

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Schedule 21

Exit Management

Schedule 21: Exit Management

1 Definitions

1.1 In this Schedule, the following definitions shall apply:

"Emergency Exit"	any termination of this Contract which is a: (a) termination of the whole or part of this Contract in accordance with Clause 31 (<i>Termination Rights</i>), except where the period of notice given under that Clause is greater than or equal to 6 months; (b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 31 (<i>Termination Rights</i>); or (c) wrongful termination or repudiation of this Contract by either Party;
"Ethical Wall Agreement"	an ethical wall agreement in a form similar to the draft ethical wall agreement set out at Annex 2;
"Exclusive Assets"	those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;
"Exit Information"	has the meaning given in Paragraph 3.1;
"Exit Manager"	the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties' respective obligations under this Schedule;
"Net Book Value"	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Authority of the same date as this Contract;
"Non-Exclusive Assets"	those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Services but which are also used by the Supplier or Key Sub-contractor for other purposes of material value;
"Ordinary Exit"	any termination of the whole or any part of this Contract which occurs: (a) pursuant to Clause 31 (<i>Termination Rights</i>) where the period of notice given by the Party serving notice to

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terminate pursuant to such Clause is greater than or equal to 6 months; or

- (b) as a result of the expiry of the Initial Term or any Extension Period;

"Transferable Assets" those of the Exclusive Assets which are capable of legal transfer to the Authority;

"Transferable Contracts" the Sub-contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Authority or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation; and

"Transferring Contracts" has the meaning given in Paragraph 7.2.3.

2 Obligations During the Term to Facilitate Exit

2.1 During the Term, the Supplier shall:

2.1.1 create and maintain a register of all:

- (a) Assets, detailing their:
- (b) make, model and asset number;
- (c) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
- (d) Net Book Value;
- (e) condition and physical location; and
- (f) use (including technical specifications); and
- (g) Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;

2.1.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;

2.1.3 agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and

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2.1.4 at all times keep the Registers up to date, in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.

2.2 The Supplier shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Contract.

2.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within 3 months of the Effective Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Contract and all matters connected with this Schedule and each Party's compliance with it.

3 Obligations to Assist on Re-tendering of Services

3.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any tender notice or associated tender documents and/or to facilitate any potential Replacement Suppliers undertaking due diligence:

3.1.1 details of the Service(s);

3.1.2 a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;

3.1.3 an inventory of Government Data in the Supplier's possession or control;

3.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;

3.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;

3.1.6 to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Contract, and to include without limitation such information as is required to be provided under Schedule 24 (*Staff Transfer*); and

3.1.7 such other material and information as the Authority shall reasonably require, (together, the "**Exit Information**").

3.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this

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Paragraph 3.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).

3.3 The Supplier shall:

3.3.1 notify the Authority within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and

3.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Authority or within such other time limits as may be specified within this Contract.

3.4 The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than 4 updates in any 6 month period.

3.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

3.5.1 prepare an informed offer for those Services; and

3.5.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

4 Obligation to enter into an Ethical Wall Agreement on Re-tendering of Services

4.1 The Authority may require the Supplier to enter into the Ethical Wall Agreement at any point during a re-tendering or contemplated re-tendering of the Services or any part of the Services.

4.2 If required to enter into the Ethical Wall Agreement, the Supplier will return a signed copy of the Ethical Wall Agreement within 10 Working Days of receipt. The Supplier's costs of entering into the Ethical Wall Agreement will be borne solely by the Supplier.

5 Exit Plan

5.1 The Supplier shall, within 3 months after the Effective Date, deliver to the Authority an Exit Plan which:

5.1.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the Authority and/or its Replacement Supplier on the Partial Termination, expiry or termination of this Contract;

5.1.2 complies with the requirements set out in Paragraph 5.2; and

5.1.3 is otherwise reasonably satisfactory to the Authority.

5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

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5.3 The Exit Plan shall set out, as a minimum:

- 5.3.1 how the Exit Information is obtained;
- 5.3.2 separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;
- 5.3.3 a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Contract;
- 5.3.4 the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
- 5.3.5 the management structure to be employed during the Termination Assistance Period;
- 5.3.6 a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
- 5.3.7 how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
- 5.3.8 the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in Annex 1 as are applicable);
- 5.3.9 a timetable and critical issues for providing the Termination Services;
- 5.3.10 any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
- 5.3.11 how the Termination Services would be provided (if required) during the Termination Assistance Period;
- 5.3.12 procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 24 (*Staff Transfer*); and
- 5.3.13 how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.

5.4 The Parties acknowledge that the migration of the Services from the Supplier to the Authority and/or its Replacement Supplier may be phased, such that certain of the

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Services are handed over before others.

- 5.5 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 14 days of such request, to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update, the Supplier shall submit the revised Exit Plan to the Authority for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

Finalisation of the Exit Plan

- 5.6 Within 20 Working Days after service of a Termination Notice by either Party or 6 months prior to the expiry of this Contract, the Supplier will submit for the Authority's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- 5.7 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days following its delivery to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

6 Termination Services

Notification of Requirements for Termination Services

- 6.1 The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least 4 months prior to the date of termination or expiry of this Contract or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- 6.1.1 the date from which Termination Services are required;
 - 6.1.2 the nature of the Termination Services required; and
 - 6.1.3 the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the expiry of the Initial Term or any Extension Period or earlier termination of this Contract.
- 6.2 The Authority shall have:
- 6.2.1 an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend

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the Termination Assistance period beyond the date which is 30 months after expiry of the Initial Term or any Extension Period or earlier termination of this Contract; and provided that it shall notify the Supplier to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire; and

- 6.2.2 the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Supplier to such effect.

Termination Assistance Period

- 6.3 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:
- 6.3.1 continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 6.1, provide the Termination Services;
 - 6.3.2 in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the Partial Termination, termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
 - 6.3.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 6.3.2 without additional costs to the Authority;
 - 6.3.4 provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the Parties agree otherwise in accordance with Paragraph 6.5; and
 - 6.3.5 at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.
- 6.4 Without prejudice to the Supplier's obligations under Paragraph 6.3.3, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.3.2 without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.
- 6.5 If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) and/or the applicable Service Credits to take account of such adverse effect.

Termination Obligations

- 6.6 The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any Partial Termination or termination.

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- 6.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule) in respect of the Services that have been terminated, the Supplier shall:
- 6.7.1 cease to use the Government Data save for any Government Data that (i) the Supplier is required to retain copies of by Law (ii) is Personal Data in respect of which the Supplier is a Controller or (iii) the Supplier has rights to hold independently of this Contract;
 - 6.7.2 provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Government Data in electronic form (or such other format as reasonably required by the Authority);
 - 6.7.3 erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Government Data, save for any Government Data that (i) the Supplier is required to retain copies of by Law (ii) is Personal Data in respect of which the Supplier is a Controller or (iii) the Supplier has rights to hold independently of this Contract, and the Supplier shall promptly certify to the Authority that it has completed such deletion;
 - 6.7.4 return to the Authority such of the following as is in the Supplier's possession or control:
 - (a) any parts of the IT Environment and any other equipment which belongs to the Authority; and
 - (b) any items that have been on-charged to the Authority, such as consumables;
 - 6.7.5 vacate any Authority Premises unless access is required to continue to deliver the Services;
 - 6.7.6 provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after the Partial Termination, expiry or termination of this Contract to:
 - (a) such information relating to the Services as remains in the possession or control of the Supplier; and
 - (b) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 6.7.6(b).
- 6.8 Upon Partial Termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if

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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.

7 Assets, Sub-contracts and Software

7.1 Following notice of termination or Partial Termination of this Contract and during the Termination Assistance Period, the Supplier shall not, in respect of the terminated Services, without the Authority's prior written consent:

- 7.1.1 terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;
- 7.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
- 7.1.3 terminate, enter into or vary any licence for Software in connection with the Services.

7.2 Within 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 6.3.5, the Authority shall provide written notice to the Supplier setting out:

- 7.2.1 which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier in respect of the terminated Services ("**Transferring Assets**");
- 7.2.2 which, if any, of:
 - (i) the Exclusive Assets that are not Transferable Assets; and
 - (i) the Non-Exclusive Assets,the Authority and/or the Replacement Supplier requires the continued use of; and
- 7.2.3 which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the "**Transferring Contracts**"),

in order for the Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Services or Replacement Services. Where requested by the Supplier, the Authority and/or its Replacement Supplier shall discuss in good faith with the Supplier which Transferable Contracts are used by the Supplier in matters unconnected to the Services or Replacement Services.

7.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for a

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consideration equal to their Net Book Value, except where:

- 7.3.1 a Termination Payment is payable by the Authority to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or
- 7.3.2 the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Contract, in which case the Authority shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.
- 7.4 Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same.
- 7.5 Where the Supplier is notified in accordance with Paragraph 7.2.3 that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
 - 7.5.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
 - 7.5.2 procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 7.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 7.7 The Authority shall:
 - 7.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
 - 7.7.2 once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 7.8 The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.
- 7.9 The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to Paragraph 7.6 both:

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- 7.9.1 in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
- 7.9.2 in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the Supplier's failure to comply with Clause 16 (*Intellectual Property Rights*) and/or Schedule 27 (*Intellectual Property Rights*).

8 Supplier Personnel

- 8.1 The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 24 (*Staff Transfer*) shall apply.
- 8.2 The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier.
- 8.3 During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Authority and/or the Replacement Supplier.
- 8.4 The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier on disciplinary grounds in accordance with Paragraph 1.5.6 of Part E of Schedule 24 (*Staff Transfer*) or received from any person referred to in the Provisional Supplier Personnel List, regardless of when such notice takes effect.
- 8.5 The Supplier shall not for a period of 12 months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Authority and/or the Replacement Supplier, except that this Paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

9 Charges

- 9.1 During the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services), the Authority shall pay the Charges to the Supplier in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.
- 9.2 Where the Authority requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with Paragraph 6.2:
 - 9.2.1 where more than 6 months' notice is provided, the same rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable; and
 - 9.2.2 where less than 6 months' notice is provided, no more than 1.2 times the rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan)

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shall be payable.

- 9.3 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
- 9.4 Except as otherwise expressly specified in this Contract, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

10 Apportionments

- 10.1 All outgoing and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
- 10.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;
- 10.1.2 the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
- 10.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 10.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 10.1 as soon as reasonably practicable.

Annex 1: Scope of the Termination Services

1 Scope of the Termination Services

- 1.1 The Termination Services to be provided by the Supplier shall include such of the following services as the Authority may specify:
- 1.1.1 ceasing all non-critical Software changes (except where agreed in writing with the Authority);
 - 1.1.2 notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
 - 1.1.3 providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority and/or the Replacement Supplier after the end of the Termination Assistance Period;
 - 1.1.4 delivering to the Authority the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the 12 month period immediately prior to the commencement of the Termination Services;
 - 1.1.5 providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
 - 1.1.6 with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
 - 1.1.7 providing the Authority with any problem logs which have not previously been provided to the Authority;
 - 1.1.8 providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of 12 months after the Termination Assistance Period;
 - 1.1.9 providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
 - 1.1.10 agreeing with the Authority an effective communication strategy and joint communications plan which sets out the implications for Supplier Personnel, Authority staff, customers and key stakeholders;
 - 1.1.11 reviewing all Software libraries used in connection with the Services and providing details of these to the Authority and/or the Replacement Supplier;
 - 1.1.12 providing assistance and expertise as necessary to support the Authority and/or the Replacement Supplier develop the migration plan for business

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operations and Government Data to the Replacement Supplier, which may include migration approach, testing of plans, contingency options, and handling of historic or archived Government Data;

- 1.1.13 provide all necessary support, equipment, tools, and Software such as data migration services and/or Automated Programming Interfaces, in order to enable and support the execution of the migration plan by the Authority and/or Replacement Supplier;
- 1.1.14 making available to the Authority and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Authority (acting reasonably) at the time of termination or expiry;
- 1.1.15 assisting in establishing naming conventions for any new production site;
- 1.1.16 analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- 1.1.17 generating a computer listing of the Source Code of NOMIS and project specific IPRs in a form and on media reasonably requested by the Authority;
- 1.1.18 agreeing with the Authority a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
- 1.1.19 delivering copies of the production databases (with content listings) to the Authority's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by the Authority;
- 1.1.20 assisting with the loading, testing and implementation of the production databases;
- 1.1.21 assisting in the execution of a parallel operation until the effective date of expiry or termination of this Contract;
- 1.1.22 in respect of the maintenance and support of the Supplier System, providing historical performance data for the previous 12 months unless otherwise agreed by the authority;
- 1.1.23 assisting in the execution of a parallel operation of the maintenance and support of the Supplier System until the end of the Termination Assistance Period or as otherwise specified by the Authority (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);
- 1.1.24 providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;
- 1.1.25 answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;
- 1.1.26 agreeing with the Authority and/or the Replacement Supplier a plan for the migration of the Government Data to the Authority and/or the Replacement

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Supplier;

- 1.1.27 providing access to the Authority and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding 6 months afterwards for the purpose of the smooth transfer of the Services to the Authority and/or the Replacement Supplier:
- (a) to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its Sub-contractors (and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
 - (b) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
- 1.1.28 knowledge transfer services, including:
- (a) transferring all training material and providing appropriate training to those Authority and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;
 - (b) providing for transfer to the Authority and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents;
 - (c) providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
 - (d) allowing the Authority and/or the Replacement Supplier to work alongside and observe the performance of the Services by the Supplier at its Sites used to fulfil the Services (subject to compliance by the Authority and the Replacement Supplier with any applicable security and/or health and safety restrictions,

and any such person who is provided with such knowledge transfer services will sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require)).

1.2 The Supplier shall:

- 1.2.1 provide a documented plan relating to the training matters referred to in Paragraph 1.1.14 for agreement by the Authority at the time of termination or expiry of this Contract;
- 1.2.2 co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1.18, providing skills and expertise of a suitable standard; and
- 1.2.3 fully co-operate in the execution of the Government Data migration plan

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agreed pursuant to Paragraph 1.1.26, providing skills and expertise of a reasonably acceptable standard.

- 1.3 To facilitate the transfer of knowledge from the Supplier to the Authority and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Authority and/or the Replacement Supplier.
- 1.4 The information which the Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to Paragraph 1.1.27 shall include:
 - 1.4.1 copies of up-to-date procedures and operations manuals;
 - 1.4.2 product information;
 - 1.4.3 agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier;
 - 1.4.4 key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule;
 - 1.4.5 information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
 - 1.4.6 details of physical and logical security processes and tools which will be available to the Authority; and
 - 1.4.7 any relevant interface information,and such information shall be updated by the Supplier at the end of the Termination Assistance Period.
- 1.5 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Supplier and/or the Authority access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:
 - 1.5.1 any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 1.5 shall:
 - (a) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
 - (b) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Authority deems reasonable; and
 - 1.5.2 the Authority and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

Annex 2: Draft Ethical Wall Agreement

[THE AUTHORITY]

and

[THE COUNTERPARTY]

ETHICAL WALL AGREEMENT

This Agreement is dated [] 20[] (the "Effective Date").

BETWEEN:

- (1) [INSERT NAME OF AUTHORITY] (the "Authority") [acting on behalf of the Crown] of [insert Authority's address]; and
- (2) [NAME OF COUNTERPARTY] a [company]/[limited liability partnership] registered in England and Wales under registered number [insert registered number] whose registered office is at [insert Counterparty's registered address] (the "Counterparty"),

together the "Parties" and each a "Party".

BACKGROUND

- A. The Authority in relation to its procurement process must treat suppliers the same unless a difference between the suppliers justifies different treatment, pursuant to the Procurement Act 2023 and any regulations made under it. The purpose of this document ("Agreement") is to define the protocols to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Purpose (defined below).
- B. The Authority is conducting a procurement exercise for the [supply/purchase/provision] of [insert details of project/goods/services] (the "Purpose").
- C. The Parties wish to enter into this Agreement to ensure that a set of management processes, barriers and disciplines are put in place to ensure that conflicts of interest do not arise, and that the Counterparty does not obtain an unfair competitive advantage over Other Bidders.

IT IS AGREED:

1 Definitions and Interpretation

- 1.1 The following capitalised words and expressions shall have the following meanings in this Agreement and its recitals:

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

"Agreement" means this ethical walls agreement duly executed by the Parties;

"Bid Team" means any Representatives of the Counterparty, any of its Affiliates and/or any Subcontractors connected to the preparation of a Tender Response;

"Central Government Body" means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics, including:

- (a) Government Departments;
- (b) Non-Departmental Public Bodies or Assembly Sponsored Public Bodies (advisory, executive, or tribunal);
- (c) Non-Ministerial Departments; or
- (d) Executive Agencies;

"Conflicted Personnel" means any Representatives of:

- (a) the Counterparty;
- (b) any of the Counterparty's Affiliates; and/or
- (c) any Subcontractors,

who, because of the Counterparty's, any of its Affiliates' and/or any Subcontractors' relationship with the Authority under any Contract, have or have had access to information which creates or may create a conflict of interest or provide the Bid Team with an unfair advantage as regards information Other Bidders would not have;

"Contract" means any pre-existing or previous contract between the Authority and:

- (a) the Counterparty;
- (b) any of the Counterparty's Affiliates;
- (c) any Subcontractor; and
- (d) any other Third Party,

relating to the subject matter of the Purpose at the date of the commencement of the Tender Process;

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"Control" means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **"Controls"** and **"Controlled"** shall be interpreted accordingly;

"Effective Date" means the date of this Agreement as set out above;

"Other Bidder" means any other bidder or potential bidder that is not the Counterparty or any of its Affiliates that has taken or is taking part in the Tender Process;

"Procurement Process" means the period commencing on the earlier of: (a) the publication of the first notice in relation to the Purpose; and (b) the execution of this Agreement, and ending on the occurrence of: (i) the publication by the Authority of the contract details notice; or (ii) the abandonment or termination of the Tender Process as notified by the Authority;

"Professional Advisor" means a supplier, subcontractor, advisor or consultant engaged by the Counterparty and/or any of its Affiliates under the auspices of compiling its Tender Response;

"Purpose" has the meaning given to it in recital B to this Agreement;

"Representative" refers to a person's officers, directors, employees, advisers (including the officers, directors, employees, advisers and agents of any Professional Advisors), agents and, where the context admits, providers or potential providers of finance (including their representatives) to the Counterparty, any of its Affiliates and/or any subcontractors engaged in connection with the Tender Process;

"Subcontractor" means an existing or proposed subcontractor of:

- (a) the Counterparty; and/or
- (b) any of the Counterparty's Affiliates,

who is connected to the preparation of a Tender Response (including key subcontractors named in the Tender Response);

"Tender Process" means, with regard to the Purpose, the relevant procedure provided for in the Procurement Act 2023 and any regulations made under it, which the Authority has elected to use to select a contractor or contractors, together with all relevant information, data, correspondence and/or documents issued and/or made available by or on behalf of the Authority as part of that procurement exercise and all information, correspondence and/or documents issued and/or made available by or on behalf of the bidders in response together with any resulting contracts;

"Tender Response" means the tender(s) submitted, or to be submitted, by the Counterparty, any of its Affiliates and/or any Subcontractors in response to any invitation(s) to submit bids under the Tender Process;

"Third Party" means any person who is not a Party, including Other Bidders, their Affiliates and/or their Representatives; and

"Working Day" means any day of the week other than a weekend, when Banks in England and Wales are open for business.

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- 1.2 Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.
- 1.3 Reference to the disclosure of information, or provision of access, by or to the Authority, the Counterparty, any of the Counterparty's Affiliates and/or any Subcontractors includes disclosure, or provision of access, by or to the Representatives of the Authority, the Counterparty, any of its Affiliates and/or any Subcontractors (as the case may be).
- 1.4 Reference to persons includes legal and natural persons.
- 1.5 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.
- 1.6 Reference to Clauses and recitals is to clauses of and recitals to this Agreement.
- 1.7 Reference to any gender includes any other.
- 1.8 Reference to writing includes email.
- 1.9 The terms "**associate**", "**holding company**", "**subsidiary**", "**subsidiary undertaking**" and "**wholly owned subsidiary**" have the meanings attributed to them in the Companies Act 2006, except that for the purposes of section 1159(1)(a) of that Act, the words 'holds a majority of the voting rights' shall be changed to 'holds 30% or more of the voting rights', and other expressions shall be construed accordingly.
- 1.10 The words "**include**" and "**including**" are to be construed without limitation.
- 1.11 The singular includes the plural and vice versa.
- 1.12 The headings contained in this Agreement shall not affect its construction or interpretation.

2 Ethical Walls

- 2.1 In consideration of the sum of £1 payable by the Authority to the Counterparty, receipt of which is hereby acknowledged, the Parties agree to be bound by the terms of this Agreement.

Conflicts of Interest

- 2.2 The Counterparty:
 - 2.2.1 shall take all appropriate steps to ensure that neither the Counterparty, nor its Affiliates, nor any Subcontractors nor any Representatives are in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives and the duties owed to the Authority under any Contract or pursuant to an open and transparent Tender Process; and
 - 2.2.2 acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives intend to take part in the Tender Process and because of the Counterparty's, any of its Affiliates', any Subcontractors' and/or any Representatives' relationship with the Authority under any Contract, the

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Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives have or have had access to information which could provide the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives with an advantage and render unfair an otherwise genuine and open competitive Tender Process.

- 2.3 Where there is or is likely to be a conflict of interest, or the perception of a conflict of interest, of any kind in relation to the Tender Process, the Counterparty shall take such steps that are necessary to eliminate the conflict of interest to the Authority's satisfaction, including one or more of the following:
- 2.3.1 not assigning any of the Conflicted Personnel to the Bid Team at any time;
 - 2.3.2 providing to the Authority promptly upon request a complete and up to date list of any Conflicted Personnel and the personnel comprising the Bid Team and reissue such list to the Authority promptly upon any change to it;
 - 2.3.3 ensuring that no act or omission by itself, its Affiliates, any Subcontractors and/or any Representatives results in information of any kind, however conveyed, or in any format and however so stored:
 - (a) about the Tender Process (gleaned from the performance of any Contract or otherwise); and/or
 - (b) which would or could in the opinion of the Authority confer an unfair advantage on the Counterparty in relation to its participation in the Tender Process, becoming available to the Bid Team where the Authority has not made generally available that information to Other Bidders;
 - 2.3.4 ensuring that by no act or omission by itself, its Affiliates, any Subcontractors and/or any Representatives and in particular the Bid Team results in information of any kind, however conveyed, in any format and however so stored about the Tender Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;
 - 2.3.5 ensure that agreements that flow down the Counterparty's obligations in this Agreement, are entered into as necessary, between the Counterparty and its Affiliates and any Subcontractors [in a form to be approved by the Authority];
 - 2.3.6 physically separating the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
 - 2.3.7 providing regular training to its Affiliates, any Subcontractors and/or Representatives to ensure it is complying with this Agreement;
 - 2.3.8 monitoring Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Agreement and to ensure adherence to the ethical wall arrangements the Counterparty, its Affiliates, any Subcontractors and/or any Representatives have put in place in order to comply with this Agreement;
 - 2.3.9 ensuring that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and

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- 2.3.10 complying with any other action as the Authority, acting reasonably, may direct in connection with the Tender Process and/or this Agreement.

Notification of Conflicts of Interest

- 2.4 The Counterparty shall:

- 2.4.1 notify the Authority immediately in writing of all perceived, potential and/or actual conflicts of interest that arise or have arisen;
- 2.4.2 submit in writing to the Authority full details of the nature of the perceived, potential and/or actual conflict of interest including full details of the risk assessments undertaken, the impact or potential impact of the perceived, potential and/or actual conflict, the measures and arrangements that have been established and/or are due to be established, to eliminate the perceived, potential and/or actual conflict, and the Counterparty's plans to prevent potential conflicts of interests from arising ("Proposed Avoidance Measures"); and
- 2.4.3 seek the Authority's approval to the Proposed Avoidance Measures which the Authority shall have the right to grant, grant conditionally or deny (if the Authority rejects the Proposed Avoidance Measures the Counterparty shall repeat the process set out in this Clause 2.4 until such time as the Authority grants approval or the Counterparty withdraws from the Tender Process).

- 2.5 The Counterparty will provide to the Authority, on demand, any and all information in relation to its adherence with its obligations set out under Clauses 2.2 and 2.3 as reasonably requested by the Authority.
- 2.6 The Authority reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses 2.2 and 2.3.
- 2.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with Clauses 2.5 and 2.6, does not constitute acceptance by the Authority of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Agreement.

Exclusion from the Tender Process

- 2.8 Where, in the reasonable opinion of the Authority, there has been any breach by the Counterparty of Clauses 2.2, 2.3, or 2.4 or failure to obtain the Authority's approval of the Proposed Avoidance Measures the Authority shall be entitled to exclude the Counterparty, or any of its Affiliates and/or any Representatives, from the Tender Process, and the Authority may, in addition to the right to exclude, take such other steps as it deems necessary.
- 2.9 The actions of the Authority pursuant to Clause 2.8 shall not prejudice or affect any right of action or remedy under this Agreement or at law which shall have accrued or shall thereafter accrue to the Authority.

Bid Costs

- 2.10 In no event shall the Authority be liable for any bid costs incurred by:

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2.10.1 the Counterparty or any of its Affiliates, any Representatives and/or any Subcontractors; or

2.10.2 any Third Party,

as a result of any breach of this Agreement by the Counterparty, any of its Affiliates, any Subcontractors and/or Representatives, including where the Counterparty, any of its Affiliates, any Subcontractors or Representatives, or any Third Party is or are excluded from the Tender Process.

Specific Remedies

2.11 The Counterparty acknowledges and agrees that:

2.11.1 neither damages nor specific performance are adequate remedies in the event of a breach of the obligations in Clause 2; and

2.11.2 in the event of a breach of any of the obligations in Clause 1 which cannot be effectively remedied the Authority shall have the right to terminate both this Agreement and the Counterparty's participation in the Tender Process in each case with immediate effect on written notice.

3 Sole Responsibility

3.1 It is the sole responsibility of the Counterparty to comply with the terms of this Agreement, including ensuring its Affiliates, any Subcontractors, and/or any Representatives comply with the terms of this Agreement. No approval by the Authority of any procedures, agreements or arrangements provided by the Counterparty, any of its Affiliates, any Subcontractors and/or their Representatives to the Authority shall discharge the Counterparty's obligations.

4 Waiver and Invalidity

4.1 No failure or delay by any Party in exercising any right, power or privilege under this Agreement or by law shall constitute a waiver of that or any other right, power or privilege, nor shall it restrict the further exercise of that or any other right, power or privilege. No single or partial exercise of such right, power or privilege shall prevent or restrict the further exercise of that or any other right, power or privilege.

4.2 If any provision of this Agreement is prohibited or unenforceable in any jurisdiction in relation to any Party, such prohibition or unenforceability will not invalidate the remaining provisions of this Agreement, or affect the validity or enforceability of the provisions of this Agreement in relation to any other Party or any other jurisdiction.

5 Assignment and Novation

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

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

5.2.1 any Central Government Body; or

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5.2.2 to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority; and

5.2.3 the Counterparty shall, at the Authority's request, enter into a novation agreement in such form as the Authority may reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 5.

5.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

6 Contracts (Rights of Third Parties) Act 1999

6.1 A person who is not a Party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any term of this Agreement, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

7 Transparency

7.1 The Parties acknowledge and agree that the Authority is under a legal duty pursuant to the Procurement Act 2023 and any regulations made under it to run procurement processes in accordance with section 12 of the Procurement Act 2023. Accordingly, the Authority may disclose the contents of this Agreement to Other Bidders (and/or potential Other Bidders) for the purposes of transparency and in order to evidence that a fair procurement process has been followed.

8 Notices

8.1 Any notices sent under this Agreement shall be in writing and be served by e-mail unless it is not practicable to do so.

8.2 Subject to Clause 8.1, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

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

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Manner of Delivery	Deemed time of service	Proof of service
or other prepaid, next Working Day service providing proof of delivery.	between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	by signature of a delivery receipt.

- 8.3 Notices shall be sent to the e-mail addresses (or address, where e-mail is not practicable) set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:

	Counterparty	Authority
Contact		
E-mail		
Address		

- 8.4 This Clause 8 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

9 Waiver and Cumulative Remedies

- 9.1 The rights and remedies under this Agreement may be waived only by notice, and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 9.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

10 Term

- 10.1 Each Party's obligations under this Agreement shall continue in full force and effect for period of [] years from the Effective Date/[or for the period of the duration of the Procurement Process]

11 Governing Law and Jurisdiction

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- 11.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 11.2 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

Signed by the Authority

Name:

Signature:

Position in Authority:

Signed by the Counterparty

Name:

Signature:

Position in Counterparty:

Schedule 22

Service Continuity Plan and Corporate Resolution Planning

Schedule 22: Service Continuity Plan and Corporate Resolution Planning

Part A: Service Continuity Plan

1. Definitions

1.1 In this Schedule, the following definitions shall apply:

"Business Continuity Plan"	has the meaning given in Paragraph 2.2.1(b);
"Business Continuity Services"	has the meaning given in Paragraph 4.2.2;
"Department"	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (a) Government Department; or (b) Non-Ministerial Department.
"Disaster"	the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for a period of 24 hours or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
"Disaster Recovery Plan"	has the meaning given in Paragraph 2.2.1(c);
"Disaster Recovery Services"	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
"Disaster Recovery System"	the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;

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"Insolvency Continuity Plan"	has the meaning given in Paragraph 2.2.1(d).
"Related Service Provider"	any person who provides services to the Authority in relation to this Contract from time to time, which persons include as at the Effective Date 29/09/2025
"Review Report"	has the meaning given in Paragraphs 7.2.1 to 7.2.3; and
"Service Continuity Plan"	means the plan prepared pursuant to Paragraph 2 of this Schedule which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan.

2. Service Continuity Plan

- 2.1 Within 40 Working Days from the Effective Date the Supplier shall prepare and deliver to the Authority for the Authority's written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:
- 2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services (including where caused by an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member); and
 - 2.1.2 the recovery of the Services in the event of a Disaster.
- 2.2 The Service Continuity Plan shall:
- 2.2.1 be divided into four parts:
 - (a) Part A which shall set out general principles applicable to the Service Continuity Plan;
 - (a) Part B which shall relate to business continuity (the "**Business Continuity Plan**");
 - (b) Part C which shall relate to disaster recovery (the "**Disaster Recovery Plan**");
 - (c) Part D which shall relate to an Insolvency Event of the Supplier, any Key Sub-contractors and/or any Supplier Group member (the "Insolvency Continuity Plan"); and
- unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4, 5 and 6.
- 2.3 Following receipt of the draft Service Continuity Plan from the Supplier, the Authority

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shall:

- 2.3.1 review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and
- 2.3.2 notify the Supplier in writing that it approves or rejects the draft Service Continuity Plan no later than 20 Working Days after the date on which the draft Service Continuity Plan is first delivered to the Authority.

2.4 If the Authority rejects the draft Service Continuity Plan:

- 2.4.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and
- 2.4.2 the Supplier shall then revise the draft Service Continuity Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Service Continuity Plan to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 2.3 and this Paragraph 2.4 shall apply again to any resubmitted draft Service Continuity Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3. Service Continuity Plan: Part A – General Principles and Requirements

3.1 Part A of the Service Continuity Plan shall:

- 3.1.1 set out how the business continuity, disaster recovery and insolvency continuity elements of the plan link to each other;
- 3.1.2 provide details of how the invocation of any element of the Service Continuity Plan may impact upon the operation of the Services and any services provided to the Authority by a Related Service Provider;
- 3.1.3 contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Service Provider with respect to issues concerning business continuity, disaster recovery and insolvency continuity where applicable;
- 3.1.4 detail how the Service Continuity Plan links and interoperates with any overarching and/or connected disaster recovery, business continuity and/or insolvency continuity plan of the Authority and any of its other Related Service Providers in each case as notified to the Supplier by the Authority from time to time;
- 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;
- 3.1.6 contain a risk analysis, including:
 - (a) failure or disruption scenarios and assessments and estimates of

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- frequency of occurrence;
 - (b) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
 - (c) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider;
 - (d) identification of risks arising from an Insolvency Event of the Supplier, any Key Sub-contractors and/or Supplier Group member; and
 - (e) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- 3.1.7 provide for documentation of processes, including business processes, and procedures;
- 3.1.8 set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Authority;
- 3.1.9 identify the procedures for reverting to "normal service";
- 3.1.10 the Backup and Recovery Plan prepared under Schedule 5 (*Security Management*);
- 3.1.11 identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the Service Continuity Plan; and
- 3.1.12 provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority's business continuity plans.
- 3.2 The Service Continuity Plan shall be designed so as to ensure that:
- 3.2.1 the Services are provided in accordance with this Contract at all times during and after the invocation of the Service Continuity Plan;
 - 3.2.2 the adverse impact of any Disaster; service failure; an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member; or disruption on the operations of the Authority, is minimal as far as reasonably possible;
 - 3.2.3 it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force; and
 - 3.2.4 there is a process for the management of disaster recovery testing detailed in the Service Continuity Plan.
- 3.3 The Service Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the Services, to the business processes facilitated by and the business operations supported by the Services, and/or changes to the Supplier Group structure.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.

4. Service Continuity Plan: Part B – Business Continuity Principles and Contents

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

5. Service Continuity Plan: Part C – Disaster Recovery Principles and Contents

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 5.3 The Disaster Recovery Plan shall include the following:
- 5.3.1 the technical design and build specification of the Disaster Recovery System;
 - 5.3.2 details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
 - (a) data centre and disaster recovery site audits;
 - (a) the Backup and Recovery Plan required by Schedule 5 (*Security Management*);
 - (b) identification of all potential disaster scenarios;

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- (c) risk analysis;
 - (d) documentation of processes and procedures;
 - (e) hardware configuration details;
 - (f) network planning including details of all relevant data networks and communication links;
 - (g) invocation rules;
 - (h) Service recovery procedures; and
 - (i) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
- 5.3.3 any applicable Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Disaster Recovery Plan;
- 5.3.4 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 5.3.5 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- 5.3.6 testing and management arrangements.

6. Service Continuity Plan: Part D – Insolvency Continuity Plan Principles and Contents

- 6.1 The Insolvency Continuity Plan shall be designed by the Supplier to permit continuity of the business operations of the Authority supported by the Services through continued provision of the Services following an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member with, as far as reasonably possible, minimal adverse impact.
- 6.2 The Insolvency Continuity Plan shall include the following:
 - 6.2.1 communication strategies which are designed to minimise the potential disruption to the provision of the Services, including key contact details in respect of the supply chain and key contact details for operational and contract Supplier Personnel, Key Sub-contractor personnel and Supplier Group member personnel;
 - 6.2.2 identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the Supplier, Key Sub- contractors and Supplier Group members where failure of those dependencies could reasonably have an adverse impact on the Services;
 - 6.2.3 plans to manage and mitigate identified risks;
 - 6.2.4 details of the roles and responsibilities of the Supplier, Key Sub-contractors

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and/or Supplier Group members to minimise and mitigate the effects of an Insolvency Event of such persons on the Services;

6.2.5 details of the recovery team to be put in place by the Supplier (which may include representatives of the Supplier, Key Sub-contractors and Supplier Group members); and

6.2.6 sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the Supplier.

7. Review and Amendment of the Service Continuity Plan

7.1 The Supplier shall review and update the Service Continuity Plan (and the risk analysis on which it is based):

7.1.1 on a regular basis and as a minimum once every 6 months;

7.1.2 within three calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 9;

7.1.3 within 14 days of a Financial Distress Event;

7.1.4 within 30 days of a Corporate Change Event (unless the Relevant Authority (acting reasonably) agrees to a Corporate Change Event Grace Period, as set out in Paragraph 2.8.2(a), in which case that Corporate Change Event Grace Period will apply); and

7.1.5 where the Authority requests any additional reviews (over and above those provided for in Paragraphs 7.1.1 to 7.1.4) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.

7.2 Each review of the Service Continuity Plan pursuant to Paragraph 7.1 shall be a review of the procedures and methodologies set out in the Service Continuity Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the Service Continuity Plan or the last review of the Service Continuity Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the Service Continuity Plan. The review shall be completed by the Supplier within the period required by the Service Continuity Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within 20 Working Days of the conclusion of each such review of the Service Continuity Plan, provide to the Authority a report (a "**Review Report**") setting out:

7.2.1 the findings of the review;

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- 7.2.2 any changes in the risk profile associated with the Services; and
- 7.2.3 the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the Service Continuity Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.
- 7.3 Following receipt of the Review Report and the Supplier's Proposals, the Authority shall:
 - 7.3.1 review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
 - 7.3.2 notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than 20 Working Days after the date on which they are first delivered to the Authority.
- 7.4 If the Authority rejects the Review Report and/or the Supplier's Proposals:
 - 7.4.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and
 - 7.4.2 the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 7.3 and this Paragraph 7.4 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 7.5 The Supplier shall as soon as is reasonably practicable after receiving the Authority's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

8. Testing of the Service Continuity Plan

- 8.1 The Supplier shall test the Service Continuity Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 8.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the Service Continuity Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Service Continuity Plan.
- 8.2 If the Authority requires an additional test of the Service Continuity Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the

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Authority's requirements and the relevant provisions of the Service Continuity Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the Service Continuity Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.

- 8.3 The Supplier shall undertake and manage testing of the Service Continuity Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.
- 8.4 The Supplier shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
- 8.5 The Supplier shall, within 20 Working Days of the conclusion of each test, provide to the Authority a report setting out:
 - 8.5.1 the outcome of the test;
 - 8.5.2 any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and
 - 8.5.3 the Supplier's proposals for remedying any such failures.
- 8.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the Service Continuity Plan) to remedy any failures in the Service Continuity Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.
- 8.7 For the avoidance of doubt, the carrying out of a test of the Service Continuity Plan (including a test of the Service Continuity Plan's procedures) shall not relieve the Supplier of any of its obligations under this Contract.
- 8.8 The Supplier shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

9. Invocation of the Service Continuity Plan

- 9.1 In the event of a loss of any critical part of the Service or a Disaster, the Supplier shall immediately invoke the business continuity and disaster recovery provisions in the Service Continuity Plan, including any linked elements in other parts of the Service Continuity Plan, and shall inform the Authority promptly of such invocation. In all other instances the Supplier shall invoke the business continuity and disaster recovery plan elements only with the prior consent of the Authority.
- 9.2 The Insolvency Continuity Plan element of the Service Continuity Plans, including any linked elements in other parts of the Service Continuity Plan, shall be invoked by the Supplier:
 - 9.2.1 where an Insolvency Event of a Key Sub-contractor and/or Supplier Group

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member (other than the Supplier) could reasonably be expected to adversely affect delivery of the Services; and/or

- 9.2.2 where there is an Insolvency Event of the Supplier and the insolvency arrangements enable the Supplier to invoke the plan;

Part B: Corporate Resolution Planning

1. Service Status and Supplier Status

- 1.1 The Supplier shall notify the Authority and the Cabinet Office Markets and Suppliers Team (Resolution.planning@cabinetoffice.gov.uk) in writing within 5 Working Days of the Effective Date and throughout the Term within 120 days after each Accounting Reference Date as to whether or not it is a Public Sector Dependent Supplier.

2. Provision of Corporate Resolution Planning Information (CRP Information)

- 2.1 Paragraphs 2 to 4 of this Part B shall apply if this Contract has been specified by the Authority as a Critical Service Contract in Section 9 (*Corporate Resolution Planning*) of the Front Sheet or the Supplier is or becomes a Public Sector Dependent Supplier.
- 2.2 Subject to Paragraphs 2.6, 2.10 and 2.11 of this Part B:
- 2.2.1 where this Contract is a Critical Service Contract, the Supplier shall provide the Relevant Authority or Relevant Authorities with CRP Information within 60 days of the Effective Date; and
- 2.2.2 except where it has already been provided in accordance with Paragraph 2.2.1 of this Part B, where the Supplier is a Public Sector Dependent Supplier, it shall provide the Relevant Authority or Relevant Authorities with the CRP Information within 60 days of the date of the Relevant Authority's or Relevant Authorities' request.
- 2.3 The Supplier shall ensure that the CRP Information provided pursuant to Paragraphs 2.2, 2.8 and 2.9 of this Part B:
- 2.3.1 is full, comprehensive, accurate and up to date;
- 2.3.2 is split into three parts:
- (a) Exposure Information (Contracts List);
- (a) Corporate Resolvability Assessment (Structural Review);
- (b) Financial Information and Commentary;
- and is structured and presented in accordance with the requirements and explanatory notes set out at the relevant Annex I of the latest published versions of the Resolution Planning Guidance Notes published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-sourcing-and-consultancy-playbooks> and contains the level of detail required (adapted as necessary to the Supplier's circumstances);
- 2.3.3 incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Authority or Relevant Authorities to understand and consider the information for approval;
- 2.3.4 provides a clear description and explanation of the Supplier Group members that have agreements for goods, services or works provision in respect of UK

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Public Sector Business and/or CNI and the nature of those agreements; and

- 2.3.5 complies with the requirements set out at Annex 1 (Exposure Information (Contracts List)) and Annex 1 (Corporate Resolvability Assessment (Structural Review)) and Annex 3 (Financial Information and Commentary) respectively.
- 2.4 Following receipt by the Relevant Authority or Relevant Authorities of the CRP Information pursuant to Paragraphs 2.2, 2.8 and 2.9 of this Part B, the Authority shall procure that the Relevant Authority or Relevant Authorities discuss in good faith the contents of the CRP Information with the Supplier and no later than 60 days after the date on which the CRP Information was delivered by the Supplier either provide an Assurance to the Supplier that Relevant Authority or Relevant Authorities approve the CRP Information or that Relevant Authority or Relevant Authorities reject the CRP Information.
- 2.5 If the Relevant Authority or Relevant Authorities reject the CRP Information:
 - 2.5.1 the Authority shall (and shall procure that the Cabinet Office Markets and Suppliers Team shall) inform the Supplier in writing of its reasons for its rejection; and
 - 2.5.2 the Supplier shall revise the CRP Information, taking reasonable account of the Relevant Authority's or Relevant Authorities' comments, and shall re-submit the CRP Information to the Relevant Authority or Relevant Authorities for approval within 30 days of the date of the Relevant Authority's or Relevant Authorities' rejection. The provisions of Paragraphs 2.3 to 2.5 of this Part B shall apply again to any resubmitted CRP Information provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 2.6 Where the Supplier or a member of the Supplier Group has already provided CRP Information to a Department or the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely to the Cabinet Office Markets and Suppliers Team) and has received an Assurance of its CRP Information from that Department and the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely from the Cabinet Office Markets and Suppliers Team), then provided that the Assurance remains Valid on the date by which the CRP Information would otherwise be required, the Supplier shall not be required to provide the CRP Information under Paragraph 2.2 if it provides a copy of the Valid Assurance to the Relevant Authority or Relevant Authorities on or before the date on which the CRP Information would otherwise have been required.
- 2.7 An Assurance shall be deemed Valid for the purposes of Paragraph 2.6 of this Part B if:
 - 2.7.1 the Assurance is within the validity period stated in the Assurance (or, if no validity period is stated, no more than 12 months has elapsed since it was issued and no more than 18 months has elapsed since the Accounting Reference Date on which the CRP Information was based); and
 - 2.7.2 no Corporate Change Events or Financial Distress Events (or events which would be deemed to be Corporate Change Events or Financial Distress Events if this Contract had then been in force) have occurred since the date of issue of the Assurance.

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- 2.8 If this Contract is a Critical Service Contract, the Supplier shall provide an updated version of the CRP Information (or, in the case of Paragraph 2.8.3 of this Part B its initial CRP Information) to the Relevant Authority or Relevant Authorities:
- 2.8.1 within 14 days of the occurrence of a Financial Distress Event (along with any additional highly confidential information no longer exempted from disclosure under Paragraph 2.11 of this Part B) unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph 7.1 of Schedule 14 (*Financial Distress*)
 - 2.8.2 within 30 days of a Corporate Change Event unless
 - (a) the Supplier requests and the Relevant Authority (acting reasonably) agrees to a Corporate Change Event Grace Period, in the event of which the time period for the Supplier to comply with this Paragraph shall be extended as determined by the Relevant Authority (acting reasonably) but shall in any case be no longer than six months after the Corporate Change Event. During a Corporate Change Event Grace Period the Supplier shall regularly and fully engage with the Relevant Authority to enable it to understand the nature of the Corporate Change Event and the Relevant Authority shall reserve the right to terminate a Corporate Change Event Grace Period at any time if the Supplier fails to comply with this Paragraph; or
 - (a) not required pursuant to Paragraph 2.10
 - 2.8.3 within 30 days of the date that:
 - (a) the credit rating(s) of each of the Supplier and its Parent Undertakings fail to meet any of the criteria specified in Paragraph 2.10; or
 - (a) none of the credit rating agencies specified at Paragraph 2.10 hold a public credit rating for the Supplier or any of its Parent Undertakings; and
 - 2.8.4 in any event, within 6 months after each Accounting Reference Date or within 15 months of the date of the previous Assurance received from the Relevant Authority (whichever is the earlier), unless:
 - (a) updated CRP Information has been provided under any of Paragraphs 2.8.1, 2.8.2 or 2.8.3 since the most recent Accounting Reference Date (being no more than 12 months previously) within the timescales that would ordinarily be required for the provision of that information under this Paragraph 2.8.4; or
 - (a) unless not required pursuant to Paragraph 2.10.
- 2.9 Where the Supplier is a Public Sector Dependent Supplier and this Contract is not a Critical Service Contract, then on the occurrence of any of the events specified in Paragraphs 2.8.1 to 2.8.4 of this Part B, the Supplier shall provide at the request of the Relevant Authority or Relevant Authorities and within the applicable timescales for each event as set out in Paragraph 2.8 (or such longer timescales as may be notified to the Supplier by the Authority), the CRP Information to the Relevant Authority or Relevant

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Authorities.

2.10 Where the Supplier or a Parent Undertaking of the Supplier has a credit rating of either:

2.10.1 Aa3 or better from Moody's; or

2.10.2 AA- or better from Standard and Poor's; or

2.10.3 AA- or better from Fitch;

the Supplier will not be required to provide any CRP Information unless or until either (i) a Financial Distress Event occurs (unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph 7.1 of Schedule 14 (*Financial Distress*)) or (ii) the Supplier and its Parent Undertakings cease to fulfil the criteria set out in this Paragraph 2.10, in which cases the Supplier shall provide the updated version of the CRP Information in accordance with Paragraph 2.8.

2.11 Subject to Paragraph 4, where the Supplier demonstrates to the reasonable satisfaction of the Relevant Authority or Relevant Authorities that a particular item of CRP Information is highly confidential, the Supplier may, having orally disclosed and discussed that information with the Relevant Authority or Relevant Authorities, redact or omit that information from the CRP Information provided that if a Financial Distress Event occurs, this exemption shall no longer apply and the Supplier shall promptly provide the relevant information to the Relevant Authority or Relevant Authorities to the extent required under Paragraph 2.8.

3. Termination Rights

3.1 The Authority shall be entitled to terminate this Contract under Clause 31.1.2 (*Termination by the Authority*) if the Supplier is required to provide CRP Information under Paragraph 2 of this Part B and either:

3.1.1 the Supplier fails to provide the CRP Information within 4 months of the Effective Date if this is a Critical Service Contract or otherwise within 4 months of the Relevant Authority's or Relevant Authorities' request; or

3.1.2 the Supplier fails to obtain an Assurance from the Relevant Authority or Relevant Authorities within 4 months of the date that it was first required to provide the CRP Information under this Contract.

4. Confidentiality and usage of CRP Information

4.1 The Authority agrees to keep the CRP Information confidential and use it only to understand the implications of an Insolvency Event of the Supplier and/or Supplier Group members on its UK Public Sector Business and/or services in respect of CNI and to enable contingency planning to maintain service continuity for end users and protect CNI in such eventuality

4.2 Where the Relevant Authority is the Cabinet Office Markets and Suppliers Team, at the Supplier's request, the Authority shall use reasonable endeavours to procure that the Cabinet Office enters into a confidentiality and usage agreement with the Supplier containing terms no less stringent than those placed on the Authority under Paragraph 4.1 of this Part B and Clause 19 (*Confidentiality*).

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- 4.3 The Supplier shall use reasonable endeavours to obtain consent from any third party which has restricted the disclosure of the CRP Information to enable disclosure of that information to the Relevant Authority or Relevant Authorities pursuant to Paragraph 2 of this Part B subject, where necessary, to the Relevant Authority or Relevant Authorities entering into an appropriate confidentiality agreement in the form required by the third party.
- 4.4 Where the Supplier is unable to procure consent pursuant to Paragraph 4.3 of this Part B, the Supplier shall use all reasonable endeavours to disclose the CRP Information to the fullest extent possible by limiting the amount of information it withholds including by:
- 4.4.1 redacting only those parts of the information which are subject to such obligations of confidentiality
 - 4.4.2 providing the information in a form that does not breach its obligations of confidentiality including (where possible) by:
 - (a) summarising the information;
 - (a) grouping the information;
 - (b) anonymising the information; and
 - (c) presenting the information in general terms
- 4.5 The Supplier shall provide the Relevant Authority or Relevant Authorities with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the Supplier is legally permitted to do so.

Annex 1: Exposure Information (Contracts List)

1 The Supplier shall:

- 1.1 provide details of all agreements held by members of the Supplier Group where those agreements are for goods, services or works provision and:
 - 1.1.1 are with any UK public sector bodies including: Crown Bodies and their arms-length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police fire and rescue, education bodies and the devolved administrations;
 - 1.1.2 are with any private sector entities where the end recipient of the service, goods or works provision is any of the bodies set out in Paragraph 1.1.1 of this Annex 1 and where the member of the Supplier Group is acting as a key sub-contractor under the agreement with the end recipient; or
 - 1.1.3 involve or could reasonably be considered to involve CNI; and
- 1.2 provide the Relevant Authority with a copy of the latest version of each underlying contract worth more than £5m per contract year and their related key sub-contracts, which shall be included as embedded documents within the CRP Information or via a directly accessible link.

Annex 2: Corporate Resolvability Assessment (Structural Review)

1 The Supplier shall:

- 1.1 provide sufficient information to allow the Relevant Authority to understand the implications on the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Annex 1 if the Supplier or another member of the Supplier Group is subject to an Insolvency Event.
- 1.2 ensure that the information is presented so as to provide a simple, effective and easily understood overview of the Supplier Group; and
- 1.3 provide full details of the importance of each member of the Supplier Group to the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Annex 1 and the dependencies between each.

Annex 3: Financial Information and Commentary

1 The Supplier shall:

- 1.1 provide sufficient financial information for the Supplier Group level, contracting operating entities level, and shared services entities' level to allow the Relevant Authority to understand the current financial interconnectedness of the Supplier Group and the current performance of the Supplier as a standalone entity; and
- 1.2 ensure that the information is presented in a simple, effective and easily understood manner.
- 1.3 For the avoidance of doubt the financial information to be provided pursuant to Paragraph 1 of this Annex 3 should be based on the most recent audited accounts for the relevant entities (or interim accounts where available) updated for any material changes since the Accounting Reference Date provided that such accounts are available in a reasonable timeframe to allow the Supplier to comply with its obligations under this Schedule 22 (***Service Continuity Plan and Corporate Resolution Planning***). If such accounts are not available in that timeframe, financial information should be based on unpublished unaudited accounts or management accounts (disclosure of which to the Cabinet Office Markets and Suppliers Team remains protected by confidentiality).

Schedule 23

Conduct of Claims

Schedule 23: Conduct of Claims

1. Indemnities

- 1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Contract (the "**Indemnifier**"), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the "**Beneficiary**").
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Contract (a "**Claim**"), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.
- 1.3 Subject to Paragraph 2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
 - 1.4.1 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
 - 1.4.2 the Indemnifier shall not bring the name of the Beneficiary into disrepute;
 - 1.4.3 the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - 1.4.4 the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Contract if:
 - 1.5.1 the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
 - 1.5.2 the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or

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- 1.5.3 the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

2. Sensitive Claims

- 2.1 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a "**Sensitive Claim**"), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

3. Recovery of Sums

- 3.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
- 3.1.1 an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
- 3.1.2 the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

4. Mitigation

- 4.1 Each of the Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.

Schedule 24

Staff Transfer

Schedule 24: Staff Transfer

1. Definitions

1.1 In this Schedule, the following definitions shall apply:

"Admission Agreement"	either or both of the CSPA Admission Agreement (as defined in Annex D1: CSPA) or the LGPS Admission Agreement) as defined in Annex D3: LGPS), as the context requires;
"Fair Deal Employees"	as defined in Part D;
"Final Supplier Personnel List"	a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
"Former Supplier"	a supplier supplying services to the Authority before any Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
"New Fair Deal"	the revised Fair Deal position set out in the HM Treasury guidance: <i>"Fair Deal for Staff Pensions: Staff Transfer from Central Government"</i> issued in October 2013 including: (a) any amendments to that document immediately prior to the Relevant Transfer Date; and (b) any similar pension protection in accordance with the subsequent Annex D1 - Annex D3 inclusive as notified to the Supplier by the Authority;
"Notified Sub-contractor"	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
"Old Fair Deal"	HM Treasury Guidance <i>"Staff Transfers from Central Government: A Fair Deal for Staff Pensions"</i> issued in June 1999 including the supplementary guidance <i>"Fair</i>

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

"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;

"Replacement Sub-contractor"

a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);

"Relevant Transfer"

a transfer of employment to which the Employment Regulations applies;

"Relevant Transfer Date"

in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place. For the purposes of Part D and its Annexes, where the Supplier or a Sub-contractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Sub-contractor), references to the Relevant Transfer Date shall become references to the Operational Service Commencement Date;

"Service Transfer"

any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;

"Service Transfer Date"

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

"Staffing Information"

in relation to all persons identified on the Provisional Supplier Personnel List or Final Supplier Personnel List, as the case may be, the information required in Annex E2: Staffing Information in that format together with employee liability information specified in regulation 11(2) and 11(3) and if applicable 11(4) of the Employment Regulations and such other information as the Authority may reasonably require.

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The Authority may acting reasonably make changes to the format or information requested in Annex E2: Staffing Information from time to time;

"Statutory Schemes"

the CSPA, NHSPS or LGPS as defined in the Annexes to Part D of this Schedule;

"Transferring Authority Employees"

those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;

"Transferring Former Supplier Employees"

in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and

"Transferring Supplier Employees"

those employees of the Supplier and/or the Supplier's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. Interpretation

- 2.1 Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

3. Applicable Parts of this Schedule

- 3.1 The only applicable Part(s) of this Schedule are as selected by the Authority in Section 10 (Staff Transfer) of the Front Sheet.

Part C: No Transfer of Employees Expected at Commencement of Services

1. Procedure in the Event of Transfer

- 1.1 The Authority and the Supplier agree that the commencement of the provision of the Services or of any part of the Services is not expected to be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.
- 1.2 If any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations then:
 - 1.2.1 the Supplier shall, and shall procure that the relevant Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier; and
 - 1.2.2 the Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the 15 Working Day period specified in Paragraph 1.2.2:
 - 1.4.1 no such offer of employment has been made;
 - 1.4.2 such offer has been made but not accepted; or
 - 1.4.3 the situation has not otherwise been resolved,the Supplier and/or the Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2. Indemnities

- 2.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Authority shall:
 - 2.1.1 indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the

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Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

- 2.1.2 procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the period(s) referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, (a) comply with such obligations as may be imposed upon it under Law and (b) comply with the provisions of Part D (Pensions) and its Annexes of this Staff Transfer Schedule.
- 2.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Authority and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.
- 2.4 The indemnities in Paragraph 2.1:
- 2.4.1 shall not apply to:
- (a) any claim for:
 - (i) any contravention of the Equality Act 2010 (or predecessor/successor legislation); or
 - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
 - (b) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and
- 2.4.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-contractor to the Authority and, if applicable, Former Supplier within 6 months of the Relevant Transfer Date.

3. Procurement Obligations

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

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

Part E: Employment Exit Provisions

1. Pre-service Transfer Obligations

- 1.1 The Supplier agrees that within 20 Working Days of the earliest of:
- 1.1.1 receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
 - 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Contract; and
 - 1.1.3 the date which is 12 months before the end of the Term; or
 - 1.1.4 receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 month period),
- it shall provide in a suitably anonymised format so as to comply with the DPA 2018, the Provisional Supplier Personnel List, together with the Staffing Information and it shall provide an updated Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.
- 1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:
- 1.2.1 the Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
 - 1.2.2 the Staffing Information in relation to the Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.
- 1.4 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):
- 1.5.1 replace or re-deploy any Supplier Personnel listed on the 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 they replace;
 - 1.5.2 make, promise, propose, permit or implement any material changes to the

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terms and conditions of employment of the Supplier Personnel (including pensions and any payments connected with the termination of employment);

- 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Provisional Supplier Personnel List regardless of when such notice takes effect.

- 1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, within 20 Working Days to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:
 - 1.6.1 the numbers of Supplier Personnel engaged in providing the Services;
 - 1.6.2 the percentage of time spent by each Supplier Personnel engaged in providing the Services;
 - 1.6.3 the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up pursuant to the provisions of any of the Annexes to Part D (*Pensions*) of this Schedule 24 (*Staff Transfer*) (as appropriate); and
 - 1.6.4 a description of the nature of the work undertaken by each Supplier Personnel by location.
- 1.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Final Supplier Personnel List who is a Transferring

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Supplier Employee:

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

2. Employment Regulations Exit Provisions

- 2.1 The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10 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.
- 2.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations under the Employment Regulations and in particular obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in

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respect of the period up to (but excluding) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Final Supplier Personnel List arising in respect of the period up to (but excluding) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, pay for accrued but untaken holiday, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Statutory Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part to the period ending on (and excluding) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

2.2.1 the Supplier and/or the Sub-contractor (as appropriate); and

2.2.2 the Replacement Supplier and/or Replacement Sub-contractor.

2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:

2.3.1 any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;

2.3.2 the breach or non-observance by the Supplier or any Sub-contractor occurring before but excluding the Service Transfer Date of:

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

(b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;

2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising before but excluding the Service Transfer Date;

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

(a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before but excluding the Service Transfer Date; and

(b) in relation to any employee who is not identified in the Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her

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employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before but excluding the Service Transfer Date;

- 2.3.5 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (but excluding) the Service Transfer Date);
 - 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee identified in the Final Supplier Personnel List for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Contract and/or the Employment Regulations; and
 - 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to any act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her terms and conditions of employment or working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
 - 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Final Supplier Personnel List claims, or it is determined in relation to any person who is not identified in the Final Supplier Personnel List, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations, then:
- 2.5.1 the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
 - 2.5.2 the Supplier may offer (or may procure that a Sub-contractor may offer)

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employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from their employment or alleged employment.

2.7 If after the 15 Working Day period specified in Paragraph 2.5.2 has elapsed:

2.7.1 no such offer of employment has been made;

2.7.2 such offer has been made but not accepted; or

2.7.3 the situation has not otherwise been resolved

the Authority shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in Paragraph 2.8:

2.9.1 shall not apply to:

(a) any claim for:

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

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

in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or

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

2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date.

2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the

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Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.

- 2.11 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.12 Subject to Paragraph 2.13, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- 2.12.1 any act or omission of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee identified in the Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
 - 2.12.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Supplier Employees identified in the Final Supplier Personnel List; and/or
 - (b) any custom or practice in respect of any Transferring Supplier Employees identified in the Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;
 - 2.12.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
 - 2.12.4 any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations or otherwise) before the Service Transfer Date as a result of or for

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a reason connected to such proposed changes;

2.12.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;

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

(a) in relation to any Transferring Supplier Employee identified in the Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and after the Service Transfer Date; and

(b) in relation to any employee who is not a Transferring Supplier Employee identified in the Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and after the Service Transfer Date;

2.12.7 a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and

2.12.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

2.13 The indemnities in Paragraph 2.12 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

Annex E1: List of Notified Sub-contractors

Annex E2: Staffing Information

Employee Information (Anonymised)

Name of Transferor:

Number of Employees in-scope to transfer:

1 Completion notes

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

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

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EMPLOYEE DETAILS & KEY TERMS							
Details	Contract end date (if fixed term contract or temporary contract)	Contractual notice period	Contractual weekly hours	Regular overtime hours per week	Mobility or flexibility clause in contract?	Previously TUPE transferred to organisation? If so, please specify (i) date of transfer, (ii) name of transferor, and (iii) whether ex public sector	Any collective agreements?
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

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

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

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

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

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

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

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

Schedule 24: Staff Transfer

[Subject to Contract]

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

Schedule 26

Processing Personal Data

Schedule 26: Processing Personal Data

[REDACTED]

Schedule 27

Intellectual Property Rights

Schedule 27: Intellectual Property Rights

Notwithstanding any other provision of this Agreement the Supplier Background IPRs includes the National Offender Management Information System application and modules (“the NOMIS System”) and Supplier Software shall include any Software in the NOMIS System created only by the Supplier

“New Supplier Products” shall relate to newly introduced products or documentation and any modifications, amendments, releases and updates to the NOMIS System .

Notwithstanding any other provision of this Agreement Project Specific IPRs includes HMPPS - Developed Products (as defined in Paragraph 1.12 below), and IPRs developed by the Supplier’s Digital Initiatives team, in correspondence with HMPPS Digital, to support all areas of Prison activities and work of Prisons Digital.

1.1 Unless otherwise specified in this Agreement, a Party will not acquire any right, title or interest in or to the IPRs of the other Party or its licensors.

1.2 Notwithstanding Paragraph 1.1, the Parties agree that:

1.2.1 all IPRs existing in the NOMIS System as at the Effective Date of this Agreement belong to the Supplier and are Supplier Background IPRs .

1.2.2 all IPRs created only by the Supplier in relation to the NOMIS System during the Term of this Agreement shall be deemed to be part of the NOMIS system and therefore owned by the Supplier.

1.2.3 all IPRs in relation to the NOMIS System created by the Supplier’s Digital Initiatives team with HMPPS Digital on behalf of the Authority:

- (a) existing as at the Effective Date of this Agreement and/or
- (b) created during the Term of this Agreement shall be deemed to be Project Specific IPRs.

1.3 The Supplier grants the Authority a non-exclusive, transferable, perpetual, irrevocable, royalty-free licence to use the Project Specific IPRs and any Supplier Background IPRs embedded within the Project Specific IPRs for the Authority’s ordinary business activities

1.4 The Supplier must obtain the grant of any IPRs so the Authority can enjoy full use of the Project Specific IPRs including the Authority’s right to publish the IPRs as open source.

1.5 The Supplier must promptly inform the Authority if it can’t comply with Paragraph 1.4 and the Supplier must not use IPRs in relation to the Project Specific IPRs if it can’t obtain the grant of a licence acceptable to the Authority.

1.6 The Supplier will, on written demand, fully indemnify the Authority and the Crown for all Losses which it may incur at any time from any claim of infringement or alleged infringement of a third party’s IPRs because of the:

1.6.1 rights granted to the Authority under this Agreement

1.6.2 Supplier’s performance of the Services

Schedule 27 (Intellectual Property Rights)

[Subject to Contract]

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1.6.3 use by the Authority of the Services

1.7 If an IPR Claim is made, or is likely to be made, the Supplier will immediately notify the Authority in writing and must at its own expense after written approval from the Authority, either:

1.7.1 modify the relevant part of the Services without reducing its functionality or performance

1.7.2 substitute Services of equivalent functionality and performance, to avoid the infringement or the alleged infringement, as long as there is no additional cost or burden to the Authority

1.7.3 buy a licence to use and supply the Services which are the subject of the alleged infringement, on terms acceptable to the Authority

1.8 Paragraph 1.7 will not apply if the IPR Claim is from:

1.8.2 the use of data supplied by the Authority which the Supplier isn't required to verify under this Agreement

1.8.3 other material provided by the Authority necessary for the Services

1.9 If the Supplier does not comply with Paragraphs 1.2 to 1.6, the Authority expressly reserves the right to terminate this Agreement for material Default as a Supplier Termination Event. The Supplier will, on demand, refund the Authority all the money paid for the affected Services.

1.10

a) Without limiting the scope of the license set out in this Paragraph 1, the Authority's license includes

i. the right to properly install, test, trial and conduct acceptance procedures with respect to the Supplier Software

ii. the right to have an undefined number of concurrent users of the Supplier Software for the management, supervision and administration of adult offenders and any growth in the number of concurrent users thereof and shall also include those youth or young offender facilities currently operated or managed by the Supplier Software

iii. the right to conduct such activities that are reasonably required for the Authority to be able to use the Supplier Software, learn to use it and to maintain and extend the Authority facilities including training, development and testing activities

iv. the right for all organisations that contract with the Authority for the services related to the management of offenders to be allowed interactive use of the Supplier Software for services related to those offenders, including, in particular, staff involved with managing offenders at contracted-out prisons in the same manner as staff at public prisons

v. the right to enjoy a data "view only" and/or data "extraction" right for jurisdictions within England and Wales and external to the Authority as permitted and required by the Crown; that is, external agencies and organizations with "view only" rights may only run queries or reports against the Supplier Software database and, those external agencies or organizations with "extraction" rights may extract (by way of interface or otherwise) certain data from the Supplier Software database but shall not add, remove, edit, change or modify any data in the Supplier Software database, and

Schedule 27 (Intellectual Property Rights)

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vi. the right to use the Supplier Software for providing services to or processing data of the Authority, including providing remote access to the Authority for purposes permitted hereunder, and performing disaster recovery, disaster testing, back-up and archive as the Authority deems necessary;

b) Except as expressly provided in this Agreement, without the prior written consent of the Supplier in its sole discretion, the Authority may not (and may not permit any person to):

- i. modify, enhance or adapt the Supplier Software or any part of it,
- ii. cause or permit reverse compilation, reverse engineering or reverse assembly of all or any portion of the Supplier Software or any part of it,
- iii. transfer the Supplier Software to a different "Operating Environment", being the hardware, operating system software and database software currently (as of the Effective Date of this Agreement) used for development and live operation of the Supplier Software (for greater certainty, including the delivery platform and the production system),
- iv. distribute, disclose, market, rent, lease or transfer to any third party any portion of the Supplier Software, or use the Supplier Software in any service bureau arrangement, facility management, or third party training, or
- v. transfer, use or sublicense the Supplier Software outside England and Wales;

c) Notwithstanding Paragraph 1.3 and any provision of this Agreement regarding open source, and as an express exception thereto

- i. the Authority acknowledges and agrees that the Source Code to the Supplier Software will be considered the Confidential Information of the Supplier, and the Authority shall not shall obtain any rights with respect to the Source Code of the Supplier Software and related system documents that are in human-readable form, including all comments and any procedural code such as job control language except as provided in this Agreement,
- ii. in particular and notwithstanding the generality of the foregoing, it is expressly acknowledged and agreed that nothing herein shall grant the Authority any ownership rights in the Supplier Software and the Supplier or its licensors are and shall be the sole owners of the Supplier Software (in both Source Code and executable code form and including Supplier Software modifications), and the Authority hereby assigns to the Supplier (including, by this written instrument, as it relates to future-arising works) all right, title and interest (including all Intellectual Property Rights) it may otherwise have but for the provisions of this Paragraph in the Supplier Software, and
- iii. the Authority shall not, at any time, whether before or after termination of this Agreement contest or aid others in contesting, or doing anything which otherwise impairs the validity of any Intellectual Property Rights, or any right, title or interest of the Supplier in and to the Supplier Software or any portions thereof; and

d) The Authority's license for the Supplier Software is intended for the sole and exclusive purpose of the administration of criminal offenders which are under the jurisdiction of the Authority in England and Wales, and it is acknowledged and agreed that, in the event that the statutory responsibility of the Authority is transferred to another public sector body which will perform its functions, the license shall be deemed to have been transferred to the successor public sector

Schedule 27 (Intellectual Property Rights)

[Subject to Contract]

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body and, in such event, the Authority shall give written notice to the Supplier but no additional charges shall be payable.

1.11 Notwithstanding the foregoing, if the Supplier and the Authority enter into a further work package, or a change is requested by the Authority in accordance with Clause 13, signed by both parties that relates to products, documentation or software not previously offered by the Supplier as part of the Services (the “New Supplier Products”), which will be expressly described in the work package as “New Supplier Products”, the following provisions will apply:

1.11.1 To the extent such work package relates to any Supplier Software, or Supplier Software modifications, Paragraphs 1.1 to 1.9 shall apply instead of this Paragraph 1.11 and the Charges shall be as set out in the order

1.11.2 Except as set out in Paragraphs 1.11 and 1.11.1, the work package will expressly state the goals and objectives, scope of work, the parties’ roles and responsibilities, and associated costs, and in addition will expressly set out whether any additional Charges relating to the provision of, maintenance of or subscription to the New Supplier Products that apply to the Authority’s use of the New Supplier Products.

1.11.3 Whether or not developed by the Supplier solely or jointly with the Authority, any New Supplier Products will be owned by the Supplier, and all Intellectual Property Rights therein, in the same manner as it owns the Supplier Software as set out in Paragraph 1.2 and Paragraph 1.9, and the Authority will have the right to use the New Supplier Products as set out in this Paragraph 1, except as expressly modified by the relevant statement of work. Where the Intellectual Property Rights in any New Supplier Products are Supplier Background IPR (other than Supplier Software already licensed under the previous provisions of this Paragraph 1), then the licence granted by the Supplier to the Authority shall be agreed by the parties and set out in the work package.

1.11.4 As an express exception to Paragraph 1.3 and any provision of this Agreement regarding Open Source, notwithstanding any joint efforts in developing the New Supplier Products, the Authority acknowledges and agrees that the Source Code to the New Supplier Products will be considered the Confidential Information of the Supplier and the Authority will not disclose any Source Code except as expressly agreed by the Supplier in writing (in its sole discretion), subject always to Clause 21.1.

1.11.5 Without prejudice to Paragraph 11.2, except as it relates to any Authority Confidential Information and/or data and material provided by the Authority that may be used in connection with the development of the New Supplier Products (which will be deemed licensed to the Supplier in a manner consistent with, and subject to the limitations of, Paragraph 1.12(d)(ii) below), the Authority hereby assigns (including, by this written instrument, as it relates to future-arising works) all right, title and interest (including all Intellectual Property Rights), in and to the New Supplier Products to the Supplier, and hereby waives all moral rights therein and thereto.

1.12 Notwithstanding the foregoing, if the Supplier and the Authority enter into a further work package, or a change is requested by the Authority in accordance with Clause 13, signed by both parties that relates to products, documentation or software that may rely on database structures or data stored in connection with the Supplier Software or any New Supplier Products (the “HMPPS-Developed Products”), which will be expressly described in the work package as “HMPPS-Developed Products”, the following provisions will apply.

Schedule 27 (Intellectual Property Rights)

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(a) To the extent such work package relates to any Supplier Software modifications, or modifications to New Supplier Products the foregoing provisions of this Paragraph 1 shall apply instead of this Paragraph 1.12

(b) Except as set out in (a) above, the work package will expressly state the goals and objectives, scope of work, the parties' roles and responsibilities, but the Authority will be responsible for the costs associated with the development, testing and use of HMPPS-Developed Products except as otherwise agreed in the work package.

(c) The Authority acknowledges and agrees that

(i) the Authority will have primary responsibility for managing any project to develop or deploy HMPPS-Developed Products,

(ii) the Authority will not be permitted to alter any database or database structure belonging to the Supplier as part of the Supplier Software or New Supplier Products (the "Underlying Databases"),

(iii) the Supplier strongly recommends use of Supplier application programming interfaces in accordance with the Supplier's documentation provided as part of the existing Services for all access to its Underlying Databases, and

(iv) if any maintenance or support is needed to the Supplier Software or New Supplier Products as a direct result of the Authority failing to follow any reasonable requirements of the Supplier with regards the interface between the HMPPS-Developed Products and the Supplier Software, New Supplier Products, or Underlying Databases, the Supplier shall not be responsible for such maintenance or support as part of its provision of the Services. Any requirement on the Supplier to provide such maintenance and support shall be commissioned through a new work package.

(d) The work package will expressly set out the ownership of the Intellectual Property Rights of the HMPPS-Developed Products, but in the absence of that:

(i) with or without the assistance of the Supplier, the Authority will own the HMPPS-Developed Products and all Intellectual Property Rights therein,

(ii) to the extent not consisting of Confidential Information of the Supplier, the Supplier hereby assigns (including, by this written instrument, as it relates to future-arising works) all right, title and interest (including all Intellectual Property Rights and the ability to publish any Source Code), in and to the HMPPS-Developed Products to the Authority, and hereby waives all moral rights therein and thereto, and

(iii) the Authority will grant to Supplier a non-exclusive, worldwide, royalty-free right and license to use, load, execute, store, transmit, display, modify, adapt, translate or otherwise utilize and exploit the HMPPS-Developed Products (in executable and Source Code form) in connection with the Supplier's provision of the Services (including the provision of any New Supplier Products, Supplier Software modifications, and assistance with the HMPPS-Developed Products). This licence shall also permit the Supplier to use the HMPPS-Developed Product in developing other products, services or offerings to other customers provided that any Authority Confidential Information shall not be used by the Supplier in developing such products, services or offerings to other customers and the Supplier shall indemnify the Authority from and against all Losses arising from any breach of this obligation.

(e) The Supplier will promptly respond to all reasonable requests relating to the entry of a work package for an HMPPS-Developed Product as contemplated by this Paragraph 1.12, but if the

Schedule 27 (Intellectual Property Rights)

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Supplier is unable or unwilling to do so on terms reasonably acceptable to both parties, the Supplier acknowledges and agrees that Authority shall have the right (without assistance of the Supplier, and without liability to the Supplier) to develop HMPPS-Developed Products strictly in accordance with subsections (c) and (d) above, but will notify the Supplier thereof in writing and provide such reasonable information regarding the HMPPS-Developed Products so as to permit the Supplier to exercise its rights under this Agreement. Nothing in this Paragraph 1.12(e) prevents the Authority developing products unrelated to the Supplier's software with third parties without reference to the Supplier.

(f) Nothing in this Paragraph 1.12 affects the Supplier's rights, titles or interests in or to any Supplier Software or New Supplier Products.

1.13 Regardless of Paragraph 1.7, Paragraph 1.5 will not apply if the IPR Claim is from:

(a) the Supplier's compliance with specifications or express requirements provided by the Authority where the Supplier has provided written notice to the Authority that the Authority's proposed specifications or express requirements might lead to an IPR Claim and the Authority has ignored this notice

(b) additions to or modifications of any Deliverable or Service, or any Background IPR or Project Specific IPR, by the Authority or any third party not authorized by the Supplier

(c) use of any Deliverable or Service, or any Background IPR or Project Specific IPR, in combination with any other products, equipment, devices, software, systems or data not supplied or authorized in writing (including in any documentation) by the Supplier, or

(d) the use of any Deliverable or Service, or any Background IPR or Project Specific IPR, that is not permitted by this Agreement

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MODEL SERVICES CONTRACT

DATED

29/09/2025

(1) The Secretary of State for Justice

and

(2) N Harris Computer Corporation

CONTRACT

relating to

The delivery of software including live service support, maintenance and development for the National Offender Information System (NOMIS) and delivery of Digital Initiatives for HMPPS.

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

For further information on Crown copyright policy and licensing arrangements, see [UK Government Licensing Framework - Re-using PSI \(nationalarchives.gov.uk\)](#) or you can contact the Information Policy Team at [Public sector information enquiry - Contact us \(nationalarchives.gov.uk\)](#).

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THIS CONTRACT is made on

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BETWEEN:

(1) the **Authority**; and

(2) the **Supplier**

(each a "**Party**" and together the "**Parties**").

IT IS AGREED as follows:

Section A: Preliminaries

1. Definitions and Interpretation

- 1.1 In this Contract, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.
- 1.2 Interpretation is as set out in Schedule 1 (*Definitions*).
- 1.3 The Schedules and their Annexes form part of this Contract.
- 1.4 In entering into this Contract the Authority is acting as part of the Crown.

2. Due Diligence

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

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other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Contract and/or which the Supplier will require the benefit of for the provision of the Services; and

(f) it has advised the Authority in writing of:

- (i) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
- (ii) the actions needed to remedy each such unsuitable aspect; and
- (iii) a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,

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

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

- 2.2.1 any unsuitable aspects of the Operating Environment;
- 2.2.2 any misinterpretation of the Authority Requirements;
- 2.2.3 any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or
- 2.2.4 any assumptions made by the Supplier in respect of the Services, other than the Allowable Assumptions.

2.3 The Parties shall comply with the provisions of Paragraph 6 of Part C of Schedule 11 (*Charges and Invoicing*) in relation to the verification of any Allowable Assumptions.

3. Warranties

3.1 The Authority represents and warrants that:

- 3.1.1 it has full capacity and authority to enter into and to perform this Contract;
- 3.1.2 this Contract is entered into by its duly authorised representative;
- 3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract; and
- 3.1.4 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

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3.2 The Supplier represents and warrants that:

- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 3.2.2 it has full capacity and authority to enter into and to perform this Contract;
- 3.2.3 this Contract is entered into by its duly authorised representative;
- 3.2.4 it has all necessary consents and regulatory approvals to enter into this Contract;
- 3.2.5 it has notified the Authority in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Contract;
- 3.2.6 its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- 3.2.7 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- 3.2.8 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the associated tender documents and information contained on the Central Digital Platform (as applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Contract;
- 3.2.9 it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by the Authority;
- 3.2.10 the Contract Inception Report is a true and accurate reflection of the Costs and Supplier Profit Margin forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Financial Model;
- 3.2.11 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
- 3.2.12 no proceedings or other steps have been taken and not discharged (nor, to the

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best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and

- 3.2.13 within the previous 12 months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Contract had this Contract been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.
- 3.3 The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Contract) by reference to the facts then existing.
- 3.4 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.
- 3.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1 or 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.6 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.
- 3.7 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.
- 3.8 The Supplier indemnifies the Authority against wilful misconduct of the Supplier, Subcontractor and Supplier Personnel that impacts the Contract.

Section B: The Services

4. Term

4.1 This Contract shall:

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

5. Services

Standard of Services

5.1 The Supplier shall provide:

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

5.2 The Supplier shall ensure that:

- 5.2.1 the Services:
 - (a) comply in all respects with the Services Description; and
 - (b) are supplied in accordance with the Supplier Solution and the provisions of this Contract; and
- 5.2.2 where:
 - (a) the Operational Services to be provided from any Operational Service Commencement Date are similar to services that the Authority was receiving immediately prior to that Operational Service Commencement Date (such similar services being "**Preceding Services**"); and
 - (b) the standard and level of service received by the Authority in respect of any of the Preceding Services in the 12 month period immediately prior

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to that Operational Service Commencement Date have been disclosed to the Supplier in the Due Diligence Information (such preceding services being "**Relevant Preceding Services**"),

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

5.3 The Supplier shall:

5.3.1 perform its obligations under this Contract, including in relation to the supply of the Services and any Goods in accordance with:

- (a) all applicable Law;
- (b) Good Industry Practice;
- (c) the Standards;
- (d) Schedule 5 (*Security Management*);
- (e) the Quality Plans;
- (f) the Authority IT Strategy; and
- (g) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.3.1(a) to 5.3.1(f); and

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

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

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

Supplier covenants

5.5 The Supplier shall:

5.5.1 at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Contract;

5.5.2 save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 13 (*Change*), obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences

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and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;

5.5.3 ensure that:

- (a) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by the Authority;
- (b) the release of any new Software or upgrade to any Software complies with the interface requirements in the Services Description and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 5 (*Security Management*)) shall notify the Authority 3 months before the release of any new Software or Upgrade;
- (c) all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
- (d) any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Authority Requirements; and
- (e) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Authority);

5.5.4 minimise any disruption to the Services, the IT Environment and/or the Authority's operations when carrying out its obligations under this Contract;

5.5.5 ensure that any Documentation and training provided by the Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;

5.5.6 co-operate with any Other Supplier notified to the Supplier by the Authority from time to time by providing:

- (a) reasonable information (including any Documentation);
- (b) advice; and
- (c) reasonable assistance,

in connection with the Services to any such Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the Services (or any of them) to the Authority

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and/or to any Replacement Supplier in accordance with the following collaborative working principles:

- (d) proactively leading on, mitigating and contributing to the resolution of problems or issues irrespective of its contractual obligations, acting in accordance with the principle of "fix first, settle later";
- (e) being open, transparent and responsive in sharing relevant and accurate information with such Other Suppliers;
- (f) where reasonable, adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with such Other Suppliers;
- (g) providing reasonable cooperation, support, information and assistance to such Other Suppliers in a proactive, transparent and open way and in a spirit of trust and mutual confidence; and
- (h) identifying, implementing and capitalising on opportunities to improve Deliverables and deliver better solutions and performance throughout the relationship lifecycle;

- 5.5.7 to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
- 5.5.8 unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 5.5.7;
- 5.5.9 provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
- 5.5.10 gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Contract;
- 5.5.11 notify the Authority in writing as soon as reasonably possible and in any event within 1 month of any change of Control taking place;
- 5.5.12 notify the Authority in writing within 10 Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract;
- 5.5.13 ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission in relation to this Contract which is reasonably likely to diminish the trust that the public places in the Authority; and

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- 5.5.14 manage closure or termination of Services and end of life of Goods to take account of the Authority's disposal requirements, including recycling and scope for re-use, and all applicable Standards.
- 5.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
- 5.7 Without prejudice to Clauses 17.2 and 17.3 (*IPRs Indemnity*) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:
 - 5.7.1 remedy any breach of its obligations in Clauses 5.5.2 to 5.5.4 inclusive within 5 Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);
 - 5.7.2 remedy any breach of its obligations in Clause 5.5.1 and Clauses 5.5.5 to 5.5.10 inclusive within 20 Working Days of becoming aware of the breach or being notified of the breach by the Authority; and
 - 5.7.3 meet all the costs of, and incidental to, the performance of such remedial work, and any failure of the Supplier to comply with its obligations under Clause 5.7.1 or Clause 5.7.2 within the specified or agreed timeframe shall constitute a Notifiable Default.

Specially Written Software warranty

- 5.8 Without prejudice to Clauses 5.5 (*Supplier Covenants*) and 5.9 (*Services*) and any other rights and remedies of the Authority howsoever arising, the Supplier warrants to the Authority that all components of the Specially Written Software shall:
 - 5.8.1 be free from material design and programming errors;
 - 5.8.2 perform in all material respects in accordance with the relevant specifications contained in the Supplier Solution and Documentation; and
 - 5.8.3 not infringe any Intellectual Property Rights.

Continuing obligation to provide the Services

- 5.9 The Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the supply of the Services, notwithstanding:
 - 5.9.1 any withholding of the Service Charges by the Authority pursuant to Clause 7.2.4(b) (*Performance Failures*);
 - 5.9.2 the existence of an unresolved Dispute; and/or
 - 5.9.3 any failure by the Authority to pay any Charges,unless the Supplier is entitled to terminate this Contract under Clause 31.3 (*Termination by the Supplier*) for failure to pay undisputed Charges.

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Optional Services

- 5.10 The Authority may require the Supplier to provide any or all of the Optional Services at any time by giving notice to the Supplier in writing. The Supplier acknowledges that the Authority is not obliged to take any Optional Services from the Supplier and that nothing shall prevent the Authority from receiving services that are the same as or similar to the Optional Services from any third party.
- 5.11 If a Change Request is submitted, the Supplier shall, as part of the Impact Assessment provided by the Supplier in relation to such Change Request, provide details of the impact (if any) that the proposed Change will have on the relevant Optional Services.
- 5.12 Following receipt of the Authority's notice pursuant to Clause 5.10:
- 5.12.1 the Parties shall document the inclusion of the relevant Optional Services within the Services in accordance with the Change Control Procedure, modified to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Optional Services have already been agreed;
 - 5.12.2 the Supplier shall implement and Test the relevant Optional Services in accordance with the Optional Services Implementation Plan;
 - 5.12.3 any additional charges for the Optional Services shall be incorporated in the Charges as specified in Paragraph 3 of Part B of Schedule 11 (*Charges and Invoicing*); and
 - 5.12.4 the Supplier shall, from the date agreed in the Optional Services Implementation Plan (or, if later, the date of Achievement of any Milestones associated with the commencement of the relevant Optional Services (if any)), provide the relevant Optional Services to meet or exceed the applicable Target Performance Level in respect of all Performance Indicators applicable to the Optional Services as set out in Annex 1 of Schedule 3 (*Performance Levels*).

Power of attorney – Not Used

- 5.13 By way of security for the performance of its obligations under Clauses 5.5.7 and 5.5.8 (*Supplier covenants*) the Supplier:
- 5.13.1 hereby irrevocably appoints the Authority as its agent and attorney to act with full power and authority in the Supplier's name and on its behalf to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such Clauses and to delegate one or more of the powers conferred on it by this Clause 5.13 (other than the power to delegate) to officer(s) appointed for that purpose by the Authority and may vary or revoke such delegation at any time;
 - 5.13.2 shall promptly, at its own expense, execute any deed that the Authority may reasonably require to create or perfect the appointment of the power of attorney referred to in this Clause 5.13; and
 - 5.13.3 ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in this

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Clause 5.13.]

Authority Responsibilities

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

6. Implementation

Quality Plans

- 6.1 The Supplier shall develop, within 60 Working Days of the Effective Date, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").
- 6.2 The Supplier shall obtain the Authority Representative's written approval of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that the Authority's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Contract.
- 6.3 Following the approval by the Authority of the Quality Plans:
- 6.3.1 the Supplier shall design and deliver all Deliverables in accordance with the Quality Plans; and
 - 6.3.2 any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

Implementation Plan and Delays

- 6.4 The Parties shall comply with the provisions of Schedule 9 (*Implementation Plan*) in relation to the agreement and maintenance of the Detailed Implementation Plan.
- 6.5 The Supplier shall:
- 6.5.1 comply with the Implementation Plan; and
 - 6.5.2 ensure that each Milestone is Achieved on or before its Milestone Date.
- 6.6 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:
- 6.6.1 it shall:
 - (a) notify the Authority in accordance with Clause 25.1 (*Rectification Plan Process*); and
 - (b) comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
 - (c) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
 - 6.6.2 if the Delay or anticipated Delay relates to a Key Milestone, the provisions of

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Clause 26 (*Delay Payments*) shall apply.

Testing and Achievement of Milestones

- 6.7 The Parties shall comply with the provisions of Schedule 10 (*Testing Procedures*) in relation to the procedures to determine whether a Milestone or Test has been Achieved.

7. Performance Indicators

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

Performance Failures

- 7.2 If in any Service Period:
- 7.2.1 a KPI Failure occurs, Service Credits shall be deducted from the Service Charges in accordance with Paragraph 3 of Part C of Schedule 11 (*Charges and Invoicing*);
 - 7.2.2 a Material KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with Clause 10.7);
 - 7.2.3 a PI Failure occurs, the Supplier shall notify the Authority of the action (if any) it will take to rectify the PI Failure and/or to prevent the PI Failure from recurring; and/or
 - 7.2.4 a Material PI Failure occurs:
 - (a) the Supplier shall comply with the Rectification Plan Process; and
 - (b) the Authority may withhold a proportionate amount of the Service Charges in accordance with the process set out in Clause 10.7 (*Set Off and Withholding*) until the relevant Material PI Failure is rectified to the reasonable satisfaction of the Authority, at which point the Authority shall pay the amount withheld.
- 7.3 Service Credits shall be the Authority's exclusive financial remedy for a KPI Failure except where:
- 7.3.1 the Supplier has over the previous 12 month period accrued Service Credits in excess of the Service Credit Cap;
 - 7.3.2 the KPI Failure:
 - (a) breaches the relevant KPI Service Threshold;

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- (b) has arisen due to the wilful default by the Supplier or any Supplier Personnel; and/or
- (c) results in:
 - (i) the corruption or loss of any Government Data (in which case the remedies under Clauses 18.8/18.9 (*Government Data and Security Requirements*) and 21.1 (*Protection of Personal Data*) shall also be available); and/or
 - (ii) the Authority being required to make a compensation payment to one or more third parties;

7.3.3 the Supplier has fraudulently misreported its performance against any Performance Indicator; and/or

7.3.4 the Authority is otherwise entitled to or does terminate the relevant Services or this Contract pursuant to Clause 31.1.2 (*Termination by the Authority*).

Unacceptable KPI Failure

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

- 7.4.1 the Authority shall (subject to the Service Credit Cap set out in Clause 23.4.2 (*Financial and other limits*)) be entitled to withhold and retain as compensation for the Unacceptable KPI Failure a sum equal to any Service Charges which would otherwise have been due to the Supplier in respect of that Service Period (such sum being "**Compensation for Unacceptable KPI Failure**"); and
- 7.4.2 if the Authority withholds and retains such Compensation for Unacceptable KPI Failure, any Service Points and Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue,

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

7.5 The Supplier:

- 7.5.1 agrees that the application of Clause 7.4 is commercially justifiable where an Unacceptable KPI Failure occurs; and
- 7.5.2 acknowledges that it has taken legal advice on the application of Clause 7.4 and has had the opportunity to price for that risk when calculating the Service Charges.

Critical Performance Failure

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

8. Services Improvement

8.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or

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potential improvements to the Services in accordance with this Clause 8. As part of this obligation the Supplier shall identify and report to the Programme Board once every 12 months on:

- 8.1.1 the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
 - 8.1.2 new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
 - 8.1.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or reduction of operational risk;
 - 8.1.4 changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Authority; and/or
 - 8.1.5 changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.
- 8.2 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.
- 8.3 If the Authority wishes to incorporate any improvement identified by the Supplier the Authority shall send the Supplier a Change Request in accordance with the Change Control Procedure.

9. Equipment and Maintenance

Supplier Equipment

- 9.1 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Authority Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this Contract the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Authority Premises, including the cost of packing, carriage and making good the Sites and/or the Authority Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.
- 9.2 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Authority shall be liable for loss of or damage to any of the Supplier's property located on Authority Premises which is due to the negligent act or omission of the Authority.
- 9.3 Subject to any express provision of the Service Continuity Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Contract, including the Target

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Performance Levels.

Maintenance

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

Supply of Goods – Not Used

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

Section C: Payment, Taxation and Value for Money Provisions

10. Financial and Taxation Matters

Charges and Invoicing

- 10.1 In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 11 (*Charges and Invoicing*).
- 10.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.7 (*Testing and Achievement of Milestones*), 12 (*Records, Reports, Audits and Open Book Data*), 20 (*Transparency and Freedom of Information*), 21 (*Protection of Personal Data*) and, to the extent specified therein, Clause 27 (*Remedial Adviser*) and Clause 28 (*Step-In Rights*).
- 10.3 If the Authority fails to pay any undisputed Charges properly invoiced under this Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 10.4 For the avoidance of doubt, the Charges represent all of the charges that can be levied by the Supplier in respect of the provision of the Services in accordance with this Contract, and the Supplier shall, at no additional cost to the Authority, be responsible for providing any services, functions and responsibilities that are both necessary for and incidental to the proper performance by the Supplier of the Services, unless there is an express right for the Supplier to vary or levy additional charges.
- 10.5 The Charges represent all of the charges that can be levied by the Supplier in respect of the provision of the Services in accordance with this Contract, and the Supplier shall, at no additional cost to the Authority, be responsible for providing any services, functions and responsibilities that are both necessary for and incidental to the proper performance by the Supplier of the Services, unless there is an express right for the Supplier to vary or levy additional charges.

VAT

- 10.6 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 10.7 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due under this Clause 10.7 shall be paid in cleared funds by the Supplier to the Authority not less than five Working Days before the date upon which the tax or other liability is payable by the Authority.

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Tax - Supplier Personnel

- 10.8 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Authority cannot terminate this Contract where the Supplier has not paid a minor tax or social security contribution.
- 10.9 Where the Supplier or any Supplier Personnel are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under this Contract, the Supplier must both:
- 10.9.1 comply with the Income Tax (Earnings and Pensions) Act 2003, the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to income tax and National Insurance contributions (including IR35); and
 - 10.9.2 indemnify the Authority against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Term in connection with the provision of the Services by the Supplier or any of the Supplier Personnel.
- 10.10 At any time during the Term, the Authority may specify information that the Supplier must provide with regard to the Supplier, the Supplier Personnel, the Workers, or the Supply Chain Intermediaries and set a deadline for responding, which:
- 10.10.1 demonstrates that the Supplier, Supplier Personnel, Workers, or Supply Chain Intermediaries comply with the legislation specified in Clause 10.9.1, or why those requirements do not apply; and
 - 10.10.2 assists with the Authority's due diligence, compliance, reporting, or demonstrating its compliance with any of the legislation in Clause 10.9.1.
- 10.11 The Authority may supply any information they receive from the Supplier under Clause 10.10 to HMRC for revenue collection and management and for audit purposes.
- 10.12 The Supplier must inform the Authority as soon as reasonably practicable if there any Workers or Supplier Personnel providing services to the Authority who are contracting, begin contracting, or stop contracting via an intermediary which meets one of conditions A-C set out in section 61N of the Income Tax (Earnings and Pensions) Act 2003 and/or Regulation 14 of the Social Security Contributions (Intermediaries) Regulations 2000.
- 10.13 If any of the Supplier Personnel are Workers who receive payment relating to the Services, then the Supplier must ensure that its contract with the Worker contains the following requirements:
- 10.13.1 the Authority may, at any time during the Term of the Contract, request that the Worker provides information which demonstrates they comply with Clause 10.9.1, or why those requirements do not apply, the Authority can specify the information the Worker must provide and the deadline for responding;
 - 10.13.2 the Worker's contract may be terminated at the Authority's request if the Worker fails to provide the information requested by the Authority within the time specified by the Authority;

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- 10.13.3 the Worker's contract may be terminated at the Authority's request if the Worker provides information which the Authority considers isn't good enough to demonstrate how it complies with Clause 10.9.1 or confirms that the Worker is not complying with those requirements; and
- 10.13.4 the Authority may supply any information they receive from the Worker to HMRC for revenue collection and management.

Set-off and Withholding

10.14 The Authority may set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Authority.

10.15 If the Authority wishes to:

- 10.15.1 set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier pursuant to Clause 10.7; or
- 10.15.2 exercise its right pursuant to Clause 7.2.4(b) (*Performance Failures*) to withhold payment of a proportion of the Service Charges,

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

Benchmarking

10.16 The Parties shall comply with the provisions of Schedule 13 (*Benchmarking*) in relation to the benchmarking of any or all of the Services.

Financial Distress

10.17 The Parties shall comply with the provisions of Schedule 14 (*Financial Distress*) in relation to the assessment of the financial standing of the Supplier and other specified entities and the consequences of a change to that financial standing.

Section D: Contract Governance

11. Governance

- 11.1 The Parties shall comply with the provisions of Schedule 17 (*Governance*) in relation to the management and governance of this Contract.

Representatives

- 11.2 Each Party shall have a representative for the duration of this Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Contract.
- 11.3 The initial Supplier Representative shall be the person named as such in section 11 (*Key Personnel*) of the Front Sheet. Any change to the Supplier Representative shall be agreed in accordance with Clause 14 (*Supplier Personnel*).
- 11.4 The Authority shall notify the Supplier of the identity of the initial Authority Representative within 5 Working Days of the Effective Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

12. Records, Reports, Audits & Open Book Data

- 12.1 The Supplier shall comply with the provisions of:
- 12.1.1 Schedule 20 (*Reports and Records Provisions*) in relation to the maintenance and retention of Records; and
 - 12.1.2 Part A of Schedule 15 (*Financial Reports and Audit Rights*) in relation to the maintenance of Open Book Data.
- 12.2 The Parties shall comply with the provisions of:
- 12.2.1 Part B of Schedule 15 (*Financial Reports and Audit Rights*) in relation to the provision of the Financial Reports; and
 - 12.2.2 Part C of Schedule 15 (*Financial Reports and Audit Rights*) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

13. Change

Change Control Procedure

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

Change in Law

- 13.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Charges as the result of:
- 13.2.1 a General Change in Law; or

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

Section E: Supplier Personnel and Supply Chain

14. Supplier Personnel

14.1 The Supplier shall:

- 14.1.1 Provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;
- 14.1.2 ensure that all Supplier Personnel:
 - (a) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (b) are vetted in accordance with the staff vetting requirements set out in Schedule 5 (*Security Management*) or, where no such requirements are specified, the HMG Baseline Personnel Security Standard found at https://assets.publishing.service.gov.uk/media/5b169993ed915d2cbae4af03/HMG_Baseline_Personnel_Security_Standard_-_May_2018.pdf, as replaced or updated from time to time, or equivalent standard; and
 - (c) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises;
- 14.1.3 subject to Schedule 24 (*Staff Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;
- 14.1.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Contract shall be a Default by the Supplier;
- 14.1.5 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- 14.1.6 replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- 14.1.7 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- 14.1.8 procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination
- 14.1.9 or expiry of this Contract.

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

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

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

Key Personnel

- 14.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Section 11 (*Key Personnel*) of the Front Sheet lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Operational Service Commencement.
- 14.4 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 14.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
 - 14.5.1 requested to do so by the Authority, after discussion with the Supplier;
 - 14.5.2 the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave;
 - 14.5.3 the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
 - 14.5.4 the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 14.6 The Supplier shall:
 - 14.6.1 notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of 2 weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - 14.6.2 ensure that any Key Role is not vacant for any longer than 10 Working Days;
 - 14.6.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least 60 Working Days' notice;
 - 14.6.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
 - 14.6.5 ensure that any replacement for a Key Role:
 - (a) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (b) is fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced.

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14.7 The provisions of these Clauses 14.3 to 14.6 (Key Personnel) are in addition to and not in substitution for the employment exit provisions of Schedule 24 (*Staff Transfer*).

Employment Indemnity

14.8 The Parties agree that:

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

Income Tax and National Insurance Contributions

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

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

Staff Transfer

14.10 The Parties agree that:

- 14.10.1 on commencement of the Services or any part of the Services the applicable Parts of Schedule 24 (*Staff Transfer*) shall apply as set out in section 10 of the Front Sheet; and
- 14.10.2 Part E of Schedule 24 (*Staff Transfer*) shall apply on the expiry or termination of the Services or any part of the Services.

15. Supply Chain Rights and Protections

Appointment of Sub-contractors

15.1 The Supplier shall:

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

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- (a) manage any Sub-contractors in accordance with Good Industry Practice;
 - (b) comply with its obligations under this Contract in the delivery of the Services; and
 - (c) assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Contract; and
- 15.1.2 ensure that it does not any time during the Term enter into a Sub-Contract with:
 - (a) any supplier that is on the debarment list on the basis of a mandatory exclusion ground within the meaning of the Procurement Act 2023 and associated Regulations; or
 - (b) any supplier that is on the debarment list on the basis of a discretionary exclusion ground within the meaning of the Procurement Act 2023 and associated Regulations, unless the Supplier has obtained the Authority's prior written consent to the appointment of the relevant proposed Sub-contractor.
- 15.2 Prior to sub-contracting any of its obligations under this Contract, the Supplier shall notify the Authority in writing of:
 - 15.2.1 the proposed Sub-contractor's name, registered office and company registration number;
 - 15.2.2 the scope of any Services to be provided by the proposed Sub-contractor; and
 - 15.2.3 where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arm's-length" terms; and
 - 15.2.4 whether the Supplier considers that an exclusion ground within the meaning of the Procurement Act 2023 and any associated Regulations does or may apply to the proposed Sub-Contractor.
- 15.3 If requested by the Authority within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.6, the Supplier shall also provide:
 - 15.3.1 a copy of the proposed Sub-contract; and
 - 15.3.2 any further information reasonably requested by the Authority.
- 15.4 The Authority may, within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.2 (or, if later, receipt of any further information requested pursuant to Clause 15.3), object to the appointment of the relevant Sub-contractor if it considers that:
 - 15.4.1 the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
 - 15.4.2 the proposed Sub-contractor is unreliable and/or has not provided reasonable

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services to its other customers;

15.4.3 the proposed Sub-contractor employs unfit persons; and/or

15.4.4 the proposed Sub-contractor is an excluded or excludable supplier within the meaning of the Procurement Act 2023 and any associated Regulations;

in which case, the Supplier shall not proceed with the proposed appointment.

15.5 If:

15.5.1 the Authority has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of 10 Working Days of receipt of:

(a) the Supplier's notice issued pursuant to Clause 15.3; and

(b) any further information requested by the Authority pursuant to Clause 15.3; and

15.5.2 the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause 15.6 (*Appointment of Key Sub-contractors*)),

the Supplier may proceed with the proposed appointment and, where the Sub-contract is entered into exclusively for the purpose of delivery of the Services, may notify the Authority that the relevant Sub-contract shall constitute a Third Party Contract for the purposes of section 7 (*Third Party Contracts*) of the Front Sheet.

Appointment of Key Sub-contractors

15.6 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:

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

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

15.6.3 the proposed Key Sub-contractor employs unfit persons; and/or

15.6.4 the proposed Key Sub-contractor is an excluded or excludable supplier within the meaning of the Procurement Act 2023 and any associated Regulations.

15.7 The Authority consents to the appointment of the Key Sub-contractors listed in section 6 (*Notified Key Sub-contractors*) of the Front Sheet.

15.8 Except where the Authority has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:

15.8.1 provisions which will enable the Supplier to discharge its obligations under this Contract;

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- 15.8.2 a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;
- 15.8.3 a provision enabling the Authority to enforce the Key Sub-contract as if it were the Supplier;
- 15.8.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
- 15.8.5 obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Contract in respect of:
 - (a) data protection requirements set out in Clauses 18 (*Government Data and Security Requirements*) and 21 (*Protection of Personal Data*);
 - (b) FOIA requirements set out in Clause 20 (*Transparency and Freedom of Information*);
 - (c) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 5.5.13 (*Supplier Covenants*);
 - (d) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
 - (e) the conduct of Audits set out in Part C of Schedule 15 (*Financial Reports and Audit Rights*);
- 15.8.6 provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 31.1.1 (*Termination by the Authority*) and 32.5 (*Payments by the Authority*) and Schedule 12 (*Payments on Termination*) of this Contract;
- 15.8.7 a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;
- 15.8.8 a provision enabling the Supplier or the Authority to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 27 (*Remedial Adviser*);
- 15.8.9 a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 28 (*Step-in Rights*);
- 15.8.10 a provision requiring the Key Sub-contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and
- 15.8.11 a provision requiring the Key Sub-contractor to:

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- (a) promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:
 - (i) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
 - (ii) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,and in any event, provide such notification within 10 Working Days of the date on which the Key Sub-contractor first becomes aware of such); and
- (b) co-operate with the Supplier and the Authority in order to give full effect to the provisions of Schedule 14 (*Financial Distress*), including meeting with the Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Remediation Plan, and providing the information specified at Paragraph 4.3(b)(ii) of Schedule 14 (*Financial Distress*).

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

Supply chain protection

- 15.10 If a Sub-contractor is to be appointed under this Contract, then the Authority may, in accordance with Section 72 of the Procurement Act 2023, require that the Supplier enters into a legally binding arrangement with the proposed Sub-contractor within such reasonable period after the Effective Date as may be specified by the Authority.
- 15.11 If the Supplier does not enter into a legally binding agreement in accordance with Clause 15.14 the Authority shall be entitled to:
- 15.11.1 terminate this Contract and Clause 32.5 shall apply; or
 - 15.11.2 require the Supplier to enter into a legally binding agreement with an alternate Sub-contractor.
- 15.12 For Sub-contracts in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract:
- 15.12.1 where such Sub-Contracts are entered into after the Effective Date, the Supplier will ensure that they all contain provisions that; or
 - 15.12.2 where such Sub-Contracts are entered into before the Effective Date, the Supplier will take all reasonable endeavours to ensure that they all contain provisions that:
 - (a) give the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with

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legal obligations in the fields of environmental, social or labour Law;

- (b) require the Supplier or other party receiving goods or services under the Sub-Contract to consider and verify invoices under that Sub-Contract in a timely fashion and notify the Sub-contractor without undue delay if it considers the invoice invalid or it disputes the invoice;
- (c) if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 15.12.2(b), the invoice shall be regarded as valid and undisputed for the purpose of Clause 15.12.2(d) after a reasonable time has passed;
- (d) require the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor:
 - (i) before the end of the period of 30 days beginning with the day on which an invoice is received by the Supplier or other party in respect of the sum; or
 - (ii) if later, by the date on which the payment falls due in accordance with the invoice,

subject to the invoice being verified by the Supplier or other party as valid and undisputed;

- (e) give the Authority a right to publish the Supplier's and Sub-contractors' compliance with their obligation to pay undisputed invoices within the specified payment period; and
- (f) require the Sub-contractor to include a clause to the same effect as this Clauses 15.12.2(a) to 15.12.2(e) in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract, such that each Sub-contractor is obliged to include those payment terms in any of its own Sub-contracts in the supply chain for the delivery of this Contract. In these Sub-contracts' clauses, references to the "Supplier" and "Sub-contractor", in Clause 15.10 are to be replaced with references to the respective Sub-contractors who are parties to the relevant contract.

15.13 The Supplier shall:

15.13.1 pay any undisputed sums which are due from it to a Sub-contractor:

- (a) before the end of the period of 30 days beginning with the day on which an invoice is received by the Supplier in respect of the sum; or
- (b) if later, by the date on which the payment falls due in accordance with the invoice,

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

15.13.2 include within the Balanced Sustainability Report produced by it pursuant to Schedule 3 (*Performance Levels*) a summary of its compliance with Clause 15.13.1, such data to be certified each Quarter by a director of the

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Supplier as being accurate and not misleading.

15.14 Without prejudice to Clause 15.13.1, the Supplier shall:

- 15.14.1 pay any sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:
 - (a) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or
 - (b) the date that falls 60 days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment);
- 15.14.2 pay all sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) within an average of 45 days or less after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and
- 15.14.3 include within the Balanced Sustainability Report produced by it pursuant to Schedule 3 (*Performance Levels*) a summary of its compliance with Clause 15.14.1 and Clause 15.14.2, such data to be certified every six months by a director of the Supplier as being accurate and not misleading.

15.15 If any Balanced Sustainability Report shows that in either of the last two six month periods the Supplier failed to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt, or the Supplier's average payment days is greater than 45 days after the day on which the Supplier received an invoice (or otherwise had notice of an amount for payment), the Supplier shall upload to the Virtual Library within 15 Working Days of submission of the latest Balanced Sustainability Report an action plan (the "**Action Plan**") for improvement. The Action Plan shall include, but not be limited to, the following:

- 15.15.1 (where relevant) identification of the primary causes of failure to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt;
- 15.15.2 (where relevant) identification of the primary causes of failure to pay all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within an average of 45 days or less after the day on which the Supplier received an invoice (or otherwise had notice of an amount for payment);
- 15.15.3 actions to address each of the causes set out in Clause 15.15.1 and/or Clause 15.15.2; and
- 15.15.4 mechanism for and commitment to regular reporting on progress to the Supplier's Board.

15.16 The Action Plan shall be certificated by a director of the Supplier and the Action Plan or a summary of the Action Plan published on the Supplier's website within 10 Working Days of the date on which the Action Plan is uploaded to the Virtual Library.

15.17 Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected

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Sub-contractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.

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

15.19 Notwithstanding any provision of Clauses 19 (*Confidentiality*) and 22 (*Publicity and Branding*), if the Supplier notifies the Authority (whether in a Balanced Sustainability Report or otherwise), or the Authority otherwise discovers, that the Supplier has failed to:

15.19.1 pay a Sub-contractor's undisputed invoice within 30 days of the date of receipt or if later, by the date on which the payment falls due in accordance with the invoice;

15.19.2 pay 95% or above of its Sub-Contractors or Unconnected Sub-contractors within sixty (60) days after the day on which the Supplier receives an invoice or otherwise has notice of an amount for payment; and/or

15.19.3 pay all sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) within an average of 45 days or less after the day on which the Supplier received an invoice (or otherwise had notice of an amount for payment),

the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Termination of Sub-contracts

15.20 The Authority may require the Supplier to terminate:

15.20.1 a Sub-contract where:

- (a) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 31.1.2 (*Termination by the Authority*);
- (b) the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise; and/or
- (c) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law.

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

- (a) the Authority has given its prior written consent to the particular change

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of Control, which subsequently takes place as proposed; or

- (b) the Authority has not served its notice of objection within 6 months of the later of the date the change of Control took place or the date on which the Authority was given notice of the change of Control.

Competitive Terms

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

15.22 If the Authority exercises its option pursuant to Clause 15.21, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.

Retention of Legal Obligations

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

Section F: Intellectual Property, Data and Confidentiality

16. Intellectual Property Rights

- 16.1 The Parties agree that the terms set out in Schedule 27 (*Intellectual Property Rights*) that are selected by the Authority in section 12 (*Intellectual Property Rights*) of the Front Sheet shall apply to this Contract.

17. IPRs Indemnity

- 17.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- 17.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
- 17.2.1 procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
 - 17.2.2 replace or modify the relevant item with non-infringing substitutes provided that:
 - (a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (b) the replaced or modified item does not have an adverse effect on any other Services or the IT Environment;
 - (c) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
 - (d) the terms and conditions of this Contract shall apply to the replaced or modified Services.
- 17.3 If the Supplier elects to procure a licence in accordance with Clause 17.2.1 or to modify or replace an item pursuant to Clause 17.2.2, but this has not avoided or resolved the IPRs Claim, then:
- 17.3.1 the Authority may terminate this Contract (if subsisting in accordance with Clause 31.1) with immediate effect by written notice to the Supplier; and
 - 17.3.2 without prejudice to the indemnity set out in Clause 17.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

18. Government Data and Security Requirements

- 18.1 The Supplier shall comply with the requirements of Schedule 5 (*Security Management*).
- 18.2 The Supplier shall not delete or remove any proprietary notices contained within or

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relating to the Government Data.

- 18.3 The Supplier shall ensure that any system on which the Supplier holds any Government Data, including back-up data, is a secure system that complies with the Security Requirements, Schedule 5 (*Security Management*) and the Security Requirements for Development.
- 18.4 The Supplier shall not store, copy, disclose, or use the Government Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority, other than Government Data which is Personal Data in respect of which the Supplier is a Controller, or the Supplier has rights to hold the Government Data independently of the Contract.
- 18.5 To the extent that Government Data is held and/or Processed by the Supplier, the Supplier shall supply that Government Data to the Authority as requested by the Authority in the format specified in Schedule 2 (*Services Description*).
- 18.6 The Supplier shall preserve the confidentiality, integrity and availability of Government Data and prevent the corruption or loss of Government Data at all times that the relevant Government Data is under its control or the control of any Sub-contractor.
- 18.7 Subject to Schedule 5 (*Security Management*), the Supplier shall ensure that copies of Government Data are stored off-site in accordance with the Service Continuity Plan. The Supplier shall ensure that such copies are available to the Authority (or to such other person as the Authority may direct) at all times within 10 Working Days of a written request via a secure encrypted method.
- 18.8 If the Government Data is any of (i) corrupted, (ii) lost or (iii) sufficiently degraded, in each case as a result of the Supplier's Default, so as to be unusable, the Authority may:
- 18.8.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Government Data to the extent and in accordance with the requirements specified in Schedule 22 (*Service Continuity Plan and Corporate Resolution Planning*) and the Supplier shall do so as soon as practicable but not later than 5 Working Days from the date of receipt of the Authority's notice; and/or
- 18.8.2 itself restore or procure the restoration of Government Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so, to the extent and in accordance with the requirements specified in Schedule 22 (*Service Continuity Plan and Corporate Resolution Planning*).
- 18.9 If at any time the Supplier suspects or has reason to believe that Government Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.

19. Confidentiality

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

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- 19.2 Except to the extent set out in this Clause 19 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:
- 19.2.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - 19.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Contract or without obtaining the owner's prior written consent;
 - 19.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract; and
 - 19.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 19.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- 19.3.1 the Recipient is required to disclose the Confidential Information by Law, provided that Clause 20 (*Transparency and Freedom of Information*) shall apply to disclosures required under the Procurement Act 2023, and any Regulations published under it, any PPNs, the FOIA and/or the EIRs;
 - 19.3.2 the need for such disclosure arises out of or in connection with:
 - (a) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Contract;
 - (b) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Contract; or
 - (c) the conduct of a Crown Body review in respect of this Contract; or
 - 19.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 19.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 19.5 The Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:
- 19.5.1 Supplier Personnel who are directly involved in the provision of the Services

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and need to know the Confidential Information to enable performance of the Supplier's obligations under this Contract;

19.5.2 its auditors; and

19.5.3 its professional advisers for the purposes of obtaining advice in relation to this Contract.

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

19.6 The Authority may disclose the Confidential Information of the Supplier:

19.6.1 on a confidential basis to any Crown Body for any proper purpose of the Authority or of the relevant Crown Body;

19.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

19.6.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

19.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 19.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;

19.6.5 on a confidential basis for the purpose of the exercise of its rights under this Contract, including the Audit Rights, its step-in rights pursuant to Clause 28 (*Step-In Rights*), its rights to appoint a Remedial Adviser pursuant to Clause 27 (*Remedial Adviser*) and Exit Management rights; or

19.6.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 19.

19.7 Nothing in this Clause 19 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

20. Transparency and Freedom of Information

20.1 The Parties acknowledge that Transparency Information is not Confidential Information.

20.2 Notwithstanding any other provision of this Contract, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information redacted which is exempt from disclosure in accordance with the provisions set out below). The Authority shall, prior to publication,

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use reasonable endeavours to consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

- 20.3 At no additional cost, the Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information.
- 20.4 Subject to, and in accordance with, its obligations under the Procurement Act 2023, if the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- 20.5 The Authority shall publish the Transparency Information in accordance with its obligations under the Procurement Act 2023, and in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Contract is being performed.
- 20.6 The Supplier agrees that any Information it holds that is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the Procurement Act 2023, the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 19.6.3) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within 5 Working Days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority, at no additional cost
- 20.7 The Supplier acknowledges that the Authority is subject to the requirements of the Procurement Act 2023, the FOIA and the EIRs. At no additional cost, the Supplier shall:
- 20.7.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the Procurement Act 2023, FOIA and EIRs;
 - 20.7.2 transfer to the Authority all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 20.7.3 provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
 - 20.7.4 not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.
- 20.8 The Supplier acknowledges that the Authority may be required under the Procurement

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Act 2023, FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the Procurement Act 2023, FOIA and EIRs.

- 20.9 In section 5 (*Commercially Sensitive Information*) of the Front Sheet 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 Procurement Act 2023, FOIA and the EIRs. Where possible, the Parties have sought to identify in section 5 (*Commercially Sensitive Information*) of the Front Sheet when any relevant Information will cease to fall into the category of Commercially Sensitive Information.
- 20.10 Without prejudice to the Authority's obligation to disclose Information in accordance with FOIA or Clause 19 (*Confidentiality*), the Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the Procurement Act 2023, FOIA, or the EIRs to the Information included in section 5 (*Commercially Sensitive Information*) of the Front Sheet.

21. Protection of Personal Data

- 21.1 Subject to the limitations of liability of this Agreement, the Supplier shall indemnify the Authority against any and all Losses incurred by the Authority due to breach by the Supplier of Data Protection Legislation or this Clause 21.

Status of the Controller

- 21.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Contract will determine the status of each Party under the Data Protection Legislation. A Party may act as:
- 21.2.1 "Controller" (where the other Party acts as the "Processor");
 - 21.2.2 "Processor" (where the other Party acts as the "Controller");
 - 21.2.3 "Joint Controller" (where both Parties are considered to jointly control the same Personal Data);
 - 21.2.4 "Independent Controller" of the Personal Data where the other Party is also "Controller" of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall set out in Schedule 26 (*Processing Personal Data*) which scenario or scenarios are intended to apply under this Contract.

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Where one Party is Controller and the other Party its Processor

- 21.3 Where a Party is a Processor, the only Processing that it is authorised to do is listed in Schedule 26 (*Processing Personal Data*) by the Controller and may not be determined by the Processor.
- 21.4 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 21.5 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
- 21.5.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - 21.5.2 an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
 - 21.5.3 an assessment of the risks to the rights and freedoms of Data Subjects; a
 - 21.5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data; and
 - 21.5.5 providing assurance that the measures referred to in Clause 21.7.4 comply with Schedule 5 (*Security Management*).
- 21.6 The Processor shall, in relation to any Personal Data Processed in connection with its obligations under this Contract:
- 21.6.1 Process that Personal Data only in accordance with Schedule 26 (*Processing Personal Data*), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Authority before Processing the Personal Data unless prohibited by Law;
 - 21.6.2 ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 18 (*Government Data and Security Requirements*), this Clause 21 (*Protection of Personal Data*), Schedule 5 (*Security Management*) and Schedule 27 (*Protection of Personal Data*) (which the Controller may reasonably reject including, where applicable, in accordance with its rights of rejection under those provisions, but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
 - 21.6.3 ensure that:
 - (a) the Processor Personnel do not Process Personal Data except in

accordance with this Contract (and in particular Schedule 26 (*Processing Personal Data*));

- (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data (including undertaking any vetting required by the Security Requirements) and ensure that they:
 - (i) are aware of and comply with the Processor's duties under this Clause 21, Clauses 19 (*Confidentiality*) and 18 (*Government Data and Security Requirements*), Schedule 5 (*Security Management*) and Schedule 27 (*Protection of Personal Data*);
 - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data (including any training required by the Security Requirements);-

21.6.4 not transfer such Personal Data outside of the UK and/or the EEA unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- (a) the destination country (and if applicable the entity receiving the Personal Data) has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR (or section 74A of DPA 2018) and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable), provided that if the destination country of a transfer is the United States:
 - (i) the Supplier shall ensure that prior to the transfer of any Personal Data to the United States relying on this adequacy (including to any United States-based Sub-contractors and/or Sub-processors), the Supplier (and/or the applicable Sub-contractor and/or Sub-processor) must be self-certified and continue to be self-certified on the US Data Privacy Framework;
 - (ii) the Supplier shall notify the Authority immediately if there are any, or there are reasonable grounds to believe there may be any, changes in respect of their and/or their Sub-contractor's or Sub-processor's position on the US Data Privacy Framework (for example if that entity ceases to be certified or is at risk of being so, or there is a strong likelihood of a competent court finding the US Data Privacy Framework unlawful), and the Supplier must then take all appropriate steps to remedy the certification and/or put in place alternative data transfer mechanisms in compliance with this Clause 21.6.4(a); and

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- (iii) in the event that the Supplier (and/or the applicable Sub-contractor or Sub-processor):
 - (A) ceases to be certified on the US Data Privacy Framework and the Supplier does not put in place the alternative data transfer mechanisms required for compliance with this Clause 21.6.4(a);
 - (B) the US Data Privacy Framework is no longer available and the Supplier does not put in place the alternative data transfer mechanisms required for compliance with this Clause 21.6.4(a); and/or
 - (C) fails to notify the Authority of any changes to its certification status in accordance with Clause 21.6.4(a)(ii) above,

the Authority shall have the right to terminate this Contract with immediate effect; or
- (b) the Controller and/or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75 and/or Article 46 of the EU GDPR (where applicable)) as determined by the Controller which could include relevant parties entering into:
 - (i) where the transfer is subject to UK GDPR:
 - (A) the UK International Data Transfer Agreement as published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 and as set out in Annex 2 to Schedule 26 (*Processing Personal Data*) or
 - (B) the European Commission's Standard Contractual Clauses per decision 2021/914/EU [set out in Annex 3 to Schedule 26 (*Processing Personal Data*)] or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time ("**EU SCCs**"), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "**Addendum**") [as published by the Information Commissioner's Office from time to time] OR [and as set out in Annex 2 to Schedule 26(*Processing Personal Data*)] [Guidance: see guidance notes and Annex 2 for an explanation of these options]; and/or
 - (ii) where the transfer is subject to EU GDPR, the EU SCCs, as well as any additional measures determined by the Controller being implemented by the importing party;
- (c) the Data Subject has enforceable rights and effective legal remedies;
- (d) the Processor complies with its obligations under the Data Protection

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Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

- (e) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and

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

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

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

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

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

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

21.7.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

21.7.6 becomes aware of a Data Loss Event.

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

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

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

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

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

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

21.9.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office or any other regulatory authority, or any

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consultation by the Controller with the Information Commissioner's Office or any other regulatory authority.

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

21.10.1 the Controller determines that the Processing is not occasional;

21.10.2 the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or

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

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

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

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

21.13.1 notify the Controller in writing of the intended Sub-processor and Processing;

21.13.2 obtain the written consent of the Controller;

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

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

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

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

Where the Parties are Joint Controllers of Personal Data

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

Where the Parties are Independent Controllers of Personal Data

21.17 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party

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undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.

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

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

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

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

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

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

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

- (a) the destination country (and if applicable the entity receiving the Personal Data) has been recognised as adequate by the UK government is in accordance with Article 45 of the UK GDPR or DPA 2018 Section 74A and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable), provided that if the destination country of a transfer is the United States:
 - (i) the Supplier shall ensure that prior to the transfer of any Personal Data to the United States relying on this adequacy (including to any United States-based Sub-contractors and/or Sub-processors), the Supplier (and/or the applicable Sub-contractor and/or Sub-processor) must be self-certified and continue to be self-certified on the US Data Privacy Framework;
 - (ii) the Supplier shall notify the Authority immediately if there are any, or there are reasonable grounds to believe there may be any, changes in respect of their and/or their Sub-contractor's or Sub-processor's position on the US Data Privacy Framework (for example if that entity ceases to be certified or is at risk of being so, or there is a strong likelihood of a competent court finding the US Data Privacy Framework unlawful), and the Supplier must then take all appropriate steps to remedy the certification and/or put in place alternative data transfer mechanisms in compliance with this Clause 21.21.3(a); and

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- (iii) in the event that the Supplier (and/or the applicable Sub-contractor or Sub-processor):
 - (A) ceases to be certified on the US Data Privacy Framework and the Supplier does not put in place the alternative data transfer mechanisms required for compliance with this Clause 21.21.3(a);
 - (B) the US Data Privacy Framework is no longer available and the Supplier does not put in place the alternative data transfer mechanisms required for compliance with this Clause 21.21.3(a); and/or
 - (C) fails to notify the Authority of any changes to its certification status in accordance with Clause 21.21.3(a)(ii) above,

the Authority shall have the right to terminate this Contract with immediate effect; or
- (b) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75 and/or Article 46 of the EU GDPR (where applicable)) as determined by the non-transferring Party which could include the relevant parties entering into:
 - (i) where the transfer is subject to UK GDPR:
 - (A) the UK International Data Transfer Agreement (the "**IDTA**") as published by the Information Commissioner's Office or such updated version of such IDTA as is published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 and as set out in Annex 2 to Schedule 26 (*Processing Personal Data*) or
 - (B) the European Commission's Standard Contractual Clauses per decisions 2021/914/EU set out in Annex 3 to Schedule 26 (*Processing Personal Data*)] (the "**EU SCCs**"), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "**Addendum**") as published by the Information Commissioner's Office from time to time and as set out in Annex 2 to Schedule 26 (*Processing Personal Data*); and/or
 - (ii) where the transfer is subject to EU GDPR, the EU SCCs, as well as any additional measures determined by the Controller being implemented by the importing party;
- (c) the Data Subject has enforceable rights and effective legal remedies;
- (d) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its

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best endeavours to assist the non-transferring Party in meeting its obligations); and

- (e) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the Processing of the Personal Data; and

21.21.4 where it has recorded it in Schedule 26 (*Processing Personal Data*).

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

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

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

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

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

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

21.25 Each party shall promptly notify the other Party upon it becoming aware of any Data Loss Event relating to Personal Data provided by the other party pursuant to this Contract and shall:

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

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

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- 21.25.3 work with the other Party to make any required notifications to the Information Commissioner's Office or any other regulatory authority and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
- 21.25.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 21.26 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Contract as specified in Schedule 26 (*Processing Personal Data*).
- 21.27 Personal Data shall not be retained or Processed for longer than is necessary to perform each Party's obligations under this Contract which is specified in Schedule 26 (*Processing Personal Data*).
- 21.28 Notwithstanding the general application of Clauses 21.3 to 21.15 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Clause 21.17 to 21.27.

Standard Contractual Clauses

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

- 21.29.1 withdrawn, invalidated, overruled or otherwise ceases to have effect, or
- 21.29.2 amended in such a way as to affect the transfers of Personal Data outside of the EU which are contemplated under this Contract,

Clauses 21.30 to 21.31 below shall apply.

21.30 The Parties agree:

- 21.30.1 that without any further action being required they have entered into the Standard Contractual Clauses in the European Commission's decision 2021/914/EU set out in Annex 3 to Schedule 26 (*Processing Personal Data*) in respect of data transfers by the Supplier outside of the EU to the UK;
- 21.30.2 that, where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Contract (and to which Chapter V of the EU GDPR applies) will be transferred in accordance with those Standard Contractual Clauses as of the date the Parties entered into those Standard Contractual Clauses;
- 21.30.3 to use best endeavours to complete the annexes to the Standard Contractual Clauses promptly and at their own cost for the purpose of giving full effect to them; and

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21.30.4 that if there is any conflict between this Contract and the Standard Contractual Clauses the terms of the Standard Contractual Clauses shall apply.

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

21.31.1 that the most up to date Standard Contractual Clauses from time to time shall be automatically incorporated in place of those in use at the time of such update, amendment, substitution, adoption or publication] OR [Annex 3 to Schedule 26 (*Processing Personal Data*)] and that such incorporation is not a Change;

21.31.2 that where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Contract (and to which Chapter V of the EU GDPR applies) will be transferred in accordance with the relevant form of the most up to date Standard Contractual Clauses as of the date the European Commission decision regarding such new Standard Contractual Clauses becomes effective;

21.31.3 to use best endeavours to complete any part of the most up to date Standard Contractual Clauses that a Party must complete promptly and at their own cost for the purpose of giving full effect to them; and

21.31.4 that if there is any conflict between this Contract and the most up to date Standard Contractual Clauses the terms of the most up to date Standard Contractual Clauses shall apply.

22. Publicity and Branding

22.1 The Supplier shall not:

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

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

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

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

Section G: Liability, Indemnities and Insurance

23. Limitations on Liability

Unlimited liability

23.1 Neither Party limits its liability for:

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

23.2 The Supplier's liability in respect of the indemnities in Clause 10.7 (VAT), Clause 14.8 (*Employment Indemnity*), Clause 14.9 (*Income Tax and National Insurance Contributions*), Clause 17 (*IPRs Indemnity*), Schedule 24 (*Staff Transfer*) and the Annexes to Schedule 24 (*Staff Transfer*) shall be unlimited.

23.3 The Authority's liability in respect of the indemnities in Clause 14.8 (*Employment Indemnity*), Schedule 24 (*Staff Transfer*) and the Annexes to Schedule 24 (*Staff Transfer*) shall be unlimited.

Financial and other limits

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

- 23.4.1 the Supplier's aggregate liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed £10 million ;
- 23.4.2 the Supplier's aggregate liability in respect of loss or damage to Government Data and the indemnity at Clause 21.1 for the term of the contract shall in no event exceed £20 million or 125% of the Charges payable by the Buyer to the Supplier during the Contract Term, whichever is greater;
- 23.4.3 the Supplier's aggregate liability in respect of all:
 - (a) Service Credits; and
 - (b) Compensation for Unacceptable KPI Failure;incurred in any rolling period of 12 months shall be subject to the Service Credit Cap; and
- 23.4.4 the Supplier's aggregate liability in respect of all other Losses incurred by the

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Authority under or in connection with this Contract as a result of Defaults by the Supplier, including the Supplier's aggregate liability in respect of the indemnities at Clauses 5.3.2 shall in no event exceed:

- (a) in relation to Defaults occurring in the first Contract Year, an amount equal to 150% of the Estimated Year 1 Charges;
- (b) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to 150% of the Charges paid and/or due to be paid to the Supplier under this Contract in the Contract Year immediately preceding the occurrence of the Default; and
- (c) in relation to Defaults occurring after the end of the Term, an amount equal to 150% of the Charges paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Term,

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

23.5 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clause 23.4.3.

23.6 Subject to Clauses 23.1 and 23.3 (*Unlimited Liability*) and Clause 23.7 (*Consequential Losses*) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:

23.6.1 the Authority's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Contract as a result of early termination of this Contract by the Authority pursuant to Clause 31.1.1 (*Termination by the Authority*) or by the Supplier pursuant to Clause 31.3.1 (*Termination by the Supplier*) shall in no event exceed the following amounts:

- (a) in relation to the Unrecovered Payment, the amount set out in Paragraph 7 of Schedule 12 (*Payments on Termination*);
- (b) in relation to the Breakage Costs Payment, the amount set out in Paragraph 3 of Schedule 12 (*Payments on Termination*); and
- (c) in relation to the Compensation Payment, the amount set out in Paragraph 9 of Schedule 12 (*Payments on Termination*); and

23.6.2 the Authority's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Contract as a result of Defaults of the Authority shall in no event exceed:

- (a) in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Year 1 Charges;
- (b) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the total Charges paid and/or due to be paid under this Contract in the Contract Year immediately preceding the occurrence

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of the Default; and

- (c) in relation to Defaults occurring after the end of the Term, an amount equal to the total Charges paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Term.

Consequential Losses

23.7 Subject to Clauses 23.1, 23.2 and 23.3 (*Unlimited Liability*) and Clause 23.8, neither Party shall be liable to the other Party for:

23.7.1 any indirect, special or consequential Loss; and/or

23.7.2 any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).

23.8 Notwithstanding Clause 23.7 but subject to Clause 23.4, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:

23.8.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

23.8.2 any wasted expenditure or charges;

23.8.3 the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Contract;

23.8.4 any compensation or interest paid to a third party by the Authority;

23.8.5 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; and

23.8.6 any anticipated savings identified in Schedule 16 (*Anticipated Savings*).

Conduct of indemnity claims

23.9 Where under this Contract one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 23 (*Conduct of Claims*) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

Mitigation

23.10 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Contract.

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24. Insurance

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

Section H: Remedies and Relief

25. Rectification Plan Process

25.1 In the event that:

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

25.1.2 in any Service Period there has been:

(a) a Material KPI Failure; and/or

(b) a Material PI Failure; and/or

25.1.3 the Supplier commits a material Default that is capable of remedy,

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

Notification

25.2 If:

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

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

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

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

Submission of the draft Rectification Plan

25.4 The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 25.2 (*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

25.5 The draft Rectification Plan shall set out:

25.5.1 full details of the Notifiable Default that has occurred, including a root cause analysis;

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- 25.5.2 the actual or anticipated effect of the Notifiable Default; and
 - 25.5.3 the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).
- 25.6 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 19 (*Dispute Resolution Procedure*).

Agreement of the Rectification Plan

- 25.7 The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- 25.7.1 is insufficiently detailed to be capable of proper evaluation;
 - 25.7.2 will take too long to complete;
 - 25.7.3 will not prevent reoccurrence of the Notifiable Default; and/or
 - 25.7.4 will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.
- 25.8 The Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within 5 Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.
- 25.9 If the Authority consents to the Rectification Plan:
- 25.9.1 the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
 - 25.9.2 the Authority may no longer terminate this Contract in whole or in part on the grounds of the relevant Notifiable Default;
- save in the event of a Rectification Plan Failure or other Supplier Termination Event.

26. Delay Payments

- 26.1 If a Key Milestone has not been Achieved by its relevant Milestone Date, the provisions of Paragraph 1 of Part C of Schedule 11 (*Charges and Invoicing*) shall apply in relation to the payment of Delay Payments.
- 26.2 Delay Payments shall be the Authority's exclusive financial remedy for the Supplier's failure to Achieve a Key Milestone by its Milestone Date except where:

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26.2.1 the Authority is entitled to or does terminate this Contract pursuant to Clause 31.1.2 (*Termination by the Authority*); or

26.2.2 the Delay exceeds the Delay Deduction Period.

27. Remedial Adviser

27.1 If:

27.1.1 any of the Intervention Trigger Events occur; or

27.1.2 the Authority reasonably believes that any of the Intervention Trigger Events are likely to occur,

(each an "**Intervention Cause**"), the Authority may give notice to the Supplier (an "**Intervention Notice**") giving reasonable details of the Intervention Cause and requiring:

27.1.3 a meeting between the Authority Representative and the Supplier Representative to discuss the Intervention Cause; and/or

27.1.4 the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause 27.

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

27.2 If the Authority gives notice that it requires the appointment of a Remedial Adviser:

27.2.1 the Remedial Adviser shall be:

(a) a person selected by the Supplier and approved by the Authority; or

(b) if none of the persons selected by the Supplier have been approved by the Authority (or no person has been selected by the Supplier) within 10 Working Days following the date on which the Intervention Notice is given, a person identified by the Authority;

27.2.2 the terms of engagement and start date agreed with the Remedial Adviser must be approved by the Authority; and

27.2.3 any right of the Authority to terminate this Contract pursuant to Clause 31.1.2 (*Termination by the Authority*) for the occurrence of that Intervention Cause shall be suspended for 60 Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties)(the "**Intervention Period**").

27.3 The Remedial Adviser's overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing the Supplier's responsibilities under this Contract), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:

27.3.1 observe the conduct of and work alongside the Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate

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having regard to the Intervention Cause;

- 27.3.2 gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
- 27.3.3 write reports and provide information to the Authority in connection with the steps being taken by the Supplier to remedy the Intervention Cause;
- 27.3.4 make recommendations to the Authority and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or
- 27.3.5 take any other steps that the Authority and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.

27.4 The Supplier shall:

- 27.4.1 work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
- 27.4.2 ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;
- 27.4.3 submit to such monitoring as the Authority and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
- 27.4.4 implement any reasonable recommendations made by the Remedial Adviser that have been approved by the Authority within the timescales given by the Remedial Adviser; and
- 27.4.5 not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Authority (such consent not to be unreasonably withheld).

27.5 The Supplier shall be responsible for:

- 27.5.1 the costs of appointing, and the fees charged by, the Remedial Adviser; and
- 27.5.2 its own costs in connection with any action required by the Authority and/or the Remedial Adviser pursuant to this Clause 27.

27.6 If:

- 27.6.1 the Supplier:
 - (a) fails to perform any of the steps required by the Authority in an Intervention Notice; and/or
 - (b) is in Default of any of its obligations under Clause 27.4; and/or
- 27.6.2 the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

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

28. Step-In Rights

- 28.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a "**Step-In Notice**") that it will be taking action under this Clause 28 (*Step-in Rights*), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 19 (*Confidentiality*)). The Step-In Notice shall set out the following:
- 28.1.1 the action the Authority wishes to take and in particular the Services that it wishes to control (the "**Required Action**");
 - 28.1.2 the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier's Default;
 - 28.1.3 the date on which it wishes to commence the Required Action;
 - 28.1.4 the time period which it believes will be necessary for the Required Action;
 - 28.1.5 whether the Authority will require access to the Supplier's premises and/or the Sites; and
 - 28.1.6 to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.
- 28.2 Following service of a Step-In Notice, the Authority shall:
- 28.2.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
 - 28.2.2 keep records of the Required Action taken and provide information about the Required Action to the Supplier;
 - 28.2.3 co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Authority is not assuming control; and
 - 28.2.4 act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this Clause 28.
- 28.3 For so long as and to the extent that the Required Action is continuing, then:
- 28.3.1 the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
 - 28.3.2 no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 28.4 shall apply to Deductions from Charges in respect of other Services; and
 - 28.3.3 the Authority shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Authority's costs of taking the Required Action.

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- 28.4 If the Supplier demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:
- 28.4.1 the degradation of any Services not subject to the Required Action; or
 - 28.4.2 the non-Achievement of a Milestone,
- beyond that which would have been the case had the Authority not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.
- 28.5 Before ceasing to exercise its step in rights under this Clause 28 the Authority shall deliver a written notice to the Supplier (a "**Step-Out Notice**"), specifying:
- 28.5.1 the Required Action it has actually taken; and
 - 28.5.2 the date on which the Authority plans to end the Required Action (the "**Step-Out Date**") subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 28.6.
- 28.6 The Supplier shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a "**Step-Out Plan**") relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Contract.
- 28.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
- 28.8 The Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause 28, provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:
- 28.8.1 limbs (c) or (d) of the definition of a Step-In Trigger Event; or
 - 28.8.2 limbs (e) and (f) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Supplier's Default).

29. Authority Cause

- 29.1 Notwithstanding any other provision of this Contract, if the Supplier has failed to:
- 29.1.1 Achieve a Milestone by its Milestone Date;
 - 29.1.2 provide the Operational Services in accordance with the Target Performance Levels; and/or
 - 29.1.3 comply with its obligations under this Contract,
- (each a "**Supplier Non-Performance**"),

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

- (a) the Supplier shall not be treated as being in breach of this Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;
- (b) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:
 - (i) to terminate this Contract pursuant to Clause 31.1.2 (*Termination by the Authority*); or
 - (ii) to take action pursuant to Clauses 27 (*Remedial Adviser*) or 28 (*Step-In*);
- (c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
 - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause;
 - (ii) if the Authority, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause;
 - (iii) if the Milestone is a Key Milestone, the Supplier shall have no liability to pay any Delay Payments associated with the Key Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Authority Cause; and
 - (iv) the Supplier shall be entitled to claim compensation subject to and in accordance with the principles set out in Paragraph 2 of Part C of Schedule 11 (*Charges and Invoicing*); and/or
- (d) where the Supplier Non-Performance constitutes a Performance Failure:
 - (i) the Supplier shall not be liable to accrue Service Credits;
 - (ii) the Authority shall not be entitled to withhold any of the Service Charges pursuant to Clause 7.2.4(b) (*Performance Failures*);
 - (iii) the Authority shall not be entitled to withhold and retain any Compensation for Unacceptable KPI Failure pursuant to Clause 7.4.1 (*Unacceptable KPI Failure*); and
 - (iv) the Supplier shall be entitled to invoice for the Service Charges for the relevant Operational Services affected by the Authority Cause,

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

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

29.2.1 the Supplier Non-Performance;

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

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

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

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

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

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

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

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

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

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

30. Force Majeure

30.1 Subject to the remaining provisions of this Clause 30 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 22 (*Service Continuity Plan and Corporate Resolution Planning*)), a Party may claim relief under this Clause 30 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-contractor or supplier

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shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

- 30.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 30.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 30 to the extent that consequences of the relevant Force Majeure Event:
- 30.3.1 are capable of being mitigated, but the Supplier has failed to do so;
 - 30.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract; or
 - 30.3.3 are the result of the Supplier's failure to comply with its Service Continuity Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the Service Continuity Plan).
- 30.4 Subject to Clause 30.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 30.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 30.6 Where, as a result of a Force Majeure Event:
- 30.6.1 an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:
 - (a) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure other than pursuant to Clause 31.1.3 (*Termination by the Authority*) or Clause 31.3.2 (*Termination by the Supplier*); and
 - (b) neither Party shall be liable for any Default arising as a result of such failure;
 - 30.6.2 the Supplier fails to perform its obligations in accordance with this Contract:
 - (a) the Authority shall not be entitled:
 - (i) during the continuance of the Force Majeure Event to exercise its rights under Clause 27 (*Remedial Adviser*) and/or Clause 28 (*Step-in Rights*) as a result of such failure;

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- (ii) to receive Delay Payments pursuant to Clause 26 (*Delay Payments*) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
 - (iii) to receive Service Credits, to withhold any of the Service Charges pursuant to Clause 7.2.4(b) (*Performance Failures*) or withhold and retain any of the Service Charges as compensation pursuant to Clause 7.4.1 (*Unacceptable KPI Failure*) to the extent that a Performance Failure has been caused by the Force Majeure Event; and
- (b) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.

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

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

Section I: Termination and Exit Management

31. Termination Rights

Termination by the Authority

- 31.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier:
- 31.1.1 for convenience at any time;
 - 31.1.2 if a Supplier Termination Event occurs;
 - 31.1.3 if a Force Majeure Event endures for a continuous period of more than ninety (90) days;
 - 31.1.4 in accordance with section 78, and/or section 79 (where applicable), of the Procurement Act 2023, and provided that the requirements of section 78(7) of the Procurement Act 2023 have been met, where:
 - (a) the Authority considers that the Contract was awarded or modified in material breach of the Procurement Act 2023 or regulations made under it;
 - (b) the Supplier has, since the award of the Contract become an excluded supplier or excludable supplier (including by reference to an associated person) as set out in section 57 of the Procurement Act 2023 and provided that the conditions in section 78(8) (where applicable) of the Procurement Act 2023 have been met; and/or
 - (c) any Sub-Contractor has, since the award of the Contract become an excluded supplier or excludable supplier as set out in section 57 of the Procurement Act 2023 and provided that the conditions in section 78(3) to 78(8) of the Procurement Act 2023 have been met; or
 - 31.1.5 where any Sub-Contractor has, since the award of the Contract, become an excluded supplier or excludable supplier as defined in section 57 of the Procurement Act 2023, provided that prior to exercising its right of termination under this Clause 31.1.5 the Authority:
 - (a) has notified the Supplier of its intention to terminate under this Clause, and why the Authority has decided to terminate the Contract;
 - (b) has given the Supplier reasonable opportunity to make representations about whether this Clause applies and the Authority's decision to terminate; and
 - (c) has given the Supplier a reasonable opportunity to end its Sub-Contract with the excluded or excludable supplier, and if necessary, find an alternative Sub-Contractor.
- 31.2 Where the Authority:

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- 31.2.1 is terminating this Contract under Clause 31.1.2 due to the occurrence of either limb (b),(h) and/or (i) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
- 31.2.2 has the right to terminate this Contract under Clause 31.1.2 or Clause 31.1.3, it may, prior to or instead of terminating the whole of this Contract, serve a Termination Notice requiring the partial termination of this Contract to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

Termination by the Supplier

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

- 31.3.1 this Contract if the Authority fails to pay an undisputed sum due to the Supplier under this Contract which in aggregate exceeds £376,188.50 and such amount remains outstanding 40 Working Days after the receipt by the Authority of a notice of non-payment from the Supplier; or
- 31.3.2 any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Contract or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than 20 Working Days from the date of the issue of the Termination Notice). If the operation of Clause 31.3.2 would result in a Partial Termination, the provisions of Clause 32.4 (*Partial Termination*) shall apply.

Partial Termination

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

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31.5.3 the Supplier shall not be entitled to reject the Change.

32. Consequences of Expiry or Termination

General Provisions on Expiry or Termination

32.1 The provisions of Clauses 5.8 (*Specially Written Software warranty*), 9.7.6 (*Indemnity against the recall of goods*), 10.6 and 10.7 (*VAT*), 10.11 and 10.12 (*Set-off and Withholding*), 12 (*Records, Reports, Audits and Open Book Data*), 14.8 (*Employment Indemnity*), 14.9 (*Income Tax and National Insurance Contributions*), 16 (*Intellectual Property Rights*), 17.1 (*IPRs Indemnity*), 19 (*Confidentiality*), 20 (*Transparency and Freedom of Information*), 21 (*Protection of Personal Data*), 23 (*Limitations on Liability*), 32 (*Consequences of Expiry or Termination*), 38 (*Severance*), 40 (*Entire Agreement*), 41 (*Third Party Rights*), 43 (*Disputes*) and 44 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 15 (*Charges and Invoicing*), 16 (*Payments on Termination*), 19 (*Financial Reports and Audit Rights*), 23 (*Dispute Resolution Procedure*), 24 (*Reports and Records Provisions*), 25 (*Exit Management*), 28 (*Staff Transfer*), and 32 (*Intellectual Property Rights*) and such other provisions which are expressly or by implication required to survive termination or expiry, shall survive the termination or expiry of this Contract.

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

Exit Management

32.3 The Parties shall comply with the provisions of Schedule 21 (*Exit Management*) and any current Exit Plan in relation to orderly transition of the Services to the Authority or a Replacement Supplier.

Payments by the Authority

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

32.4.1 the Termination Payment; and

32.4.2 the Compensation Payment, if either of the following periods is less than three hundred and 365 days:

- (a) the period from (but excluding) the date that the Termination Notice is given (or, where Paragraph 2.1(a) of Part D of Schedule 11 (*Charges and Invoicing*) applies, deemed given) by the Authority pursuant to Clause 31.1.1 (*Termination by the Authority*) to (and including) the Termination Date; or
- (b) the period from (and including) the date of the non-payment by the Authority referred to in Clause 31.3.1 (*Termination by the Supplier*) to (and including) the Termination Date.

32.5 If this Contract is terminated (in part or in whole) by the Authority pursuant to Clauses 31.1.2, 31.1.4(b), 31.1.4(c), 31.1.5 (*Termination by the Authority*), 33.8.12(b)

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and/or 33.12.2 or Clauses 15.15.1 or 15.8 (*Sub-Contracting*) or Clause 33.7.2 or 33.7 (*Conflicts of Interest*) or the Term expires, the only payments that the Authority shall be required to make as a result of such termination or expiry (whether by way of compensation or otherwise) are:

32.5.1 payments in respect of any Assets or apportionments in accordance with Schedule 21 (*Exit Management*); and

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

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

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

32.6.2 the Authority terminates this Contract under Clauses 31.1.4(a) (*Termination by the Authority*) or 33.7.1 (*Conflicts of Interest*).

Payments by the Supplier

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

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

32.9 A Milestone Adjustment Payment Notice shall specify:

32.9.1 each CPP Milestone to which it relates;

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

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

and may form part of a Termination Notice.

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

32.10.1 notify the Authority whether it agrees that the Retained Deliverables which the

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Authority considers should be subject to an Allowable Price Adjustment as specified in the relevant Milestone Adjustment Payment Notice should be so subject; and

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

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

(a) all relevant Milestone Payments; and

(b) the Allowable Price of each Retained Deliverable; and

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

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

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

32.12.1 the Authority shall:

(a) securely destroy or return to the Supplier all Non-retained Deliverables that are in tangible form; and

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

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

all licences granted by the Supplier pursuant to Schedule 27 (*Intellectual Property Rights*) in respect of Specially Written Software and Project Specific IPRs and any Supplier Non-COTS Software and/or Supplier Background IPRs shall terminate upon such repayment to the extent that they relate to the Non-retained Deliverables.

Section J: Miscellaneous and Governing Law

33. Compliance

Health and Safety

- 33.1 The Supplier shall perform its obligations under this Contract (including those in relation to the Services) in accordance with:
- 33.1.1 all applicable Law regarding health and safety; and
 - 33.1.2 the Health and Safety Policy whilst at the Authority Premises.
- 33.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Contract. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

Employment Law

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

Equality and Diversity

- 33.4 The Supplier shall:
- 33.4.1 perform its obligations under this Contract (including those in relation to the Services) in accordance with:
 - (a) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (b) the Authority's equality and diversity policy as provided to the Supplier from time to time; and
 - (c) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
 - 33.4.2 take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

Official Secrets Act and Finance Act

- 33.5 The Supplier shall comply with the provisions of:
- 33.5.1 the Official Secrets Acts 1911 to 1989; and
 - 33.5.2 section 182 of the Finance Act 1989.

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Conflicts of Interest

33.6 The Supplier:

- 33.6.1 must take action to ensure that neither the Supplier nor the Supplier Personnel are placed in the position of an actual or potential Conflict of Interest; and
- 33.6.2 must promptly notify and provide details to the Authority if an actual, perceived or potential Conflict of Interest happens or is expected to happen.

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

- 33.7.1 outside of the control of the Supplier, Clauses 32.2, 32.6.2 to 32.11 shall apply; or
- 33.7.2 within the control of the Supplier, Clauses 32.2, 32.5, and 32.7 to 32.11 shall apply.

Modern Slavery

33.8 The Supplier:

- 33.8.1 shall not use, nor allow its sub-contractors to use forced, bonded or involuntary prison labour;
- 33.8.2 shall not require any Supplier Personnel or the personnel of any sub-contractors to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice;
- 33.8.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
- 33.8.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;
- 33.8.5 shall make reasonable enquires to ensure that its officers, employees and sub-contractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- 33.8.6 shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its sub-contractors anti-slavery and human trafficking provisions;
- 33.8.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;
- 33.8.8 shall prepare and deliver to the Authority, an annual slavery and human

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trafficking report (in respect of which a statement under section 54 of the Modern Slavery Act would be sufficient) setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;

- 33.8.9 shall not use, nor allow its employees or sub-contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or sub-contractors;
- 33.8.10 shall not use or allow child or slave labour to be used by its sub-contractors; and
- 33.8.11 shall report the discovery or suspicion of any slavery, trafficking, forced labour, child labour, involuntary prison labour or labour rights abuses by it or its sub-contractors to the Authority and the Modern Slavery Helpline and relevant national or local law enforcement agencies;
- 33.8.12 if the Supplier is in Default under Clauses 33.8.1 to 33.8.11 the Authority may by notice:
 - (a) require the Supplier to remove from performance of the Contract any sub-contractor, Supplier Personnel or other persons associated with it whose acts or omissions have caused the Default; or
 - (b) immediately terminate the Contract in accordance with Clause 31.1.2; and

Whistleblowing

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

- 33.9.1 Law;
- 33.9.2 Clauses 33.1 to 33.7 or 33.13; or
- 33.9.3 Clause 37.

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

Recruitment of Supplier Personnel

33.11 Where, during the Term, the Supplier or a Sub-contractor need to hire Supplier Personnel for a role based in the United Kingdom, the role should be published on the Governments' 'Find a Job' website and include the location at which Supplier Personnel would be expected to perform the role.

34. Assignment and Novation

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

34.2 The Authority may at its discretion assign, novate or otherwise dispose of any or all of its

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rights, obligations and liabilities under this Contract and/or any associated licences to:

34.2.1 any Crown Body; or

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

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

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

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

35. Waiver and Cumulative Remedies

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

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

36. Relationship of the Parties

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

37. Exclusions

37.1 During the Term the Supplier shall notify the Authority as soon as reasonably practicable if:

37.1.1 the Supplier considers that an exclusion ground within the Procurement Act 2023 and any associated Regulations applies to the Supplier, including where the Supplier is put on the debarment list or becomes an excluded or excludable

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supplier by virtue of any associated persons or subcontractors where information relating to such was provided under Section 28 of the Procurement Act 2023; and/or

- 37.1.2 there are any changes to the Supplier's associated persons within the meaning of the Procurement Act 2023.
- 37.2 If the Supplier notifies the Buyer in accordance with Clause 37.1.1 then the Supplier must promptly provide any information the Authority reasonably requests in relation to the notification, including information to support an assessment of whether the circumstances giving rise to the exclusion ground are continuing or likely to occur again.
- 37.3 If the Supplier notifies the Buyer in accordance with Clause 37.1.2 above then the Supplier must promptly provide any information requested by the Buyer in relation to the change to the Supplier's associated persons, including any information set out in the Procurement Regulations 2024.
- 37.4 The Authority may terminate this Contract in accordance with Clause 31.1.2 if:
 - 37.4.1 the Supplier has failed to provide notification under Clause 37.1.1 as soon as reasonably practicable after the Supplier becoming aware that an exclusion ground within the Procurement Act 2023 and any associated Regulations does or may apply to the Supplier;
 - 37.4.2 the Supplier has failed to provide notification under Clause 37.1.2 as soon as reasonably practicable after the Supplier becoming aware of any changes to the Supplier's "associated persons" within the meaning of the Procurement Act 2023; and/or
 - 37.4.3 any notification or information provided by the Supplier under Clause 37.1, 37.2 and/or 37.3 is incomplete, inaccurate or misleading.
- 37.5 Clause 37.4 is without prejudice to the Authority's rights to terminate the Contract in accordance with Clause 31.1.4.

38. Severance

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

39. Further Assurances

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

40. Entire Agreement

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

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- 40.2 Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.
- 40.3 Nothing in this Clause 40 shall exclude any liability in respect of misrepresentations made fraudulently.

41. Third Party Rights

- 41.1 The provisions of Clauses 15.12 and 15.13 (*Supply Chain Protection*), 17.1 (*IPRs Indemnity*), Paragraphs 2.1 and 2.6 of Part A, Paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, Paragraphs 2.1 and 2.3 of Part C, Part D and Paragraphs 1.4, 2.3 and 2.8 of Part E of Schedule 24 (*Staff Transfer*) and the provisions of Paragraph 7.9 of Schedule 21 (*Exit Management*) (together "**Third Party Provisions**") confer benefits on persons named or identified in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 41.2 Subject to Clause 41.1, a person who is not a Party to this Contract has no right under the CRTPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 41.3 Except for the provisions of Clauses 15.12 and 15.13 (*Supply Chain Protection*), no Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.
- 41.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 41.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

42. Notices

- 42.1 Any notices sent under this Contract shall be in writing and served by e-mail unless it is not practicable to do so.
- 42.2 Subject to Clause 42.1, the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

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

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Manner of Delivery	Deemed time of service	Proof of service
other prepaid, next Working Day service providing proof of delivery.	provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	evidenced by signature of a delivery receipt

42.3 Notices shall be sent to the e-mail addresses (or address, where e-mail is not practicable) set out in section 13 (*Notices*) of the Front Sheet.

42.4 This Clause 42 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 19 (*Dispute Resolution Procedure*)).

43. Disputes

43.1 The Parties shall resolve Disputes arising out of or in connection with this Contract in accordance with the Dispute Resolution Procedure.

43.2 The Supplier shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.

44. Governing Law and Jurisdiction

44.1 This Contract and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

44.2 Subject to Clause 43 (*Disputes*) and Schedule 19 (*Dispute Resolution Procedure*) (including the Authority's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

[REDACTED]

