COMBINED SCHEDULES

**MODEL AGREEMENT FOR SERVICES**

**SCHEDULES, ANNEXES AND PARTS**

**Schedule 1 (Definitions)**

**SCHEDULE 2 SPECIFICATION**

**Schedule 3 (Performance Levels)**

Part A: Performance Indicators and Service Credits

Part B: Performance Monitoring

Annex 1: Performance Indicators

**Schedule 4 (Standards) not used**

**Schedule 5 (Security Management) not used**

**Schedule 6 (Insurance Requirements) not used**

**Schedule 7 (Authority Responsibilities)**

**Schedule 8 (Supplier Solution)**

**Schedule 9 (Commercially Sensitive Information)**

**Schedule 10 (Notified Key Sub-Contractors) not used**

**Schedule 11 (Third Party Contracts) not used**

**Schedule 12 (Software) not used**

**Schedule 13 (Mobilisation Plan)**

ANNEX 1: OUTLINE MOBILISATION PLAN

**Schedule 14 (Testing Procedures) not used**

**Schedule 15 (Charges and Invoicing**)

Part A: PRICING

Part B: CHARGING MECHANISMS

Part C: ADJUSTMENTS TO THE CHARGES AND RISK REGISTER

Part D: EXCESSIVE SUPPLIER PROFIT MARGIN

Part E: INVOICING AND PAYMENT TERMS

ANNEX 1: PRICING MECHANISM

ANNEX 2: CHARGING MECHANISM AND ADJUSTMENTS

ANNEX 3: PRO-FORMA CERTIFICATE OF COSTS

ANNEX 4: RISK REGISTER

**Schedule 16 (Payments on Termination) not used**

**Schedule 17 (Benchmarking)**

ANNEX 1: APPROVED BENCHMARKERS

ANNEX 2: CONFIDENTIALITY AGREEMENT

**Schedule 18 (Financial Distress)**

ANNEX 1: RATING AGENCIES AND THEIR STANDARD RATING SYSTEM

ANNEX 2: CREDIT RATINGS AND CREDIT RATING THRESHOLDS

ANNEX 3: CALCULATION METHODOLOGY FOR FINANCIAL INDICATORS

**Schedule 19 (Financial Reports and Audit Rights)**

Part A: FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA

Part B: FINANCIAL REPORTS

Part C: AUDIT RIGHTS

**Schedule 20 (Anticipated Savings) not used**

**Schedule 21 (Governance)**

ANNEX 1: REPRESENTATION AND STRUCTURE OF BOARDS

**Schedule 22 (Change Control Procedure)**

Annex 1: CHANGE REQUEST FORM

ANNEX 2: CHANGE AUTHORISATION NOTE

**Schedule 23 (Dispute Resolution Procedure)**

**Schedule 24 (Reports and Records Provisions)**

ANNEX 1: TRANSPARENCY REPORTS

ANNEX 2: RECORDS TO BE KEPT BY THE SUPPLIER

ANNEX 3: RECORDS TO UPLOAD TO VIRTUAL LIBRARY

**Schedule 25 (Exit Management)**

ANNEX 1: SCOPE OF THE TERMINATION SERVICES

ANNEX 2: DRAFT ETHICAL WALL AGREEMENT

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

Part A: SERVICE CONTINUITY PLAN

**Schedule 27 (Conduct of Claims)**

**Schedule 28 (Staff Transfer)**

Part A: TRANSFERRING AUTHORITY EMPLOYEES AT COMMENCEMENT OF SERVICES

Part B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES

Part C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

Part D: PENSIONS

ANNEX D1: CSPS

ANNEX D2: NHSPS

ANNEX D3: LGPS

ANNEX D4: OTHER SCHEMES

Part E: EMPLOYMENT EXIT PROVISIONS

ANNEX E1: LIST OF NOTIFIED SUB-CONTRACTORS

ANNEX E2: STAFFING INFORMATION

**Schedule 29 (Key Personnel)**

Schedule 30 (Deed of Guarantee)

**Schedule 31 (Processing Personal Data)**

ANNEX 1: Joint Controller Agreement

ANNEX 2: International data transfer agreement and INTERNATIONAL DATA TRANSFER AGREEMENT ADDENDUM TO THE EU COMMISSION STANDARD CONTRACTUAL CLAUSES

ANNEX 3: STANDARD CONTRACTUAL CLAUSES FOR EU GDPR COMPLIANT TRANSFERS

ANNEX 2:

Schedule 32 (Intellectual Property Rights)

ANNEX 1: SPECIALLY WRITTEN SOFTWARE AND PROJECT SPECIFIC IPRS

**SCHEDULE 1**

**DEFINITIONS**

# Schedule 1 (*Definitions*)

1. DEFINITIONS
   1. In the Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.
   2. If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
   3. In the Contract, unless the context otherwise requires:
      1. the singular includes the plural and vice versa;
      2. reference to a gender includes the other gender and the neuter;
      3. references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
      4. a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
      5. the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
      6. references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
      7. references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings"** as references to obligations under the Contract;
      8. references to **"Clauses"** and **"Schedules"** are, unless otherwise provided, references to the clauses and schedules of the Core Terms and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;
      9. references to **"Paragraphs"** are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided; and
      10. references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified.
      11. the headings in the Contract are for ease of reference only and shall not affect the interpretation or construction of the Contract; and
      12. where the Buyer is a Crown Body it shall be treated as contracting with the Crown as a whole.
      13. Any reference in this Contract which immediately before IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to Section 1A of the European Union (Withdrawal) Act 2018) is a reference to (as it has effect from time to time):
          1. any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (“**EU References**”) which is to form part of domestic law by application of Section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of Section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
          2. any EU institution or EU authority or other such EU body shall be read on and after IP Completion Day as a reference to the UK institution, authority or body to which its functions were transferred.
   4. Where a standard, policy or document is referred to in this Contract by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Contract with a reference to the replacement hyperlink.

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| “Accounting Reference Date” | means in each year the date to which the Supplier prepares its annual audited financial statements; |
| “Affected Party” | the Party seeking to claim relief in respect of a Force Majeure Event; |
| “Affiliate” | in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time; |
| “Annual Contract Report” | has the meaning given in Schedule 19 (*Financial Reports and Audit Rights*); |
| “Annual Revenue” | means, for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Supplier or, as appropriate, the Supplier Group in its most recent published accounts, subject to the following methodology:   1. figures for accounting periods of other than 12 months should be scaled pro rata to produce a proforma figure for a 12 month period; and 2. where the Supplier, the Supplier Group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date; |
| “Anticipated Contract Life Profit Margin” | has the meaning given in Schedule 15 *(Charges and* Invoicing); |
| “Approved Sub-Licensee” | any of the following:   1. a Central Government Body; 2. any third party providing services to a Central Government Body; and/or 3. any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority; |
| “Assets” | all assets and rights used by the Supplier to provide the Services in accordance with this Contract but excluding the Authority Assets; |
| “Associated Person” | has the meaning given to it in Section 44(4) of the Criminal Finances Act 2017; |
| “Associates” | means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles; |
| “Assurance” | means written confirmation from a Relevant Authority to the Supplier that the CRP Information is approved by the Relevant Authority; |
| “Audit” | any exercise by the Authority of its Audit Rights pursuant to Clause 12 (Records, Reports, Audit and Open Book Data) and Schedule 19 (*Financial Reports and Audit Rights*); |
| “Audit Agents” | 1. the Authority’s internal and external auditors; 2. the Authority’s statutory or regulatory auditors; 3. the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; 4. HM Treasury or the Cabinet Office; 5. any party formally appointed by the Authority to carry out audit or similar review functions; and 6. successors or assigns of any of the above; |
| “Audit Rights” | the audit and access rights referred to in Schedule 19 (*Financial Reports and Audit Rights)*; |
| “Authority Assets” | the Authority Materials, the Authority infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision or receipt of the Services; |
| “Authority Background IPRs” | 1. IPRs owned by the Authority before the Effective Date, including IPRs contained in any of the Authority's Know-How, documentation, processes and procedures; 2. IPRs created by the Authority independently of this Contract; and/or 3. Crown Copyright which is not available to the Supplier otherwise than under this Contract;   but excluding IPRs owned by the Authority subsisting in the Authority Software; |
| “Authority Data” | 1. the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:    1. supplied to the Supplier by or on behalf of the Authority; and/or    2. which the Supplier is required to generate, process, store or transmit pursuant to this Contract; or 2. any Personal Data for which the Authority is the Controller; |
| “Authority Service Collaboration Strategy” | the Authority's policy in force as at the Effective Date (described in [•] as updated from time to time in accordance with the Change Control Procedure; |
| “Authority Materials” | the Authority Data together with any materials, documentation, information, programs and codes supplied by the Authority to the Supplier, the IPRs in which:   1. are owned or used by or on behalf of the Authority; and 2. are or may be used in connection with the provision or receipt of the Services,   but excluding any Project Specific IPRs, Specially Written Software, Supplier Software, Third Party Software and Documentation relating to Supplier Software or Third Party Software; |
| “Authority Premises” | premises owned, controlled or occupied by the Authority and/or any Central Government Body which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them); |
| “Authority Representative” | the representative appointed by the Authority pursuant to Clause 11.4 (Representatives); |
| “Authority Requirements” | the requirements of the Authority set out in Schedule 2 (*Specification)*), Schedule 3 (*Performance Levels*), Schedule 13 (*Mobilisation Plan*), Schedule 24 (*Reports* *and Records Provisions*), Schedule 25 (Exit *Management*) and Schedule 26 (*Service* *Continuity Plan and Corporate Resolution Planning*); |
| “Authority Responsibilities” | the responsibilities of the Authority specified in Schedule 7 (*Authority Responsibilities*); |
| “Authority Software” | software which is owned by or licensed to the Authority (other than under or pursuant to this Contract) and which is or will be used by the Supplier for the purposes of providing the Services; |
| “Authority System” | the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with this Contract which is owned by the Authority or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Services; |
| “Baseline Security Requirements” | the Authority's baseline security requirements, consisting vetting requirements set out in the Specificationas updated from time to time by the Authority and notified to the Supplier; |
| “Board” | means the Supplier’s board of directors; |
| “Central Government Body” | a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:   1. Government Department; 2. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); 3. Non-Ministerial Department; or 4. Executive Agency; |
| “Certificate of Costs” | has the meaning given in Schedule 15 *(Charges and* Invoicing); |
| “Change” | any change to this Contract; |
| “Change Authorisation Note” | a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2: Change Authorisation Note; |
| “Change Control Procedure” | the procedure for changing this Contract set out in Schedule 22 (*Change Control* *Procedure*); |
| “Change in Law” | any change in Law which impacts on the performance of the Services which comes into force after the Effective Date; |
| “Change Request” | a written request for a Contract Change substantially in the form of Annex 1 *(Change Request Form);* |
| “Charges” | the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 15 *(Charges* andInvoicing), including any Service Charge; |
| “Class 1 Transaction” | has the meaning set out in the listing rules issued by the UK Listing Authority; |
| “Commercially Sensitive Information” | the information listed in Schedule 9 (*Commercially Sensitive Information*) comprising the information of a commercially sensitive nature relating to:   1. the pricing of the Services; 2. details of the Supplier’s IPRs; and 3. the Supplier’s business and investment plans;   which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss; |
| “Comparable Supply” | the supply of services to another customer of the Supplier that are the same or similar to any of the Services; |
| “Compensation for Unacceptable KPI Failure” | has the meaning given in Clause 7.4(a) (Unacceptable KPI Failure); |
| “Condition Precedent” | has the meaning given in Clause 4.2 (Condition Precedent); |
| “Confidential Information” | 1. Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Contract that relates to:    1. the Disclosing Party Group; or    2. the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group; 2. other Information provided by the Disclosing Party pursuant to or in anticipation of this Contract that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient’s attention or into the Recipient’s possession in connection with this Contract; 3. discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Contract and all matters arising therefrom; and 4. Information derived from any of the above,   but not including any Information which:   * 1. was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;   2. the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient’s knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;   3. was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality;   4. was independently developed without access to the Confidential Information; or   5. relates to the Supplier’s:      1. performance under this Contract; or      2. failure to pay any Sub-contractor as required pursuant to Clause 15.15(a) (Supply Chain Protection); |
| “Conflict of Interest” | a conflict between the financial or personal duties of the Supplier or the Supplier Personnel and the duties owed to the Authority under the Contract, in the reasonable opinion of the Authority; |
| “Contract Change” | any change to this Contract other than an Operational Change; |
|  |  |
| “Contracts Finder” | the online government portal which allows suppliers to search for information about contracts as prescribed by Part 4 of the Public Contract Regulations 2015; |
| “Contract Year” | 1. a period of 12 months commencing on the Effective Date; or 2. thereafter a period of 12 months commencing on each anniversary of the Effective Date;   provided that the final Contract Year shall end on the expiry or termination of the Term; |
| “Control” | the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly; |
| “Controller” | has the meaning given in the UK GDPR or the EU GDPR as the context requires; |
| “Corporate Change Event” | means:   1. any change of Control of the Supplier or a Parent Undertaking of the Supplier; 2. any change of Control of any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services; 3. any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services; 4. a Class 1 Transaction taking place in relation to the shares of the Supplier or any Parent Undertaking of the Supplier whose shares are listed on the main market of the London Stock Exchange plc; 5. an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier or any Parent Undertaking of the Supplier; 6. payment of dividends by the Supplier or the ultimate Parent Undertaking of the Supplier Group exceeding 25% of the Net Asset Value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any 12 month period; 7. an order is made or an effective resolution is passed for the winding up of any member of the Supplier Group; 8. any member of the Supplier Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Supplier Group; 9. the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or 10. any process or events with an effect analogous to those in Paragraphs (e) to (g) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales; |
| “Corporate Change Event Grace Period” | means a grace period agreed to by the Relevant Authority for providing CRP Information and/or updates to Service Continuity Plan after a Corporate Change Event |
| “Costs” | has the meaning given in Schedule 15 *(Charges and* Invoicing); |
| “Critical Performance Failure” | 1. the Supplier accruing in aggregate [insert number] or more Service Points (in terms of the number of points allocated) in any period of [insert number] months; or 2. the Supplier accruing Service Credits or Compensation for Unacceptable KPI Failure which meet or exceed the Service Credit Cap; |
| “Crown Body” | means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf; |
| “Crown Copyright” | has the meaning given in the Copyright, Designs and Patents Act 1988 |
| “CRTPA” | the Contracts (Rights of Third Parties) Act 1999; |
| “Data Loss Event” | any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach; |
| “Data Protection Impact Assessment” | an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data; |
| “Data Protection Legislation” | 1. the UK GDPR; 2. the DPA 2018 to the extent that it relates to processing of personal data and privacy; 3. all applicable Law about the processing of personal data and privacy; and 4. (to the extent that it applies) the EU GDPR; |
| “Data Subject” | has the meaning given to it in the UK GDPR or the EU GDPR as the context requires; |
| “Data Subject Request” | a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to their Personal Data; |
| “Deductions” | all Service Credits, Compensation for Unacceptable KPI Failure, or any other deduction which is paid or payable to the Authority under this Contract; |
| “Default” | any breach of the obligations of the relevant Party (including abandonment of this Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:   1. in the case of the Authority, of its employees, servants, agents; or 2. in the case of the Supplier, of its Sub-contractors or any Supplier Personnel,   in connection with or in relation to the subject-matter of this Contract and in respect of which such Party is liable to the other; |
| “Defect” | 1. any error, damage or defect in the manufacturing of a Deliverable; or 2. any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or 3. any failure of any Deliverable to provide the performance, features and functionality specified in the Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria; or 4. any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria; |
| “Delay” | 1. a delay in commencing provisionof the Mobilisation Services on the Effective Date; or 2. a delay in commencing the Operational Services on and from the Start Date; |
| “Deliverable” | an item or feature delivered or to be delivered by the Supplier at any other stage during the performance of this Contract; |
| “Dependent Parent Undertaking” | means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Contract, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Contract; |
| “Detailed Implementation Plan” | the plan developed and revised from time to time in accordance with Paragraphs 3 and 4 of Schedule 13 (*Mobilisation Plan*); |
| “Disclosing Party” | has the meaning given in Clause 19.1 (Confidentiality); |
| “Disclosing Party Group” | 1. where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and 2. where the Disclosing Party is the Authority, the Authority and any Central Government Body with which the Authority or the Supplier interacts in connection with this Contract; |
| “Dispute” | any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure; |
| “Dispute Notice” | a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute; |
| “Dispute Resolution Procedure” | the dispute resolution procedure set out in Schedule 23 (*Dispute Resolution Procedure*); |
| “Documentation” | descriptions of the Services and Performance Indicators, details of the Supplier System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:   1. is required to be supplied by the Supplier to the Authority under this Contract; 2. would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services; 3. is required by the Supplier in order to provide the Services; and/or 4. has been or shall be generated for the purpose of providing the Services; |
| “DOTAS” | the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992; |
| “DPA 2018” | the Data Protection Act 2018; |
| “Due Diligence Information” | any information supplied to the Supplier by or on behalf of the Authority prior to the Effective Date; |
| “Effective Date” | the later of:   1. the date on which this Contract is signed by both Parties; and 2. the date on which the Condition Precedent has been satisfied or waived in accordance with Clause 4.2 (Condition Precedent);   and in either case the date from which the Mobilisation Services shall commence; |
| “EIRs” | the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations; |
| “Emergency Maintenance” | ad hoc and unplanned maintenance provided by the Supplier where:   1. the Authority reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a fault, and notifies the Supplier of the same; or 2. the Supplier reasonably suspects that the IT Environment or the Services, or any part the IT Environment or the Services, has or may have developed a fault; |
| “Employee Liabilities” | all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:   1. redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; 2. unfair, wrongful or constructive dismissal compensation; 3. compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; 4. compensation for less favourable treatment of part-time workers or fixed term employees; 5. outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions; 6. employment claims whether in tort, contract or statute or otherwise; 7. any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation; |
| “Employment Regulations” | the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced; |
| “Estimated Year 1 Charges” | the estimated Charges payable by the Authority during the first Contract Year, as set out in the Financial Model; |
| “Estimated Initial Service Charges” | the estimated Service Charges payable by the Authority during the period of 12 months from the Start Date, as set out in the Financial Model; |
| “EEA” | European Economic Area |
| “EU GDPR” | Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law; |
| “EU” | European Union |
| “Exit Management” | services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier, as set out or referred to in Schedule 25 (Exit *Management)*; |
| “Exit Plan” | the plan produced and updated by the Supplier during the Term in accordance with Paragraph 4 of Schedule 25 (Exit *Management)*; |
| “Expedited Dispute Timetable” | the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 23 (*Dispute Resolution Procedure*); |
| “Expert” | has the meaning given in Schedule 23 (*Dispute Resolution Procedure*); |
| “Expert Determination” | the process described in Paragraph 6 of Schedule 23 (*Dispute Resolution Procedure*); |
| “Extension Period” | a period of [x] years from the end of the Initial Term; |
| “Financial Distress Event” | the occurrence of one or more of the events listed in Paragraph 3.1 of Schedule 18 (*Financial Distress*); |
| “Financial Distress Remediation Plan” | a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Contract in the event that a Financial Distress Event occurs. This plan should include what the Authority would need to put in place to ensure performance and delivery of the Services in accordance with this Contract up to and including any Insolvency Event in respect of the relevant FDE Group entity and may refer to the Insolvency Continuity Plan in this regard; |
| “Financial Model” | has the meaning given in Schedule 19 (*Financial Reports and Audit Rights*); |
| “Financial Reports” | has the meaning given in Schedule 19 (*Financial Reports and Audit Rights*); |
| “Financial Transparency Objectives” | has the meaning given in Schedule 19 (Financial Reports and Audit Rights); |
| “FOIA” | the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act; |
| “Force Majeure Event” | any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or other natural disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier’s or a Sub-contractor’s supply chain; |
| “Force Majeure Notice” | a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event; |
| “Former Supplier” | has the meaning given in Schedule 28 (*Staff Transfer*); |
| “General Anti-Abuse Rule” | 1. the legislation in Part 5 of the Finance Act 2013; and 2. any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions; |
| “General Change in Law” | a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply; |
| “Good Industry Practice” | at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Authority, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws; |
| “Goods” | has the meaning given in Clause 9.7 (Supply of Goods); |
| [“Guarantee” | the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of this Contract (which is in the form set out in Schedule 29 (*Key Personnel)*), or any guarantee acceptable to the Authority that replaces it from time to time;] |
| [“Guarantor” | [insert name], a company registered in [insert country] with company number [insert company number] and whose registered office is at [insert registered address];] |
| “Halifax Abuse Principle” | the principle explained in the CJEU Case C-255/02 Halifax and others; |
| “Health and Safety Policy” | the health and safety policy of the Authority and/or other relevant Central Government Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety; |
| “HMRC” | HM Revenue & Customs; |
| “Impact Assessment” | has the meaning given in Schedule 22 (*Change Control Procedure*); |
| “Indemnified Person” | the Authority and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Contract; |
| “Independent Controller” | a party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data; |
| “Information” | all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); |
| “Initial Term” | the period of [x years] from and including the Effective Date; |
| “Initial Upload Date” | means the occurrence of an event detailed in Schedule 24 (*Reports and Records Provisions*) Annex 3: Records *To Upload To Virtual Library*) which requires the Supplier to provide its initial upload of the relevant information to the Virtual Library; |
| “Insolvency Event” | with respect to any person, means:   1. that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:    1. (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or    2. (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986; 2. that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person; 3. another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person; 4. a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person’s assets and such attachment or process is not discharged within fourteen (14) days; 5. that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; 6. where that person is a company, a LLP or a partnership:    1. a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;    2. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;    3. (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or    4. (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or 7. any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above; |
| “Intellectual Property Rights” or “IPRs” | 1. copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information; 2. applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and 3. all other rights having equivalent or similar effect in any country or jurisdiction; |
| “Intervention Cause” | has the meaning given in Clause 27.1 (Remedial Adviser); |
| “Intervention Notice” | has the meaning given in Clause 27.1 (Remedial Adviser); |
| “Intervention Period” | has the meaning given in Clause 27.2(c) (Remedial Adviser); |
| “Intervention Trigger Event” | 1. any event falling within limb (a), (b), (c), (e), (f) or (g) of the definition of a Supplier Termination Event; 2. a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services; 3. the Supplier accruing in aggregate [insert number of points which is 75% of the points that would constitute a “Critical Performance Failure”] or more Service Points (in terms of the number of points allocated) in any period of [insert number of months taken from definition of “Critical Performance Failure”] months; and/or 4. the Supplier accruing Service Credits which meet or exceed 75% of the Service Credit Cap; |
| “IP Completion Day” | has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020; |
| “IPRs Claim” | any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Authority Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Contract or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Contract; |
| “IT” | information and communications technology; |
| “IT Environment” | the Authority System and the Supplier System; |
| “Joint Controllers” | where two or more Controllers jointly determine the purposes and means of processing; |
| “Key Performance Indicator” | the Qualitative Indicator where Service Credits are attributed for poor performance set out in Table 1 of Part A of Annex 1 of Schedule 3 (*Performance Levels*); |
| “Key Personnel” | those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 29 (*Key Personnel*) against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 14.5 and 14.6 (Key Personnel); |
| “Key Roles” | a role described as a Key Role in Schedule 29 (*Key Personnel*) and any additional roles added from time to time in accordance with Clause 14.4 (Key Personnel); |
| “Key Sub-contract” | each Sub-contract with a Key Sub-contractor; |
| “Key Sub-contractor” | any Sub-contractor:   1. which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or 2. with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Contract (as set out in the Financial Model); |
| “Know-How” | all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party’s possession before this Contract; |
| “KPI Failure” | a failure to meet the Target Performance Level in respect of a Key Performance Indicator; |
| “KPI Service Threshold” | shall be as set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 3 (*Performance Levels*); |
| “Law” | any law, statute, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply; |
| “LED” | Law Enforcement Directive (Directive (EU) 2016/680); |
| “Licensed Software” | all and any Software licensed by or through the Supplier, its Sub-contractors or any third party to the Authority for the purposes of or pursuant to this Contract, including any Supplier Software, Third Party Software and/or any Specially Written Software; |
| “Losses” | losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise; |
| “Maintenance Schedule” | shall have the meaning set out in Clause 9.4 (Maintenance); |
| “Malicious Software” | any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence; |
| “Management Information” | the management information specified in Schedule 3 (*Performance Levels*), Schedule 15 *(Charges and* Invoicing) and Schedule 21 (*Governance*) to be provided by the Supplier to the Authority; |
| “Material KPI Failure” | 1. a Serious KPI Failure; 2. a Severe KPI Failure; or 3. a failure by the Supplier to meet a KPI Service Threshold; |
| “Material PI Failure” | 1. a failure by the Supplier to meet the PI Service Threshold in respect of 25% or more of the Subsidiary Performance Indicators that are measured in that Service Period; and/or 2. a failure by the Supplier to meet the Target Performance Level in respect of 50% or more of the Subsidiary Performance Indicators that are measured in that Service Period; |
| “Measurement Period” | in relation to a Performance Indicator or Subsidiary Performance Indicator, the period over which the Supplier’s performance is measured (for example, a Service Period if measured monthly or a 12 month period if measured annually); |
| “Minor KPI Failure” | shall be as set out against the relevant Key Performance Indicator in Table 2 of Part A of Annex 1 of Schedule 3 (*Performance Levels*); |
| “Mobilisation Plan” | the Outline Implementation Plan or (if and when approved by the Authority pursuant to Paragraph 3 of Schedule 13 (*Mobilisation Plan*)) the Detailed Implementation Plan as updated in accordance with Paragraph 4 of Schedule 13 (*Mobilisation Plan*) from time to time; |
| “Mobilisation Services” | the activities and deliverable required to mobilise services in readiness for go live of the Operational Services on and from the Start Date; |
| “month” | a calendar month and “monthly” shall be interpreted accordingly; |
| “Multi-Party Dispute Resolution Procedure” | has the meaning given in Paragraph 9.1 of Schedule 28 (*Staff Transfer*) of Schedule 23 (*Dispute Resolution Procedure*); |
| “Multi-Party Procedure Initiation Notice” | has the meaning given in Paragraph 9.2 of Schedule 23 (*Dispute Resolution Procedure*); |
| “New Releases” | an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item; |
| “Non-trivial Customer Base” | a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor; |
| “Non-retained Deliverables” | in relation to a CPP Milestone Payment Notice and each CPP Milestone the subject of that CPP Milestone Payment Notice, Deliverables provided to the Authority which relate to the relevant CPP Milestone(s) and which are not Retained Deliverables; |
| “Notifiable Default” | shall have the meaning given in Clause 25.1 (Rectification Plan Process); |
| “Object Code” | software and/or data in machine-readable, compiled object code form; |
| “Occasion of Tax Non-Compliance” | 1. any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:    1. a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;    2. the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or 2. any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion; |
| “Open Book Data” | has the meaning given in Schedule 19 (*Financial Reports and Audit Rights*); |
| “Open Source” | computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source; |
| “Operating Environment” | the Authority System and the Sites; |
| “Operational Change” | any change in the Supplier's operational procedures which in all respects, when implemented:   1. will not affect the Charges and will not result in any other costs to the Authority; 2. may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services; 3. will not adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure; and 4. will not require a change to this Contract; |
| “Operational Services” | the operational services described as such in the Specification; |
| “Optional Services” | the services described as such in Schedule 2 (*Specification*) which are to be provided by the Supplier if required by the Authority in accordance with Clause 5.10 (Optional Services); |
| “Optional Services Implementation Plan” | the implementation plan to effect the Optional Services agreed between the Parties prior to the Effective Date and, if not agreed prior to the Effective Date, to be developed by the Supplier and approved by the Authority; |
| “Other Supplier” | any supplier to the Authority (other than the Supplier) which is notified to the Supplier from time to time; |
| “Outline Implementation Plan” | the outline plan set out at Annex 1 of Schedule 13 (*Mobilisation Plan*); |
| “Parent Undertaking” | has the meaning set out in section 1162 of the Companies Act 2006; |
| “Partial Termination” | the partial termination of this Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 31.2(b) (Termination by the Authority) or 31.3(b) (Termination by the Supplier) or otherwise by mutual agreement by the Parties; |
| “Parties” and “Party” | have the meanings respectively given on page 1 of this Contract; |
| “Performance Failure” | a KPI Failure or a PI Failure; |
| “Performance Indicators” | the Quantative Indicators and the Qualitative Indicators; |
| “Permitted Maintenance” | has the meaning given in Clause 9.4 (Maintenance); |
| “Performance Monitoring Report” | has the meaning given in Schedule 3 (*Performance Levels*); |
| “Personal Data” | has the meaning given in the UK GDPR or the EU GDPR as the context requires; |
| “Personal Data Breach” | has the meaning given in the UK GDPR or the EU GDPR as the context requires; |
| “PI Failure” | a failure to meet the Target Performance Level in respect of a Subsidiary Performance Indicator; |
| “PI Service Threshold” | shall be as set out against the relevant Subsidiary Performance Indicator in Table 2 in Part A of Annex 1 of Schedule 3 (*Performance Levels*); |
| “Preceding Services” | has the meaning given in Clause 5.2(b) (Standard of Services); |
| “Prescribed Person” | a legal adviser, an MP, or an appropriate body which a whistle-blower may make a disclosure to as detailed in ‘Whistleblowing: list of prescribed people and bodies’, available online at: <https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies>[, as updated from time to time;](https://www.gov.uk/government/publications/blowing-thewhistle-list-of-prescribed-people-and-bodies--2/whistleblowing-listof-prescribed-people-and-bodies,%20as%20updated%20from%20time%20to%20time;) |
| “Processor” | has the meaning given to it under the UK GDPR or the EU GDPR as the context requires; |
| “Processor Personnel” | means all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-processor engaged in the performance of its obligations under this Contract; |
| “Programme Board” | the body described in Paragraph 5 of Schedule 21 (*Governance*); |
| “Prohibited Act” | 1. to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:    1. induce that person to perform improperly a relevant function or activity; or    2. reward that person for improper performance of a relevant function or activity; 2. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract; 3. an offence:    1. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);    2. under legislation or common law concerning fraudulent acts; or    3. defrauding, attempting to defraud or conspiring to defraud the Authority (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or 4. any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK; |
| “Protective Measures” | appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it; |
| “Project Specific IPRs” | 1. Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or 2. Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Contract;   but shall not include the Supplier Background IPRs or the Specially Written Software; |
| “Public Sector Dependent Supplier” | means a supplier where that supplier, or that supplier’s group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business; |
| “Publishable Performance Information” | means any of the information in the Performance Monitoring Report as it relates to a Performance Indicator where it is expressed as publishable in the table in Annex 1 which shall not constitute Commercially Sensitive Information; |
| “Quality Plans” | has the meaning given in Clause 6.1 (Quality Plans); |
| “Quarter” | the first three Service Periods and each subsequent three Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Contract); |
| “Recipient” | has the meaning given in Clause 19.1 (Confidentiality); |
| “Records” | has the meaning given in Schedule 24 (*Reports and Records Provisions*); |
| “Rectification Plan” | a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default; |
| “Rectification Plan Failure” | 1. the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 25.4 (Submission of the draft Rectification Plan) or 25.8 (Agreement of the Rectification Plan); 2. the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 25.7 (Agreement of the Rectification Plan); 3. the Supplier failing to rectify a material Default within the later of:    1. 30 Working Days of a notification made pursuant to Clause 25.2 (Notification); and    2. where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default; 4. a Material KPI Failure re-occurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in any of the 3 Measurement Periods subsequent to the Measurement Period in which the initial Material KPI Failure occurred; and/or 5. following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of 6 months for the same (or substantially the same) root cause as that of the original Notifiable Default; |
| “Rectification Plan Process” | the process set out in Clauses 25.4 (Submission of the draft Rectification Plan) to 25.9 (Agreement of the Rectification Plan); |
| “Registers” | has the meaning given in Schedule 25 (Exit *Management)*; |
| “Reimbursable Expenses” | has the meaning given in Schedule 15 *(Charges and* Invoicing); |
| “Relevant Authority” or “Relevant Authorities” | means the Authority and the Cabinet Office Markets and Suppliers Team or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team; |
| “Relevant IPRs” | IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority or a third party in the fulfilment of the Supplier’s obligations under this Contract including IPRs in the Specially Written Software, the Supplier Non-COTS Software, the Supplier Non-COTS Background IPRs, the Third Party Non-COTS Software and the Third Party Non-COTS IPRs but excluding any IPRs in the Authority Software, the Authority Background IPRs, the Supplier COTS Software, the Supplier COTS Background IPRS, the Third Party COTS Software and/or the Third Party COTS IPRs; |
| “Relevant Preceding Services” | has the meaning given in Clause 5.2(b) (Standard of Services); |
| “Relevant Requirements” | all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010; |
| “Relevant Tax Authority” | HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established; |
| “Relevant Transfer” | a transfer of employment to which the Employment Regulations applies; |
| “Remedial Adviser” | the person appointed pursuant to Clause 27.2 (Remedial Adviser); |
| “Remedial Adviser Failure” | has the meaning given in Clause 27.6 (Remedial Adviser); |
| “Replacement Services” | any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Contract, whether those services are provided by the Authority internally and/or by any third party; |
| “Replacement Supplier” | any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority); |
| “Request For Information” | a Request for Information under the FOIA or the EIRs; |
| “Required Action” | has the meaning given in Clause 28.1(a) (Step-In Rights); |
| “Retained Deliverables” | has the meaning given in Clause 32.8(b) (Payments by the Supplier); |
| “Risk Register” | the register of risks and contingencies that have been factored into any Costs due under this Contract, a copy of which is set out in Annex 4 of Schedule 15 *(Charges and* Invoicing); |
| “Serious KPI Failure” | shall be as set out against the relevant Key Performance Indicator in Table 2 of Part A of Annex 1 of Schedule 3 (*Performance Levels*); |
| “Service Charges” | the periodic payments made in accordance with Schedule 15 *(Charges and* Invoicing) in respect of the supply of the Operational Services; |
| “Service Continuity Plan” | any plan prepared pursuant to Paragraph 2 of Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*) as may be amended from time to time; |
| “Service Continuity Services” | the business continuity, disaster recovery and insolvency continuity services set out in Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*) |
| “Service Credit Cap” | 1. in the period of 12 months from the Start Date to occur after the Effective Date, [x]% of the Estimated Initial Service Charges; and 2. during the remainder of the Term, [x]% of the Service Charges paid and/or due to be paid to the Supplier under this Contract in the period of 12 months immediately preceding the Service Period in respect of which Service Credits are accrued; |
| “Service Credits” | credits payable by the Supplier due to the occurrence of 1 or more KPI Failures, calculated in accordance with Paragraph 2 of Part C of Schedule 15 *(Charges and* Invoicing); |
| “Service Period” | a calendar month, save that:   1. the first service period shall begin on the first Start Date and shall expire at the end of the calendar month in which the first Start Date falls; and 2. the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term; |
| “Service Points” | in relation to a KPI Failure, the points that are set out against the relevant Key Performance Indicator in the fifth column of Table 2 in Annex 1 of Schedule 3 (*Performance Levels*); |
| “Services” | any and all of the services to be provided by the Supplier under this Contract, including those set out in Schedule 2 (*Specification*); |
| “Service Transfer Date” | has the meaning given in Schedule 28 (*Staff Transfer*); |
| “Services Description” | the services description set out in Schedule 2 (*Specification*); |
| “Severe KPI Failure” | shall be as set out against the relevant Key Performance Indicator in Table 2 of Part A of Annex 1 of Schedule 3 (*Performance Levels*); |
| “Sites” | any premises (including the Authority Premises, the Supplier’s premises or third party premises):   1. from, to or at which:    1. the Services are (or are to be) provided; or    2. the Supplier manages, organises or otherwise directs the provision or the use of the Services; or 2. where:    1. any part of the Supplier System is situated; or    2. any physical interface with the Authority System takes place; |
| “SME” | an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises; |
| “Social Value” | the additional social benefits that can be achieved in the delivery of the Contract, set out in the Authority’s Requirements; |
| “Software” | Specially Written Software, Supplier Software and Third Party Software; |
| “Software Supporting Materials” | has the meaning given in Paragraph 2.1b of Schedule 32 (*Intellectual Property Rights*) (Specially Written Software and Project Specific IPRs); |
| “Source Code” | computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software; |
| “Specially Written Software” | any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Contract. |
| “Specific Change in Law” | a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply; |
| “Staffing Information” | has the meaning given in Schedule 28 (*Staff Transfer)*; |
| “Start Date” | the date on which the Supplier is to commence provision of the first of the Operational Services, being [insert date]; |
| “Step-In Notice” | has the meaning given in Clause 28.1 (Step-In Rights); |
| “Step-In Trigger Event” | 1. any event falling within the definition of a Supplier Termination Event; 2. a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services; 3. the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Contract; 4. the Authority being advised by a regulatory body that the exercise by the Authority of its rights under Clause 28 (Step-In Rights) is necessary; 5. the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or 6. a need by the Authority to take action to discharge a statutory duty; |
| “Step-Out Date” | has the meaning given in Clause 28.5(b) (Step-In Rights); |
| “Step-Out Notice” | has the meaning given in Clause 28.5 (Step-In Rights); |
| “Step-Out Plan” | has the meaning given in Clause 28.6 (Step-In Rights); |
| “Strategic Supplier” | means those suppliers to government listed at <https://www.gov.uk/government/publications/strategic-suppliers>; |
| “Sub-contract” | any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof; |
| “Sub-contractor” | any third party with whom:   1. the Supplier enters into a Sub-contract; or 2. a third party under (a) above enters into a Sub-contract,   or the servants or agents of that third party; |
| “Sub-processor” | any third party appointed to process Personal Data on behalf of the Supplier related to this Contract; |
| “Subsidiary Performance Indicator” | the performance indicators set out in Table 2 of Part A of Annex 1 of Schedule 3 (*Performance Levels*); |
| “Subsidiary Undertaking” | has the meaning set out in section 1162 of the Companies Act 2006; |
| “Successor Body” | has the meaning given in Clause 34.4 (Assignment and Novation); |
| “Supplier Background IPRs” | 1. Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or 2. Intellectual Property Rights created by the Supplier independently of this Contract,   which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software; |
| “Supplier COTS Background IPRs” | Any embodiments of Supplier Background IPRs that:   1. the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and 2. has a Non-trivial Customer Base; |
| “Supplier COTS Software” | Supplier Software (including open source software) that:   1. the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and 2. has a Non-trivial Customer Base; |
| “Supplier Equipment” | the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from the Authority) for the provision of the Services; |
| “Supplier Group” | means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings; |
| “Supplier Non-COTS Background IPRs” | Any embodiments of Supplier Background IPRs that have been delivered by the Supplier to the Authority and that are not Supplier COTS Background IPRs; |
| “Supplier Non-COTS Software” | Supplier Software that is not Supplier COTS Software; |
| “Supplier Personnel” | all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier’s obligations under this Contract; |
| “Supplier Profit” | has the meaning given in Schedule 15 *(Charges and* Invoicing); |
| “Supplier Profit Margin” | has the meaning given in Schedule 15 *(Charges and* Invoicing); |
| “Supplier Representative” | the representative appointed by the Supplier pursuant to Clause 11.3 (Representatives); |
| “Supplier Software” | software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 2 (*Specification*); |
| “Supplier Solution” | the Supplier's solution for the Services set out in Schedule 8 (*Supplier Solution*) including any Annexes of that Schedule; |
| “Supplier System” | the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System); |
| “Supplier Termination Event” | 1. the Supplier’s level of performance constituting a Critical Performance Failure; 2. the Supplier committing a material Default which is irremediable; 3. as a result of the Supplier's Default, the Authority incurring Losses in any Contract Year which exceed 80% of the value of the aggregate annual liability cap for that Contract Year as set out in Clause 23.6(a) (Financial and other Limits); 4. a Remedial Adviser Failure; 5. a Rectification Plan Failure; 6. where a right of termination is expressly reserved in this Contract, including pursuant to:    1. Clause 17 (IPRs Indemnity);    2. Clause 36 (Compliance)    3. Clause 37.6(b) (Prevention of Fraud and Bribery); and/or    4. Paragraph 6 of Schedule 18 (*Financial Distress*); 7. the representation and warranty given by the Supplier pursuant to Clause 3.2(i) (Warranties) being materially untrue or misleading; 8. the Supplier committing a material Default under Clause 10.10 (Promoting Tax Compliance) or failing to provide details of steps being taken and mitigating factors pursuant to Clause 10.10 (Promoting Tax Compliance) which in the reasonable opinion of the Authority are acceptable; 9. the Supplier committing a material Default under any of the following Clauses:    1. Clause 5.5(j) (Services);    2. Clause 21 (Protection of Personal Data);    3. Clause 20 (Transparency and Freedom of Information);    4. Clause 19 (Confidentiality); and    5. Clause 33 (Compliance); and/or   in respect of any security requirements set out in Schedule 2 (*Specification*), or the Baseline Security Requirements; and/or  in respect of any requirements set out in Schedule 28 (*Staff Transfer*);   1. any failure by the Supplier to implement the changes set out in a Benchmark Report as referred to in Paragraph 5.9 of Schedule 17 (*Benchmarking*); 2. an Insolvency Event occurring in respect of the Supplier or the Guarantor; 3. the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Authority with the Guarantor or with another guarantor which is acceptable to the Authority); 4. a change of Control of the Supplier or a Guarantor unless:    1. the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or    2. the Authority has not served its notice of objection within 6 months of the later of the date on which the Change of Control took place or the date on which the Authority was given notice of the Change of Control; 5. a change of Control of a Key Sub-contractor unless, within 6 months of being notified by the Authority that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Authority pursuant to Clause 15.10 (Appointment of Key Sub-contractors); 6. any failure by the Supplier to enter into or to comply with an Admission Agreement under the Annex to either Part A or Part B of Schedule 28 (*Staff Transfer*); 7. the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract; 8. a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law; or |
| [Optional: “Supply Chain Map”  *[Guidance: Include this definition if Optional Clause 33.8(n) is included in the Core Terms]* | means details of (i) the Supplier, (ii) all Subcontractors and (iii) any other entity that the Supplier is aware is in its supply chain that is not a Subcontractor, setting out at least:   1. the name, registered office and company registration number of each entity in the supply chain; 2. the function of each entity in the supply chain; and   the location of any premises at which an entity in the supply chain carries out a function in the supply chain;] |
| “Target Performance Level” | the minimum level of performance for a Performance Indicator which is required by the Authority, as set out against the relevant Performance Indicator in the tables in Annex 1 of Schedule 3 (*Performance Levels*); |
| “Term” | the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Contract; |
| “Termination Assistance Notice” | has the meaning given in Paragraph 5 of Schedule 25 (Exit *Management)*; |
| “Termination Assistance Period” | in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to Paragraph 5.2 of Schedule 25 (Exit *Management)*; |
| “Termination Date” | the date set out in a Termination Notice on which this Contract (or a part of it as the case may be) is to terminate; |
| “Termination Notice” | a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract (or any part thereof) on a specified date and setting out the grounds for termination; |
| “Termination Services” | the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 of Schedule 25 (Exit *Management)*, and any other services required pursuant to the Termination Assistance Notice; |
| “Test Issues” | has the meaning given in Schedule 14 (*Testing Procedures*); |
| “Tests” and “Testing” | any tests required to be carried out under this Contract, as further described in Schedule 14 (*Testing Procedures*) and “Tested” shall be construed accordingly; |
| “Test Success Criteria” | has the meaning given in Schedule 14 (*Testing Procedures*); |
| “Third Party Auditor” | an independent third party auditor as appointed by the Authority from time to time to confirm the completeness and accuracy of information uploaded to the Virtual Library in accordance with the requirements outlined in Schedule 24 (*Reports and Records Provisions*); |
| “Third Party Beneficiary” | has the meaning given in Clause 41.1 (Third Party Rights); |
| “Third Party COTS IPRs” | Third Party IPRs that:   1. the supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and 2. has a Non-trivial Customer Base; |
| “Third Party COTS Software” | Third Party Software (including open source software) that:   1. the supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and 2. has a Non-trivial Customer base; |
| “Third Party IPRs” | Intellectual Property Rights owned by a third party, but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software, which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services; |
| “Third Party Non-COTS IPRs” | Third Party IPRs that are not Third Party COTS IPRs; |
| “Third Party Non-COTS Software” | Third Party Software that is not Third Party COTS Software; |
| “Third Party Provisions” | has the meaning given in Clause 41.1 (Third Party Rights); |
| “Third Party Software” | software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 2 (*Specification*); |
| “Transferring Assets” | has the meaning given in Paragraph 6.2(a) of Schedule 25 (Exit *Management)*; |
| “Transferring Authority Employees” | has the meaning given in Schedule 28 (*Staff Transfer*); |
| “Transferring Former Supplier Employees” | has the meaning given in Schedule 28 (*Staff Transfer*); |
| “Transferring Supplier Employees” | has the meaning given in Schedule 28 (*Staff Transfer*); |
| “Transparency Information” | has the meaning given in Clause 20.1 (Transparency and Freedom of Information); |
| “Transparency Reports” | has the meaning given in Schedule 24 (*Reports and Records Provisions*); |
| “UK” | the United Kingdom; |
| “UK GDPR” | Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, together with the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 |
| “UK Public Sector Business” | means any goods, service or works provision to UK public sector bodies, including Central Government Departments and their arm's length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations; |
| “Unacceptable KPI Failure” | the Supplier failing to achieve the KPI Service Threshold in respect of more than 50% of the Key Performance Indicators that are measured in that Service Period; |
| “Unconnected Sub-contract” | any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017; |
| “Unconnected Sub-contractor” | any third party with whom the Supplier enters into an Unconnected Sub-contract; |
| “Updates” | in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item; |
| “Update Requirement” | means the occurrence of an event detailed in Schedule 24 (*Reports and Records Provisions*) (Annex 3: *Records To Upload To Virtual Library*) which requires the Supplier to update the relevant information hosted on the Virtual Library; |
| “Upgrades” | any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term; |
| “VAT” | value added tax as provided for in the Value Added Tax Act 1994; |
| “VCSE” | means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives; |
| “Virtual Library” | means the data repository hosted by the Supplier containing the information about this Contract and the Services provided under it in accordance with Schedule 24 (*Reports and Records Provisions*); and |
| “Working Day” | any day other than a Saturday, Sunday or public holiday in England and Wales. |

**SCHEDULE 2**

**SPECIFICATION**

# Schedule 2 (Specification)

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

|  |  |
| --- | --- |
| ***[insert definitions as required]*** |  |

1. INTRODUCTION
   1. ***[Outline why the Authority has identified that it needs the Supplier to provide the Services.]***
   2. This Schedule sets out the intended scope of the Services to be provided by the Supplier and to provide a description of what each Service entails.
2. SPECIFICATION
   1. Mobilisation Services - ***[Description of the services to be provided by the Supplier for the design, build, test, implementation and roll out of the Operational Services]***
   2. Operational Services - ***[Description of the business as usual services including Operational Hours]***
   3. Interface Requirements
      * 1. technical interface and
        2. management obligations/responsibilities
   4. Security Requirements
   5. **Social Value Requirements** – ***[Description of the additional social, environmental and economic benefits to be delivered  in line with the*** [***Public Services (Social Value) Act 2012***](https://www.gov.uk/government/publications/social-value-act-information-and-resources/social-value-act-information-and-resources) ***,*** [***PPN 06/20,***](https://www.gov.uk/government/publications/procurement-policy-note-0620-taking-account-of-social-value-in-the-award-of-central-government-contracts) ***and Authority policies and practices]***
   6. Other Authority Requirements - ***[Description of any other requirements of the Authority e.g. wider sustainability requirements and other Authority commitments]***
   7. Optional Services
   8. **Software**

The Supplier shall ensure that the Supplier Software and Third Party Software is licensed to the Authority in accordance with Clause 16 and Schedule 32 (Intellectual Property Rights). The Parties agree that they will update the tables below regularly to record any changes in the the Supplier Software and Third Party Software licensed by the Supplier or third parties for the purposes of the delivery of the Services.

The Supplier Software includes the following items:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Software | Supplier (if an Affiliate of the Supplier) | Purpose | Number of Licences | Restrictions | Number of Copies | Type (COTS or Non-COTS) | Term/Expiry |
|  |  |  |  |  |  |  |  |
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The Third Party Software includes the following items:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Software | Supplier (if an Affiliate of the Supplier) | Purpose | Number of Licences | Restrictions | Number of Copies | Type (COTS or Non-COTS) | Term/Expiry |
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**SCHEDULE 3**

**PERFORMANCE LEVELS**

# Schedule 3 (*Performance Levels*)

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

|  |  |
| --- | --- |
| **“Repeat KPI Failure”** | has the meaning given in Paragraph 0 of Part A; |
| **“Quantitative Indicator”** | each quantative performance indicator set out in Table 1 of Annex 1 of Part A; and |
| **“Qualititive Indicator”** | each qualitative performance indicator set out in Table 2 of Annex 1 of Part A. |

## Part A: Performance Indicators and Service Credits

1. **PERFORMANCE INDICATORS**
   1. The Supplier is required to provide performance data and information, in an agreed format, against agreed Performance Indicators. Performance Indicators are divided into Quantitative Indicators and Qualitative Indicators.
   2. Quantative Indicators are listed in Annex 1. Qualitative Indicators, applicable Service Points and corresponding Service Credits shall be agreed between the Parties in accordance with the Change Control Procedure prior to the Start Date and reviewed [six] monthly thereafter. A Qualitative Indicator with corresponding Service Points and Service Credits is referred to as a Key Performance Indicator or KPI.
   3. The Qualitative Indicators shall be designed to deliver the following objectives:
      1. **[GMCA to consider/propose objectives. The following have been suggested by way of example, only**] (1) To measure how victims and survivors cope and recover from the harm that they have experienced. (2) Measures demonstrating outcomes of joint working initiatives between the Supplier and other key stakeholders e.g. Greater Manchester Police that assure delivery of the purpose of the Service, described more fully in [sections [•] of] the Specification. (3) Measures demonstrating the quality and consistency of interventions provided to victims.
      2. Any Service Credits to be applied in respect of Qualitative Indicators shall be used to the benefit of the Services at the discretion of the Authority: Similarly, the Authority has a right to forego the value of Service Credits; and in both instances the Authority reserves its rights to the full extent.
   4. The Supplier shall monitor its performance against each Performance Indicator and shall send the Authority a report detailing the level of service actually achieved monthly (unless agreed otherwise).
   5. Service Points, and therefore Service Credits, shall accrue for any KPI Failure and shall be calculated in accordance with Paragraphs 2, and 3.
2. **SERVICE POINTS**
   1. If the level of performance of the Supplier during a Service Period achieves the Target Performance Level in respect of a Key Performance Indicator, no Service Points (and therefore no Service Credits) shall accrue to the Supplier in respect of that Key Performance Indicator.
   2. If the level of performance of the Supplier during a Service Period is below the Target Performance Level in respect of a Key Performance Indicator, Service Points shall accrue to the Supplier in respect of that Key Performance Indicator as set out in Paragraph 2.3.
   3. The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure shall be the applicable number as set out in Annex 1 depending on whether the KPI Failure is a [Minor KPI Failure, a Serious KPI Failure or a Severe KPI Failure].
3. **SERVICE CREDITS**

* 1. Schedule 15 *(Charges and* Invoicing) sets out the mechanism by which Service Points shall be converted into Service Credits.
  2. The Authority shall use the Performance Monitoring Reports provided by the Supplier, among other things, to verify the calculation and accuracy of the Service Credits (if any) applicable to each Service Period. The Supplier warrants that the information set out such reports shall be accurate.

## Part B: Performance Monitoring

1. **PERFORMANCE MONITORING AND PERFORMANCE REVIEW**
   1. Within 10 Working Days of the end of each Service Period, the Supplier shall provide:
      * 1. a report to the Authority Representative which summarises the performance by the Supplier against each of the Performance Indicators as more particularly described in Paragraph 1.2 (the “**Performance Monitoring Report**”);

**Performance Monitoring** **Report**

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

**Information in respect of the Service Period just** **ended**

* + - 1. for each Performance Indicator the actual performance achieved over the Service Period, and that achieved over the previous 3 Measurement Periods;
      2. a summary of all Performance Failures that occurred during the Service Period;
      3. the severity level of each KPI Failure which occurred during the Service Period and whether each PI Failure which occurred during the Service Period fell below the PI Service Threshold;
      4. which Performance Failures remain outstanding and progress in resolving them;
      5. for any Material KPI Failures or Material PI Failures occurring during the Service Period, the cause of the relevant KPI Failure or PI Failure and the action being taken to reduce the likelihood of recurrence;
      6. the status of any outstanding Rectification Plan processes, including:
         1. whether or not a Rectification Plan has been agreed; and
         2. where a Rectification Plan has been agreed, a summary of the Supplier’s progress in implementing that Rectification Plan;
      7. for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;
      8. the number of Service Points awarded in respect of each KPI Failure;
      9. the Service Credits to be applied, indicating the KPI Failure(s) to which the Service Credits relate;
      10. the conduct and performance of any agreed periodic tests that have occurred, such as the annual failover test of the Service Continuity Plan;
      11. relevant particulars of any aspects of the Supplier’s performance which fail to meet the requirements of this Contract;
      12. such other details as the Authority may reasonably require from time to time; and

**Information in respect of previous Service** **Periods**

* + - 1. a rolling total of the number of Performance Failures that have occurred over the past six Service Periods;
      2. the amount of Service Credits that have been incurred by the Supplier over the past six Service Periods;
      3. the conduct and performance of any agreed periodic tests that have occurred in such Service Period such as the annual failover test of the Service Continuity Plan; and

**Information in respect of the next** **Quarter**

* + - 1. any scheduled Service Downtime for Permitted Maintenance and Updates that has been agreed between the Authority and the Supplier for the next Quarter.

1. **PERFORMANCE RECORDS** 
   1. The Supplier shall keep appropriate documents and records (including Help Desk records, staff records, timesheets, training programmes, staff training records, goods received documentation, supplier accreditation records, complaints received etc) in relation to the Services being delivered. Without prejudice to the generality of the foregoing, the Supplier shall maintain accurate records of call histories for a minimum of 12 months and provide prompt access to such records to the Authority upon the Authority's request. The records and documents of the Supplier shall be available for inspection by the Authority and/or its nominee at any time and the Authority and/or its nominee may make copies of any such records and documents.
   2. In addition to the requirement in Paragraph 2.1 to maintain appropriate documents and records, the Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance of the Supplier from the Start Date and the calculations of the amount of Service Credits for any specified period.
   3. The Supplier shall ensure that the Performance Monitoring Report, (as well as historic Performance Monitoring Reports) and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by the Authority are available to the Authority on-line and are capable of being printed.
2. **PERFORMANCE VERIFICATION**
   1. The Authority reserves the right to verify the Availability of the IT Environment and/or the Services and the Supplier’s performance under this Contract against the Performance Indicators including by sending test transactions through the IT Environment or otherwise.
3. **VIRTUAL LIBRARY COMPLETENESS**
   1. The Virtual Library shall be complete where all of the information required under Schedule 24 (*Reports and Records Provisions*) (*Annex 3: Records To Upload To Virtual Library*) has been uploaded to the Virtual Library in accordance with Paragraph 3 of that Schedule.

## Annex 1: Performance Indicators

### Part A: Quantitative & Qualitative Indicator Tables

***[Guidance – table 1 contains the quatitative measures described in Appendix H of the Specification, and may vary during the tendering process so as to best align to the services and the winning solution. The qualitative indicators will be finalised following contract signature and added to Table 2 of this Annex.]***

The Performance Indicators that shall apply to the Operational Services are set out below:

1. **Quantitative Indicators**

|  |  |  |  |
| --- | --- | --- | --- |
| No. | Quantitative Indicator Title | Definition | Publishable Performance Information |
| QA1 | Number of Greater Manchester Police referrals into service and broken down per borough. |  | YES |
|
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|
|
| QA2 | Number of referrals from other Police Force areas. |  | YES |
|
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|
| QA3 | Number of self-referrals into service and broken down per borough. |  | YES |
|
|
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|
| QA4 | Number of other referrals – for example from out of the area, other agencies and organisations, etc into service and broken down per borough. |  | YES |
|
|
|
|
| QA5 | Details of all referrals by equality strands which include Age / Disability (including Deaf and Blind people) / Gender Reassignment or Gender Identity / Race, Ethnicity, Nationality / Sex, Gender / Pregnancy, Religion, Belief / Sexual Orientation / Marriage, Civil Partnership. |  | YES |
|
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|
|
| QA6 | Details of victims by crime type and vulnerability markers; e.g. domestic abuse, vulnerable victims. |  | YES |
|
|
|
|
| QA7 | Number of Out of Hours messages received and number of successful contacts made. |  | YES |
| QA8 | Number of non-conversion of referrals – with reasons to be discussed on issue of contract. |  | YE |
| QA9 | Total number of victims provided with support from all referrals into the service. |  | YES |
| QA10 | Number of cases transferred to other Police Force areas. |  | YES |
| QA11 | Number of cases identified in the following groups:   * Vulnerable of serious crime * Those most persistently targeted * Vulnerable * Intimidated |  | YES |
| QA12 | Number of victims contacted within agreed time. | The agreed time is defined as [TBC] | YES |
| QA13 | Number of victims contacted by phone |  | YES |
| QA14 | Number of victims contacted by other methods of communication (please specify and breakdown). |  | YES |
| QA15 | Number of failed contact attempts. |  | YES |
| QA16 | Number of victims declining the service following initial referral. |  | YES |
| QA17 | Number of victims not completing their agreed pathway. | The agreed pathway is defined as [TBC] | YES |
| QA18 | 18. Number of victims where immediate needs identified and met at first contact and case closed. |  | YES |
| QA19 | Number of victims referred to other agencies and define who. |  | YES |
| QA20 | Number of volunteers supporting service delivery as a step down approach. |  | YES |
| QA21 | Number of cases referred into local Restorative Justice service. |  | YES |
| QA22 | 22. Number of promotional and awareness raising events delivered and to whom. |  | YES |
| QA23 | 23. Training and Awareness Raising – number of lead professionals and other staff receiving training and provide details. |  | YES |
| QA24 | Workforce development – courses attended and hours of development undertaken. |  | YES |
| QA25 | Financial statements of spend against agreed budget. |  | NO |
| QA26 | Number of victims receiving face to face support, broken down by borough. |  | YES |
| QA27 | Average length of support given (6/12 sessions etc over 6 weeks/months). |  | YES |
| QA28 | Numbers of parents/carers/siblings being supported. |  | YES |

1. **Qualitative Indicators**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| No. | Qualitative Indicator Title | Definition | Frequency of Measurement | Severity Levels | Service Points | Publishable Performance Information |
| QU1 | [ ] | [ ] | e.g. quarterly or annually | Target Performance Level: [ ] | 0 | [YES/NO] |
| Minor KPI Failure: [ ] | [1] |
| Serious KPI Failure: [ ] | [2] |
| Severe KPI Failure: [ ] | [3] |
| Service Threshold: [ ] | [4] |
| QU2 | [ ] | [ ] |  |  |  |  |

# SCHEDULE 4

# STANDARDS

# Schedule 4 (*Standards*) - Not used

**SCHEDULE 5**

**SECURITY MANAGEMENT**

# Schedule 5 (*Security Management*) – Not used

**SCHEDULE 6**

**INSURANCE REQUIREMENTS**

# Schedule 6 (*Insurance Requirements*) – Not used

**SCHEDULE 7**

**AUTHORITY RESPONSIBILITIES**

# Schedule 7 (*Authority Responsibilities*)

***[Drafting note: This schedule will be completed with the successful tenderer prior to contract signature in line with that tenderer’s solution documentation.]***

1. INTRODUCTION
   1. The responsibilities of the Authority set out in this Schedule shall constitute the Authority Responsibilities under this Contract. Any obligations of the Authority in Schedule 2 (*Specification*) and Schedule 8 (*Supplier Solution*) shall not be Authority Responsibilities and the Authority shall have no obligation to perform any such obligations unless they are specifically stated to be “Authority Responsibilities” and cross referenced in the table in Paragraph 3.
   2. The responsibilities specified within this Schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.
2. GENERAL OBLIGATIONS
   1. The Authority shall:
      * 1. perform those obligations of the Authority which are set out in the Clauses of this Contract and the Paragraphs of the Schedules (except Schedule 2 (*Specification*) and Schedule 8 (*Supplier Solution*));
        2. use its reasonable endeavours to provide the Supplier with access to appropriate members of the Authority’s staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and the Termination Assistance Period;
        3. provide sufficient and suitably qualified staff to fulfil the Authority’s roles and duties under this Contract;
        4. use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Contract provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority; and
        5. procure for the Supplier such agreed access and use of the Authority Premises (as a licensee only) and facilities (including relevant IT systems) as is reasonably required for the Supplier to comply with its obligations under this Contract, such access to be provided during the Authority's normal working hours on each Working Day or as otherwise agreed by the Authority (such agreement not to be unreasonably withheld or delayed).
3. SPECIFIC OBLIGATIONS
   1. The Authority shall, in relation to this Contract perform the Authority's responsibilities identified as such in this Contract the details of which are set out below:

|  |  |
| --- | --- |
| Document | Location (Paragraph) |
| *[Insert Schedule details here]* | *[Refer to specific Paragraphs here]* |
|  |  |
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**SCHEDULE 8**

**SUPPLIER SOLUTION**

# Schedule 8 (*Supplier Solution*)

***[Drafting note: Insert Supplier Solution here.]***

**SCHEDULE 9**

**COMMERCIALLY SENSITIVE INFORMATION**

# Schedule 9 (*Commercially Sensitive Information*)

1. In this Schedule the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.
2. Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies in the table below (please see the column “Duration of Confidentiality”).
3. Without prejudice to the Authority’s obligation to disclose Information in accordance with FOIA or Clause 19 (Confidentiality), the Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

*[Drafting note: This schedule will be completed from the information provided by the successful tenderer prior to contract signature.]*

Commercially Sensitive Information

|  |  |  |  |
| --- | --- | --- | --- |
| No. | Date | Item(s) | Duration of Confidentiality |
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**SCHEDULE** **10**

**NOTIFIED KEY SUB-CONTRACTORS – Not Used**

# Schedule 10 (*Notified Key Sub-Contractors*) – Not used

**SCHEDULE 11**

**THIRD PARTY CONTRACTS – Not used**

# Schedule 11 (*Third Party Contracts*) – Not used

**SCHEDULE 12**

**SOFTWARE – Not used**

# Schedule 12 (*Software*) – Not used

**SCHEDULE 13**

**MOBILISATION PLAN**

# Schedule 13 (*Mobilisation Plan*)

1. INTRODUCTION
   1. This Schedule defines the process for the preparation and implementation of the Outline Mobilisation Plan and Detailed Mobilisation Plan.
2. OUTLINE MOBILISATION PLAN
   1. The Outline Implementation Plan is set out in Annex 1.
   2. All changes to the Outline Mobilisation Plan shall be subject to the Change Control Procedure provided that the Supplier shall not attempt to postpone the commencement of the Services using the Change Control Procedure.
3. APPROVAL OF THE DETAILED MOBILISATION PLAN
   1. The Supplier shall submit a draft of the Detailed Mobilisation Plan to the Authority for approval within 20 Working Days of the Effective Date.
   2. The Supplier shall ensure that the draft Detailed Mobilisation Plan showing a breakdown of the various deliverables and activities together with the time allocated for each and owners or responsible individuals.
   3. Prior to the submission of the draft Detailed Mobilisation Plan to the Authority in accordance with Paragraph 3.1, the Authority shall have the right:
      * 1. to review any documentation produced by the Supplier in relation to the development of the Detailed Mobilisation Plan, including:
           1. details of the Supplier's intended approach to the Detailed Mobilisation Plan and its development;
           2. copies of any drafts of the Detailed Mobilisation Plan produced by the Supplier; and
           3. any other work in progress in relation to the Detailed Mobilisation Plan; and
        2. to require the Supplier to include any reasonable changes or provisions in the Detailed Implementation Plan.
   4. Following receipt of the draft Detailed Mobilisation Plan from the Supplier, the Authority shall:
      * 1. review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and
        2. notify the Supplier in writing that it approves or rejects the draft Detailed Mobilisation Plan no later than 20 Working Days after the date on which the draft Detailed Mobilisation Plan is first delivered to the Authority.
   5. If the Authority rejects the draft Detailed Mobilisation Plan:
      * 1. the Authority shall inform the Supplier in writing of its reasons for its rejection; and
        2. the Supplier shall then revise the draft Detailed Mobilisation Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Detailed Mobilisation Plan to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 3.4 and this Paragraph 3.5 shall apply again to any resubmitted draft Detailed Mobilisation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
   6. If the Authority approves the draft Detailed Mobilisation Plan, it shall replace the Outline Mobilisation Plan from the date of the Authority’s notice of approval.
4. UPDATES TO AND MAINTENANCE OF THE DETAILED MOBILISATION PLAN
   1. Following the approval of the Detailed Mobilisation Plan by the Authority:
      * 1. the Supplier shall submit a revised Detailed Mobilisation Plan to the Authority every 3 months starting 3 months from the Effective Date;
        2. without prejudice to Paragraph 4.1(a), the Authority shall be entitled to request a revised Detailed Mobilisation Plan at any time by giving written notice to the Supplier and the Supplier shall submit a draft revised Detailed Mobilisation Plan to the Authority within 20 Working Days of receiving such a request from the Authority (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure);
        3. any revised Detailed Mobilisation Plan shall (subject to Paragraph 4.2) be submitted by the Supplier for approval in accordance with the procedure set out in Paragraph 3; and
        4. the Supplier’s performance against the Mobilisation Plan shall be monitored at meetings of the Service Management Board (as defined in Schedule 21 (Governance). In preparation for such meetings, the current Detailed Mobilisation Plan shall be provided by the Supplier to the Authority not less than 5 Working Days in advance of each meeting of the Service Management Board.
   2. Save for any amendments which are of a type identified and notified by the Authority (at the Authority's discretion) to the Supplier in writing as not requiring approval, any material amendments to the Detailed Mobilisation Plan shall be subject to the Change Control Procedure provided that:
      * 1. any amendments to elements of the Detailed Mobilisation Plan which are based on the contents of the Outline Mobilisation Plan shall be deemed to be material amendments; and
        2. in no circumstances shall the Supplier be entitled to alter or request an alteration to the Start Date.
   3. Any proposed amendments to the Detailed Mobilisation Plan shall not come into force until they have been approved in writing by the Authority.

## ANNEX 1: OUTLINE MOBILISATION PLAN

| Milestone | Deliverables *(bulleted list showing all Deliverables (and associated tasks) required for each Milestone)* | Duration *(Working Days)* | Milestone Date | Authority Responsibilities *(if applicable)* |
| --- | --- | --- | --- | --- |
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**SCHEDULE 14**

**(TESTING PROCEDURES) Not used**

# Schedule 14 (*Testing Procedures*) - Not used

**SCHEDULE 15**

**CHARGES AND INVOICING**

# Schedule 15 (*Charges and Invoicing*)

***[Drafting note: This schedule will be completed with the successful tenderer prior to contract signature in line with that tenderer’s pricing submission.]***

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

|  |  |
| --- | --- |
| “Achieved Profit Margin” | the cumulative Supplier Profit Margin calculated from (and including) the Effective Date (or, if applicable, the date of the last adjustment to the Charges made pursuant to Paragraph 2.2 of Part D) to (and including) the last day of the previous Contract Year; |
| “Anticipated Contract Life Profit Margin” | the anticipated Supplier Profit Margin over the Term as reflected in the Financial Model; |
| “Certificate of Costs” | a certificate of costs signed by the Supplier’s Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant certificate) and substantially in the format set out in Annex 3; |
| “Costs” | the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:   1. the cost to the Supplier or the Key Sub-contractor (as the context requires), calculated per Work Day, of engaging the Supplier Personnel, including:    1. base salary paid to the Supplier Personnel;    2. employer’s national insurance contributions;    3. Employer Pension Contributions;    4. car allowances;    5. any other contractual employment benefits;    6. staff training;    7. work place accommodation;    8. work place IT equipment and tools reasonably necessary to perform the Services (but not including items included within limb (b) below); and    9. reasonable recruitment costs, as agreed with the Authority; 2. costs incurred in respect of those Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Assets by the Supplier to the Authority or (to the extent that risk and title in any Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Assets; 3. operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the delivery of the Services; 4. Forecast Contingency Costs; 5. Reimbursable Expenses to the extent these are incurred in delivering any Services where the Charges for those Services are to be calculated on a Fixed Price or Firm Price pricing mechanism;   but excluding:   * 1. Overhead;   2. financing or similar costs;   3. maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term, whether in relation to Assets or otherwise;   4. taxation;   5. fines and penalties;   6. amounts payable under Schedule 17 (Benchmarking); and   7. non-cash items (including depreciation, amortisation, impairments and movements in provisions); |
| “The Employer Pension Contributions” | means:   1. in respect of CSPS Eligible Employees those sums set out at Clauses 7.1.1 (*annual administration charges covering core services*), 7.1.5 (*employer contributions*), 7.1.7 (*the ASLC*) and 7.1.8 (*flat charges applicable to the Partnership Pension Account*) of the Admission Agreement; 2. in respect of NHSPS Eligible Employees, the standard employer contribution rate applicable to NHS Pension Scheme employers during the Term and payable by the Supplier (but no other costs, contributions, charges or surcharges payable by the Supplier to or in respect of the NHS Pension Scheme or in respect of any NHS Premature Retirement Rights, unless otherwise agreed in writing by the Authority); 3. in respect of LGPS Eligible Employees the standard employer contribution rate applicable to LGPS Eligible Employees during the Term and payable by the Supplier (but no other costs, contributions, charges or surcharges payable by the Supplier to or in respect of the LGPS or in respect of any Beckmann Liabilities, unless otherwise agreed in writing by the Authority); and   such other employer pension contributions, charges or costs incurred by the Supplier which have been expressly agreed by the Authority in writing to constitute 'Employer Pension Contributions'; |
| “European Standard” | in relation to an electronic invoice means the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870. |
| “Forecast Contingency Costs” | the costs which the Supplier forecasts may be incurred in relation to the risks and contingencies that are identified in the Risk Register, such costs being those set out in the column headed ‘Forecast Contingency Costs’ in the Risk Register (as such costs are updated from time to time); |
| “Maximum Permitted Profit Margin” | the Anticipated Contract Life Profit Margin plus 5%; |
| “Overhead” | those amounts which are intended to recover a proportion of the Supplier’s or the Key Sub-contractor’s (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of “Costs” or the day cost set out in Table 3 of Annex 1; |
| “Reimbursable Expenses” | reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Authority's expenses policy current from time to time, but not including:   1. travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Authority otherwise agrees in advance in writing; and 2. subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed; |
| “Supplier Profit” | in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period; |
| “Supplier Profit Margin” | in relation to a period, the Supplier Profit for the relevant period divided by the total Charges over the same period and expressed as a percentage; |
| “Supporting Documentation” | sufficient information in writing to enable the Authority reasonably to assess whether the Charges, Reimbursable Expenses and other sums due from the Authority detailed in the information are properly payable, including copies of any applicable receipts; |
| “Work Day” | 7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day; |
| “Work Hours” | the hours spent by the Supplier Personnel properly working on the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks; |

## Part A: PRICING

1. APPLICABLE PRICING MECHANISM
   1. Service Charges shall be calculated using the pricing mechanism specified in Annex 2 and on the basis of the rates and prices specified in Annex 1 as more particularly set out in this Schedule.
   2. Table 2 of Annex 2 sets out which pricing mechanism shall be used to calculate each Service Charge, which shall be one or more of the following:
      * 1. “Volume Based” pricing, in which case the provisions of Paragraph 3 shall apply; or
        2. “Fixed Price” in which case the provisions of Paragraph 2 shall apply.
2. SERVICE CHARGES
   1. Where Table 1 or Table 2 of Annex 2 indicates that a Service Charge is to be calculated by reference to a Fixed Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Table 5 of Annex 1.
3. VOLUME BASED SERVICE CHARGES
   1. Where Table 2 of Annex 2 indicates that a Service Charge is to be calculated by reference to a Volume Based pricing mechanism, the relevant Charges shall be calculated on the basis of the unit costs set out against that Service Charge in Table 7 of Annex 1.
   2. In the event that the volume of any Services that are to be calculated by reference to a Volume Based pricing mechanism fall outside the relevant volume bands set out against that Service Charge in Table 7 of Annex 1, the relevant Service Charges shall be calculated in accordance with the Change Control Procedure and Paragraph 3 of Part C.
4. REIMBURSABLE EXPENSES
   * + 1. [*Details to be set out here.*]

## Part B: CHARGING MECHANISMS

1. SERVICE CHARGES
   1. Each Service to which a Service Charge relates shall commence on the Start Date.
   2. Service Charges shall be invoiced by the Supplier [monthly in arrears] (a “**Service Period**”) in accordance with the requirements of Part E.
   3. If a Service Charge is to be calculated by reference to a Fixed Price pricing mechanism and the relevant Service:
      * 1. commences on a day other than the first day of a month; and/or
        2. ends on a day other than the last day of a month,

the Service Charge for the relevant Service Period shall be pro-rated based on the proportion which the number of days in the month for which the Service is provided bears to the total number of days in that month.

* 1. Any Service Credits that accrue during a Service Period shall be deducted from the Service Charges payable for the next following Service Period. An invoice for a Service Charge shall not be payable by the Authority unless all adjustments (including Service Credits) relating to the Service Charges for the immediately preceding Service Period have been agreed.

1. OPTIONAL SERVICES
   1. If the Authority gives notice pursuant to Clause 5.10 (*Optional Services*) that it requires the Supplier to provide any or all of the Optional Services:
      * 1. the Service Charges for the relevant Optional Services shall be calculated by reference to the pricing mechanism for those Optional Services set out in Table 4 of Annex 2,

in both cases using the relevant rates and prices specified in Annex 1.

## Part C: ADJUSTMENTS TO THE CHARGES AND RISK REGISTER

1. SERVICE CREDITS
   1. Service Credits (if any) shall be calculated by reference to the number of Service Points accrued in any one Service Period pursuant to the provisions of Schedule 3 (Performance Levels) in respect of Key Performance Indicators.
   2. For each Service Period:
      * 1. the Service Points accrued shall be converted to a percentage deduction from the Service Charges for the relevant Service Period on the basis of one point equating to a [0.01]% deduction in the monthly Service Charges; and
        2. the total Service Credits applicable for the Service Period shall be calculated in accordance with the following formula:

where:

|  |  |
| --- | --- |
| SC | is the total Service Credits for the relevant Service Period; |
| TSP | is the total Service Points that have accrued for the relevant Service Period; |
| X | is [Insert percentage deduction per Service Point]%; and |
| AC | is the total Services Charges payable for the relevant Service Period (prior to deduction of applicable Service Credits). |

* 1. The liability of the Supplier in respect of Service Credits shall be subject to Clause 23.4(c) (*Financial and other Limits*) provided that, for the avoidance of doubt, the operation of the Service Credit Cap shall not affect the continued accrual of Service Points in excess of such financial limit in accordance with the provisions of Schedule 3 (Performance Levels).
  2. Service Credits are a reduction of the Service Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.
  3. Service Credits shall be shown as a deduction from the amount due from the Authority to the Supplier in the invoice for the Service Period immediately succeeding the Service Period to which they relate.

1. CHANGES TO CHARGES
   1. Any Changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 22 (*Change Control Procedure*) and on the basis that the Supplier Profit Margin on such Charges shall:
      * 1. be no greater than that applying to Charges using the same pricing mechanism as at the Effective Date ; and
        2. in no event exceed the Maximum Permitted Profit Margin.

1. RISK REGISTER
   1. The Parties shall review the Risk Register set out in Annex 4 from time to time and as otherwise required for the purposes of Schedule 21 (Governance).

## Part D: EXCESSIVE SUPPLIER PROFIT MARGIN

1. LIMIT ON SUPPLIER PROFIT MARGIN
   1. The Supplier acknowledges that the Achieved Profit Margin applicable over the Term shall not exceed the Maximum Permitted Profit Margin.
   2. The Supplier shall include in each Annual Contract Report the Achieved Profit Margin as at the end of the Contract Year to which the Annual Contract Report is made up and the provisions of Paragraph 2 of Part B of Schedule 19 (*Financial Reports and Audit Rights*) shall apply to the approval of the Annual Contract Report.
2. ADJUSTMENT TO THE CHARGES IN THE EVENT OF EXCESS SUPPLIER PROFIT
   1. If an Annual Contract Report demonstrates (or it is otherwise determined pursuant to Paragraph 2 of Part B of Schedule 19 (*Financial Reports and Audit Rights*)) that the Achieved Profit Margin as at the end of the Contract Year to which the Annual Contract Report is made up exceeds the Maximum Permitted Profit Margin:
      * 1. the Supplier shall, within 5 Working Days of delivery to the Authority of the Annual Contract Report, propose such adjustments to the Charges as will ensure that the Achieved Profit Margin both over the Contract Year to which the next Annual Contract Report will relate and over the Term will not exceed the Maximum Permitted Profit Margin;
        2. the Authority (acting reasonably) may agree or reject the proposed adjustments; and
        3. if the Authority rejects the proposed adjustments it shall give reasons and the Supplier shall propose revised adjustments within 10 Working Days of receiving those reasons.
   2. Pending agreement of a proposed adjustment to the Charges pursuant to this Part D, the Charges then in force shall continue to apply. Once the adjustments to the Charges are agreed in accordance with Paragraph 2.1, the Parties shall document the adjustment in a Change Authorisation Note and the adjusted Charges shall apply with effect from the first day of the Service Period that immediately follows the Service Period in which the Change Authorisation Note is executed or such other date as is specified in the Change Authorisation Note.

## Part E: INVOICING AND PAYMENT TERMS

1. SUPPLIER INVOICES
   1. The Supplier shall ensure that each invoice is submitted in the correct format for the Authority’s e-invoicing system, or that it contains the following information:
      * 1. the date of the invoice;
        2. a unique invoice number;
        3. the Service Period or other period(s) to which the relevant Charge(s) relate;
        4. the correct reference for this Contract;
        5. the reference number of the purchase order to which it relates (if any);
        6. the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
        7. a description of the Services;
        8. the pricing mechanism used to calculate the Charges (such as Guaranteed Maximum Price with Target Cost, Fixed Price, Time and Materials);
        9. the total Charges gross and net of any applicable deductions and, separately, the amount of any Reimbursable Expenses properly chargeable to the Authority under the terms of this Contract, and, separately, any VAT or other sales tax payable in respect of each of the same;
        10. details of any Service Credits or similar deductions that shall apply to the Charges detailed on the invoice;
        11. reference to any reports required by the Authority in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Authority, then to any such reports as are validated by the Authority in respect of the Services);
        12. a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;
        13. the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and
        14. where the Services have been structured into separate Service lines, the information at (a) to (m) of this Paragraph 1.3 shall be broken down in each invoice per Service line.
   2. The Supplier shall invoice the Authority in respect of Services in accordance with the requirements of Part B. The Supplier shall first submit to the Authority a draft invoice setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within 5 Working Days of its receipt by the Authority, following which the Supplier shall be entitled to submit its invoice.
   3. Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Authority as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice.
   4. The Supplier shall submit all invoices and Supporting Documentation through the Authority’s electronic system [name] or if that is not possible to:

*[Insert address or email address]*

with a copy (again including any Supporting Documentation) to such other person and at such place as the Authority may notify to the Supplier from time to time.

* 1. All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.
  2. The Authority shall regard an invoice as valid only if it complies with the provisions of this Part E. Where any invoice does not conform to the Authority's requirements set out in this Part E, the Authority shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.
  3. If the Authority fails to consider and verify an invoice in accordance with Paragraphs 1.4 and 1.8, the invoice shall be regarded as valid and undisputed for the purpose of Paragraph 2.1 [Payment in 30 days] after a reasonable time has passed.

1. PAYMENT TERMS
   1. Subject to the relevant provisions of this Schedule, the Authority shall make payment to the Supplier within thirty (30) days of verifying that the invoice is valid and undisputed.
   2. Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.

## ANNEX 1: PRICING MECHANISM

1. *[Pricing mechanism to be populated here]*
2. TABLE 1: FIXED PRICES

|  |  |
| --- | --- |
| Charge | Fixed Charge (£)  [ ] |
| [Service Line 1] | |
| [e.g. SL1M3] |  |
| [e.g. SL1SC1] |  |
| [e.g. SL1SC3] |  |
| [Service Line 2] | |
| [e.g. SL2M3] |  |
| [e.g. SL2SC1] |  |
| [e.g. SL2SC3] |  |
| [Service Line [X] – *insert further rows as necessary*] | |
| [etc.] |  |
|  |  |

1. TABLE 2: FIRM PRICES

|  |  |
| --- | --- |
| Charge | Firm Charge (£) |
| [Service Line 1] | |
| [e.g. SL1M4] |  |
| [e.g. SL1MS3] |  |
| [Service Line 2] | |
| [e.g. SL2M4] |  |
| [e.g. SL2MS3] |  |
| [Service Line [X] – insert further rows as necessary] | |
| [etc.] | … |

1. TABLE 3: VOLUME CHARGES

|  |  |  |  |
| --- | --- | --- | --- |
| Charge Number | Unit | Number of units per Service Period | Charge per unit (£) |
| [Service Line 1] | | | |
| [e.g. SL1VC1] |  | [ ] - [ ] | [ ] |
| [ ] - [ ] | [ ] |
| [ ] - [ ] | [ ] |
| [e.g. SL1VC2] |  | [ ] - [ ] | [ ] |
| [ ] - [ ] | [ ] |
| [ ] - [ ] | [ ] |
| [e.g. SL1VC3] |  | [ ] - [ ] | [ ] - [ ] |
| [ ] - [ ] | [ ] - [ ] |
| [ ] - [ ] | [ ] - [ ] |
| [Service Line 2] | | | |
| [e.g. SL2VC1] |  | [ ] - [ ] | [ ] |
| [ ] - [ ] | [ ] |
| [ ] - [ ] | [ ] |
| [e.g. SL2VC2] |  | [ ] - [ ] | [ ] |
| [ ] - [ ] | [ ] |
| [ ] - [ ] | [ ] |
| [e.g. SL2VC3] |  | [ ] - [ ] | [ ] - [ ] |
| [ ] - [ ] | [ ] - [ ] |
| [ ] - [ ] | [ ] - [ ] |
| [Service Line [X] – insert further rows as necessary] | | | |
| [etc.] | …. | [ ] - [ ] | [ ] |
| [ ] - [ ] | [ ] |
| [ ] - [ ] | [ ] |

## ANNEX 2: CHARGING MECHANISM AND ADJUSTMENTS

1. TABLE 1: Not used.
2. TABLE 2: SERVICE CHARGES

[*Table of service charges to be inserted* ]

1. TABLE 3: OPTIONAL SERVICES SERVICE CHARGES

[*Table of service charges to be inserted* ]

## ANNEX 3: PRO-FORMA CERTIFICATE OF COSTS

I [*name of CFO or Director of Finance or equivalent as agreed in advance in writing with the Authority*] of [*insert name of Supplier*], certify that the financial information provided as part of this Certificate of Costs, incurred in relation to the [*insert name/reference for the Contract*] (the “Contract”) in relation to the following [ ]:

[*Insert details*]

1. has been reasonably and properly incurred in accordance with [*name of Supplier*]’s books, accounts, other documents and records;
2. is accurate and not misleading in all key respects; and
3. is in conformity with the Contract and with all generally accepted accounting principles within the United Kingdom.

Signed [*Director of Finance or equivalent*]

[*Name of Supplier*]

### ANNEX 4: RISK REGISTER

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 | Column 7 | Column 8 | Column 9 | Column 10 | Column 11 | Column 12 |
| Risk Number | Risk Name | Description of risk | Timing | Likelihood | Impact (£) | Impact (description) | Mitigation (description) | Cost of mitigation | Post-mitigation impact (£) | Forecast Contingency Costs | Owner |
|  |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |
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**SCHEDULE 16**

**PAYMENTS ON TERMINATION**

# Schedule 16 (*Payments on Termination*) - Not Used

**SCHEDULE 17**

**BENCHMARKING**

# Schedule 17 (*Benchmarking*)

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

|  |  |
| --- | --- |
| “Benchmarked Service” | a Service that the Authority elects to include in a Benchmark Review under Paragraph 2.3; |
| “Benchmarker” | the independent third party appointed under Paragraph 3.1; |
| “Benchmark Report” | the report produced by the Benchmarker following the Benchmark Review as further described in Paragraph 5; |
| “Benchmark Review” | a review of one or more of the Services carried out in accordance with Paragraph 4 to determine whether those Services represent Good Value; |
| “Comparable Service” | in relation to a Benchmarked Service, a service that is identical or materially similar to the Benchmarked Service (including in terms of scope, specification, volume and quality of performance); |
| “Comparison Group” | in relation to a Comparable Service, a sample group of organisations providing the Comparable Service identified by the Benchmarker under Paragraph 4.8 which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker's professional opinion) fair comparators with the Supplier or which, in the professional opinion of the Benchmarker, are best practice organisations and, where there are a reasonable number of such organisations, referencing only those organisations that are carrying on at least a significant part of their business within the United Kingdom; |
| “Equivalent Services Data” | in relation to a Comparable Service, data derived from an analysis of the Comparable Service provided by the Comparison Group as adjusted in accordance with Paragraphs 4.8(a) and 4.9 provided that the Benchmarker shall not use any such data that relates to a period which ended more than 36 months prior to the date of the appointment of the Benchmarker; |
| “Good Value” | in relation to a Benchmarked Service, that:   1. having taken into account the Performance Indicators and Target Service Levels, the value for money of the Charges attributable to that Benchmarked Service is at least as good as the value for money of the Upper Quartile; and 2. any Performance Indicators and Target Service Levels applicable to that Benchmarked Service are, having taken into account the Charges, equal to or better than the median service levels for the Comparable Service using Equivalent Services Data; and |
| “Upper Quartile” | the top 25% of instances of provision of a Comparable Service by members of the Comparison Group ranked by best value for money to the recipients of that Comparable Service. |

1. FREQUENCY, PURPOSE AND SCOPE OF BENCHMARK REVIEW
   1. The Authority may, by written notice to the Supplier, require a Benchmark Review of any or all of the Services in order to establish whether a Benchmarked Service is, and/or the Benchmarked Services as a whole are, Good Value.
   2. The Authority shall not be entitled to carry out a Benchmark Review of any Services during the 12 month period from the Start Date for those Services, nor at intervals of less than 12 months after any previous Benchmark Review relating to the same Services.
   3. The Services that are to be the Benchmarked Services shall be identified by the Authority in the notice given under Paragraph 2.1.
2. APPOINTMENT OF BENCHMARKER
   1. The Authority shall appoint as the Benchmarker to carry out the Benchmark Review either an organisation on the list of organisations set out in Annex 1 or such other organisation as may be agreed in writing between the Parties.
   2. The Authority shall, at the written request of the Supplier, require the Benchmarker to enter into a confidentiality agreement with the Supplier in, or substantially in, the form set out in Annex 2.
   3. The costs and expenses of the Benchmarker and the Benchmark Review shall be shared equally between both Parties provided that each Party shall bear its own internal costs of the Benchmark Review. The Benchmarker shall not be compensated on a contingency fee or incentive basis.
   4. The Authority shall be entitled to pay the Benchmarker’s costs and expenses in full and to recover the Supplier’s share from the Supplier.
3. BENCHMARK REVIEW
   1. The Authority shall require the Benchmarker to produce, and to send to each Party for approval, a draft plan for the Benchmark Review within 10 Working Days after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker shall reasonably request in all the circumstances. The plan must include:
      * 1. a proposed timetable for the Benchmark Review;
        2. a description of the information that the Benchmarker requires each Party to provide;
        3. a description of the benchmarking methodology to be used;
        4. a description that clearly illustrates that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives under Paragraph 2.1;
        5. an estimate of the resources required from each Party to underpin the delivery of the plan;
        6. a description of how the Benchmarker will scope and identify the Comparison Group;
        7. details of any entities which the Benchmarker proposes to include within the Comparison Group; and
        8. if in the Benchmarker's professional opinion there are no Comparable Services or the number of entities carrying out Comparable Services is insufficient to create a Comparison Group, a detailed approach for meeting the relevant benchmarking objective(s) under Paragraph 2.1 using a proxy for the Comparison Services and/or Comparison Group as applicable.
   2. The Parties acknowledge that the selection and or use of proxies for the Comparison Group (both in terms of number and identity of entities) and Comparable Services shall be a matter for the Benchmarker's professional judgment.
   3. Each Party shall give notice in writing to the Benchmarker and to the other Party within 10 Working Days after receiving the draft plan either approving the draft plan or suggesting amendments to that plan which must be reasonable Where a Party suggests amendments to the draft plan pursuant to this Paragraph 4.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 4.1 and this Paragraph 4.3 shall apply to any amended draft plan.
   4. Failure by a Party to give notice under Paragraph 4.3 shall be treated as approval of the draft plan by that Party. If the Parties fail to approve the draft plan within 30 Working Days of its first being sent to them pursuant to Paragraph 4.1 then the Benchmarker shall prescribe the plan.
   5. Once the plan is approved by both Parties or prescribed by the Benchmarker, the Benchmarker shall carry out the Benchmark Review in accordance with the plan. Each Party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the Supplier fails to provide any information requested from it by the Benchmarker and described in the plan, such failure shall constitute a material Default for the purposes of Clause 25.1(c) (*Rectification Plan Process*).
   6. Each Party shall co-operate fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the Services.
   7. Either Party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
   8. Once it has received the information it requires, the Benchmarker shall:
      * 1. finalise the sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The final selection of the Comparison Group (both in terms of number and identity of entities) and of the Comparable Services shall be a matter for the Benchmarker's professional judgment;
        2. derive the Equivalent Services Data by applying the adjustment factors listed in Paragraph 4.9 and from an analysis of the Comparable Services;
        3. derive the relative value for money of the charges payable for the Comparable Services using the Equivalent Services Data and from that derive the Upper Quartile;
        4. derive the median service levels relating to the Comparable Services using the Equivalent Services Data;
        5. compare the value for money of the Charges attributable to the Benchmarked Services (having regard in particular to the applicable Performance Indicators and Target Service Levels) to the value for money of the Upper Quartile;
        6. compare the Performance Indicators and Target Service Levels attributable to the Benchmarked Services (having regard to the Charges and Service Credits) with the median service levels using the Equivalent Services Data; and
        7. determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.
   9. The Benchmarker shall have regard to the following matters when performing a comparative assessment of a Benchmarked Service and a Comparable Service in order to derive Equivalent Services Data:
      * 1. the contractual and business environment under which the Services are being provided (including the scope, scale, complexity and geographical spread of the Services);
        2. any front-end investment and development costs of the Supplier;
        3. the Supplier's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;
        4. the extent of the Supplier's management and contract governance responsibilities;
        5. any other reasonable factors demonstrated by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive (such as erroneous costing, non-sustainable behaviour including excessive consumption of energy or over-aggressive pricing).
4. BENCHMARK REPORT
   1. The Benchmarker shall be required to prepare a Benchmark Report and deliver it simultaneously to both Parties, at the time specified in the plan approved under Paragraph 4, setting out its findings. The Benchmark Report shall:
      * 1. include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;
        2. include other findings (if any) regarding the quality and competitiveness or otherwise of those Services;
        3. if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Charges, Performance Indicators and/or Target Performance Levels, that would be required to make that Benchmarked Service or those Benchmarked Services as a whole Good Value; and
        4. illustrate the method used for any normalisation of the Equivalent Services Data
   2. The Benchmarker shall act as an expert and not as an arbitrator.
   3. If the Benchmark Report states that any Benchmarked Service is not Good Value or that the Benchmarked Services as a whole are not Good Value, then the Supplier shall (subject to Paragraphs 5.5 and 5.6) implement the changes set out in the Benchmark Report as soon as reasonably practicable within timescales agreed with the Authority but in any event within no more than 3 months. Any associated changes to the Charges shall take effect only from the same date and shall not be retrospective.
   4. The Supplier acknowledges and agrees that Benchmark Reviews shall not result in any increase to the Charges, disapplication of the Performance Indicators or any reduction in the Target Performance Levels.
   5. The Supplier shall be entitled to reject any Benchmark Report if the Supplier reasonably considers that the Benchmarker has not followed the procedure for the related Benchmark Review as set out in this Schedule in any material respect.
   6. The Supplier shall not be obliged to implement any Benchmark Report to the extent this would cause the Supplier to provide the Services at a loss (as determined, by reference to the Financial Model), or to the extent the Supplier cannot technically implement the recommended changes.
   7. In the event of any Dispute arising over whether the Benchmarker has followed the procedure for the related Benchmark Review under Paragraph 5.5 and/or any matter referred to in Paragraph 5.6, the Dispute shall be referred to Expert Determination. For the avoidance of doubt in the event of a Dispute between the Parties, the Authority shall continue to pay the Charges to the Supplier in accordance with the terms of this Contract and the Performance Indicators and Target Performance Levels shall remain unchanged pending the conclusion of the Expert Determination.
   8. On conclusion of the Expert Determination:
      * 1. if the Expert determines that all or any part of the Benchmark Report recommendations regarding any reduction in the Charges shall be implemented by the Supplier, the Supplier shall immediately repay to the Authority the difference between the Charges paid by the Authority up to and including the date of the Expert's determination and the date upon which the recommended reduction in Charges should have originally taken effect pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and
        2. if the Expert determines that all or any part of the Benchmark Report recommendations regarding any changes to the Performance Indicators and/or Target Performance Levels shall be implemented by the Supplier:
           1. the Supplier shall immediately implement the relevant changes;
           2. the Supplier shall immediately pay an amount equal to any Service Credits which would have accrued up to and including the date of the Expert’s determination if the relevant changes had taken effect on the date determined pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and
           3. the relevant changes shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Contract.
   9. Any failure by the Supplier to implement the changes as set out in the Benchmark Report in accordance with the relevant timescales determined in accordance with Paragraph 5.3 (unless the provisions of Paragraph 5.6 and/or Paragraph 5.7 apply) or in accordance with Paragraph 5.8 shall, without prejudice to any other rights or remedies of the Authority, constitute a Supplier Termination Event.

## ANNEX 1: APPROVED BENCHMARKERS

## ANNEX 2: CONFIDENTIALITY AGREEMENT

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [date]

BETWEEN:

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

WHEREAS:

1. [insert name of Authority] (the “Authority”) and the Supplier are party to a contract dated [insert date] (the “Contract”) for the provision by the Supplier of [insert brief description of services] to the Authority.
2. The Benchmarker is to receive Confidential Information from the Supplier for the purpose of carrying out a benchmarking review for the Authority of one or more of such services pursuant to the terms of the Contract (the “Permitted Purpose”).

IT IS AGREED as follows:

1. Interpretation
   1. In this Agreement, unless the context otherwise requires:

|  |  |
| --- | --- |
| “Confidential Information” | means:   1. Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Supplier to the Benchmarker pursuant to this Agreement that relates to:    1. the Supplier; or    2. the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier; 2. other Information provided by the Supplier pursuant to this Agreement to the Benchmarker that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Benchmarker’s attention or into the Benchmarker’s possession in connection with the Permitted Purpose; 3. discussions, negotiations, and correspondence between the Supplier or any of its directors, officers, employees, consultants or professional advisers and the Benchmarker or any of its directors, officers, employees, consultants and professional advisers in connection with the Permitted Purpose and all matters arising therefrom; and 4. Information derived from any of the above,   but not including any Information that:   1. was in the possession of the Benchmarker without obligation of confidentiality prior to its disclosure by the Supplier; 2. the Benchmarker obtained on a non-confidential basis from a third party who is not, to the Benchmarker’s knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Benchmarker; 3. was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or 4. was independently developed without access to the Confidential Information; |
| “Information” | means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and |
| “Permitted Purpose” | has the meaning given to that expression in recital (B) to this Agreement. |

* 1. In this Agreement:
     + 1. a reference to any gender includes a reference to other genders;
       2. the singular includes the plural and vice versa;
       3. the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;
       4. references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;
       5. headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
       6. references to Clauses are to clauses of this Agreement.

1. Confidentiality Obligations
   1. In consideration of the Supplier providing Confidential Information to the Benchmarker, the Benchmarker shall:
      * 1. treat all Confidential Information as secret and confidential;
        2. have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
        3. not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or, if relevant, other owner or except as expressly set out in this Agreement;
        4. not transfer any of the Confidential Information outside the United Kingdom;
        5. not use or exploit any of the Confidential Information for any purpose whatsoever other than the Permitted Purpose;
        6. immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
        7. once the Permitted Purpose has been fulfilled:
           1. destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
           2. ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Benchmarker) from any computer, word processor, voicemail system or any other device; and
           3. make no further use of any Confidential Information.
2. Permitted Disclosures
   1. The Benchmarker may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
      * 1. reasonably need to receive the Confidential Information in connection with the Permitted Purpose; and
        2. have been informed by the Benchmarker of the confidential nature of the Confidential Information; and
        3. have agreed to terms similar to those in this Agreement.
   2. The Benchmarker shall be entitled to disclose Confidential Information to the Authority for the Permitted Purpose and to any Expert appointed in relation to a Dispute as referred to in Paragraph 5.7 of this Schedule 17 (Benchmarking) to the Contract.
   3. The Benchmarker shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Benchmarker.
   4. Before making a disclosure pursuant to Clause 3.3, the Benchmarker shall, if the circumstances permit:
      * 1. notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
        2. ask the court or other public body to treat the Confidential Information as confidential.
3. General
   1. The Benchmarker acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
   2. This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
      * 1. to grant the Benchmarker any licence or rights other than as may be expressly stated in this Agreement;
        2. to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
        3. as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of this Agreement.
   3. The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
   4. Without prejudice to any other rights or remedies that the Supplier may have, the Benchmarker acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Benchmarker of any of the provisions of this Agreement. Accordingly, the Benchmarker acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
   5. The maximum liability of the Benchmarker to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).
   6. For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
   7. Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
   8. This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.
4. Notices
   1. Any notice to be given under this Agreement (each a “Notice”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.
   2. Any Notice:
      * 1. if to be given to the Supplier shall be sent to:

[*Address*]

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

* + - 1. if to be given to the Benchmarker shall be sent to:

[*Name of Organisation*]

[*Address*]

Attention: [ ]

1. Governing law
   1. This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.
   2. Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

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

For and on behalf of [*name of Supplier*]

|  |  |
| --- | --- |
| Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: |
| Name: | Position: |

For and on behalf of [*name of Benchmarker*]

|  |  |
| --- | --- |
| Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: |
| Name: | Position: |

**SCHEDULE 18**

**FINANCIAL DISTRESS**

# Schedule 18 (*Financial Distress*)

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

|  |  |
| --- | --- |
| “Applicable Financial Indicators” | means the financial indicators from Paragraph 5.1 of this Schedule which are to apply to the Monitored Suppliers as set out in Paragraph 5.2 of this Schedule; |
| “Board” | means the Supplier’s board of directors; |
| “Credit Rating Level” | a credit rating level as specified in Annex 1 of this Schedule; |
| “Credit Rating Threshold” | the minimum Credit Rating Level for each entity in the FDE Group as set out in Annex 2 of this Schedule; |
| “FDE Group” | means the Supplier, [and the Guarantor; |
| “Financial Indicators” | in respect of the Supplier, and the Guarantor, means each of the financial indicators set out at Paragraph 5.1 of this Schedule; and in respect of each Monitored Supplier, means those Applicable Financial Indicators; |
| “Financial Target Thresholds” | means the target thresholds for each of the Financial Indicators set out at Paragraph 5.1 of this Schedule; |
| ”Monitored Suppliers” | means those entities specified at Paragraph 5.2 of this Schedule; |
| “Rating Agencies” | the rating agencies listed in Annex 1 of this Schedule. |

1. WARRANTIES AND DUTY TO NOTIFY
   1. The Supplier warrants and represents to the Authority for the benefit of the Authority that as at the Effective Date:
      * 1. the long term credit ratings issued for each entity in the FDE Group by each of the Rating Agencies are as set out in Annex 2 of this Schedule; and
        2. the financial position or, as appropriate, the financial performance of each of the Supplier, and Guarantor satisfies the Financial Target Thresholds.
   2. The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if there is any downgrade in the credit rating issued by any Rating Agency for any entity in the FDE Group (and in any event within 5 Working Days of the occurrence of the downgrade).
   3. The Supplier shall:
      * 1. regularly monitor the credit ratings of each entity in the FDE Group with the Rating Agencies;
        2. monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds at least at the frequency set out for each at Paragraph 5.1 (where specified) and in any event, on a regular basis and no less than once a year within one hundred and twenty (120) days after the Accounting Reference Date; and
        3. promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).
   4. For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraphs 3.1(a), and for the purposes of determining relief under Paragraph 7.1, the credit rating of an FDE Group entity shall be deemed to have dropped below the applicable Credit Rating Threshold if:
      * 1. any of the Rating Agencies have given a Credit Rating Level for that entity which is below the applicable Credit Rating Threshold; or
        2. a Rating Agency that is specified as holding a Credit Rating for an entity as set out at Annex 2 of this Schedule ceases to hold a Credit Rating for that entity.
   5. Each report submitted by the Supplier pursuant to Paragraph 2.3(b) shall:
      * 1. be a single report with separate sections for each of the FDE Group entities;
        2. contain a sufficient level of information to enable the Authority to verify the calculations that have been made in respect of the Financial Indicators;
        3. include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;
        4. be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable; and
        5. include a history of the Financial Indicators reported by the Supplier in graph form to enable the Authority to easily analyse and assess the trends in financial performance.
2. FINANCIAL DISTRESS EVENTS
   1. The following shall be Financial Distress Events:
      * 1. the credit rating of an FDE Group entity dropping below the applicable Credit Rating Threshold;
        2. an FDE Group entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
        3. there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;
        4. an FDE Group entity committing a material breach of covenant to its lenders;
        5. a Key Sub-contractor notifying the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
        6. any FDE Group entity extends the filing period for filing its accounts with the Registrar of Companies so that the filing period ends more than 9 months after its accounting reference date without an explanation to the Authority which the Authority (acting reasonably) considers to be adequate;
        7. any FDE Group entity is late to file its annual accounts without a public notification or an explanation to the Authority which the Authority, acting reasonably, considers to be adequate;
        8. the directors and/or external auditors of any FDE Group entity conclude that a material uncertainty exists in relation to that FDE Group entity’s going concern in the annual report including in a reasonable but plausible downside scenario. This includes, but is not limited to, commentary about liquidity and trading prospects in the reports from directors or external auditors;
        9. any of the following:
           1. any FDE Group entity makes a public announcement which contains adverse commentary with regards to that FDE Group entity’s liquidity and trading and trading prospects, such as but not limited to, a profit warning or ability to trade as a going concern;
           2. commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m;
           3. non-payment by an FDE Group entity of any financial indebtedness;
           4. any financial indebtedness of an FDE Group entity becoming due as a result of an event of default;
           5. the cancellation or suspension of any financial indebtedness in respect of an FDE Group entity; or
           6. the external auditor of an FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE entity;

in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Contract; and

* + - 1. any [one] of the Financial Indicators set out at Paragraph 5 for any of the FDE Group entities failing to meet the required Financial Target Threshold.

1. CONSEQUENCES OF FINANCIAL DISTRESS EVENTS
   1. Immediately upon notification by the Supplier of a Financial Distress Event (or if the Authority becomes aware of a Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in Paragraphs 4.3 to 4.5.
   2. In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1(e), the Authority shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the Supplier 10 Working Days to:
      * 1. rectify such late or non-payment; or
        2. demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.
   3. The Supplier shall (and shall procure that any Monitored Supplier, the Guarantor and/or any relevant Key Sub-contractor shall):
      * 1. at the request of the Authority, meet the Authority as soon as reasonably practicable (and in any event within 3 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Contract; and
        2. where the Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3(a) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Contract:
           1. submit to the Authority for its approval, a draft Financial Distress Remediation Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing); and
           2. to the extent that it is legally permitted to do so and subject to Paragraph 4.7, provide such information relating to the Supplier, any Monitored Supplier, Key Sub-contractors and/or the Guarantor as the Authority may reasonably require in order to understand the risk to the Services, which may include forecasts in relation to cash flow, orders and profits and details of financial measures being considered to mitigate the impact of the Financial Distress Event.
   4. The Authority shall not withhold its approval of a draft Financial Distress Remediation Plan unreasonably. If the Authority does not approve the draft Financial Distress Remediation Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Remediation Plan, which shall be resubmitted to the Authority within 5 Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Remediation Plan is either:
      * 1. approved by the Authority;
        2. referred, by notice sent by either Party to the other Party explaining why it thinks the Financial Distress Remediation Plan has not been approved, to commercial negotiation led by senior representatives who have authority to agree the Financial Distress Remediation Plan to be held within 28 days of the date of the notice; or
        3. finally rejected by the Authority.
   5. Following approval of the Financial Distress Remediation Plan by the Authority, the Supplier shall:
      * 1. on a regular basis (which shall not be less than fortnightly):
           1. review and make any updates to the Financial Distress Remediation Plan as the Supplier may deem reasonably necessary and/or as may be reasonably requested by the Authority, so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Services in accordance with this Contract; and
           2. provide a written report to the Authority setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the Supplier and/or the reasons why the Supplier may have decided not to make any changes;
        2. where updates are made to the Financial Distress Remediation Plan in accordance with Paragraph 4.5(a), submit an updated Financial Distress Remediation Plan to the Authority for its approval, and the provisions of Paragraphs 4.4 and 4.5(a) shall apply to the review and approval process for the updated Financial Distress Remediation Plan; and
        3. comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.
   6. Where the Supplier reasonably believes that the relevant Financial Distress Event under Paragraph 4.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 4.5.
   7. The Supplier shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at Paragraph 4.3(b)(ii) is available when required and on request from the Authority and within reasonable timescales. Such measures may include:
      * 1. obtaining in advance written authority from Key Sub-contractors, the Guarantor and/or Monitored Suppliers authorising the disclosure of the information to the Authority and/or entering into confidentiality agreements which permit disclosure;
        2. agreeing in advance with the Authority, Key Sub-contractors, the Guarantor and/or Monitored Suppliers a form of confidentiality agreement to be entered by the relevant parties to enable the disclosure of the information to the Authority;
        3. putting in place any other reasonable arrangements to enable the information to be lawfully disclosed to the Authority (which may include making price sensitive information available to Authority nominated personnel through confidential arrangements, subject to their consent); and
        4. disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction, anonymisation and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.
2. FINANCIAL INDICATORS
   1. Subject to the calculation methodology set out at Annex 3 of this Schedule, the Financial Indicators and the corresponding calculations and thresholds used to determine whether a Financial Distress Event has occurred in respect of those Financial Indicators, shall be as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Financial Indicator | Calculation1 | Financial Target Threshold: | Monitoring and Reporting Frequency *[if different from the default position set out in* *Paragraph 2.3(b)]* |
| 1  [Operating Margin]  OR  [The higher of (a) the Operating Margin for the most recent 12 month period and (b) the average Operating Margin for the last two 12 month periods] | *[Operating Margin = Operating Profit / Revenue]* | *[> [X%]]* | *Tested and reported [yearly / half yearly] in arrears within [120 / 90] days of each [accounting reference date / half year end] based upon figures for the 12 months ending on the relevant [accounting reference date / half year end]* |
| 2  [Free Cash Flow to Net Debt Ratio]  OR  [Net Debt to EBITDA Ratio] | *[Free Cash Flow to Net Debt Ratio = Free Cash Flow / Net Debt]*  *OR*  *[Net Debt to EBITDA ratio = Net Debt / EBITDA]* | *[> [X%]]*  *OR*  *[< [X]] times* | *Tested and reported [yearly / half yearly] in arrears within [120 / 90] days of each [accounting reference date / half year end] based upon [Free Cash Flow / EBITDA] for the 12 months ending on, and Net Debt at, the relevant [accounting reference date / half year end]* |
| 3  [Net Debt + Net Pension Deficit to EBITDA ratio] | *[Net Debt + Net Pension Deficit to EBITDA Ratio = (Net Debt + Net Pension Deficit) / EBITDA]* | *[< [X]] times* | *Tested and reported yearly in arrears within 120 days of each accounting reference date based upon EBITDA for the 12 months ending on, and the Net Debt and Net Pension Deficit at, the relevant accounting reference date* |
| 4  [Net Interest Paid Cover] | *[Net Interest Paid Cover = Earnings Before Interest and Tax / Net Interest Paid]* | *[> [X]] times* | *Tested and reported [yearly / half yearly] in arrears within [120 / 90] days of each [accounting reference date / half year end] based upon figures for the 12 months ending on the relevant [accounting reference date / half year end]* |
| 5  [Acid Ratio] | *[Acid Ratio = (Current Assets – Inventories) / Current Liabilities]* | *[> [X]] times* | *Tested and reported [yearly / half yearly] in arrears within [120 /90] days of each [accounting reference date / half year end] based upon figures at the relevant [accounting reference date / half year end]* |
| 6  [Net Asset value] | *[Net Asset Value = Net Assets]* | *[> £0]* | *Tested and reported [yearly / half yearly] in arrears within [120 /90] days of each [accounting reference date / half year end] based upon figures at the relevant [accounting reference date / half year end]* |
| 7  [Group Exposure Ratio] | *[Group Exposure / Gross Assets]* | *[< [X]]%* | *Tested and reported yearly in arrears within 120 days of each accounting reference date based upon figures at the relevant accounting reference date* |
| Financial Target 8  [etc.] | *[etc.]* | *[etc.]* | *[etc.]* |

Key: 1 – See Annex 3 of this Schedule which sets out the calculation methodology to be used in the calculation of each Financial Indicator.

* 1. Monitored Suppliers

1. TERMINATION RIGHTS
   1. The Authority shall be entitled to terminate this Contract under Clause 31.1(b) (*Termination by the Authority*) if:
      * 1. the Supplier fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2.3(c);
        2. the Supplier fails to comply with any part of Paragraph 4.3;
        3. the Authority finally rejects a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraphs 4.4 to 4.5(a); and/or
        4. the Supplier fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 4.5(c).
2. PRIMACY OF CREDIT RATINGS
   1. Without prejudice to the Supplier’s obligations and the Authority’s rights and remedies under Paragraph 2, if, following the occurrence of a Financial Distress Event pursuant to any of Paragraphs 3.1(b) to 3.1(j), the Rating Agencies review and report subsequently that the credit ratings for the FDE Group entities do not drop below the relevant Credit Rating Thresholds specified for those entities in Annex 2 of this Schedule, then:
      * 1. the Supplier shall be relieved automatically of its obligations under Paragraphs 4.3 to 4.5; and
        2. the Authority shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 4.3(b)(ii).

## ANNEX 1: RATING AGENCIES AND THEIR STANDARD RATING SYSTEM

* [Rating Agency 1 (e.g. Standard and Poors)]
  + - Credit Rating Level 1 = [AAA]
    - Credit Rating Level 2 = [AA+]
    - Credit Rating Level 3 = [AA]
    - Credit Rating Level 4 = [AA-]
    - Credit Rating Level 5 = [A+]
    - Credit Rating Level 6 = [A]
    - Credit Rating Level 7 = [A-]
    - Credit Rating Level 8 = [BBB+]
    - Credit Rating Level 9 = [BBB]
    - Credit Rating Level 10 = [BBB-]
    - Etc.
* [Rating Agency 2 (e.g. Moodys) ]
  + - Credit Rating Level 1 = [Aaa]
    - Credit Rating Level 2 = [Aa1]
    - Credit Rating Level 3 = [Aa2]
    - Credit Rating Level 4 = [Aa3]
    - Credit Rating Level 5 = [A1]
    - Credit Rating Level 6 = [A2]
    - Credit Rating Level 7 = [A3]
    - Credit Rating Level 8 = [Baa1]
    - Credit Rating Level 9 = [Baa2]
    - Credit Rating Level 10 = [Baa3]
    - Etc.
* [Rating Agency 3 (etc.) ]
  + - Credit Rating Level 1 = [XXX]
    - Etc.

## ANNEX 2: CREDIT RATINGS AND CREDIT RATING THRESHOLDS

|  |  |  |
| --- | --- | --- |
| Entity | Credit Rating (long term)  (insert credit rating issued for the entity at the Effective Date) | Credit Rating Threshold  *(insert the actual rating (e.g. AA-) or the Credit Rating Level (e.g. Credit Rating Level 3)* |
| *Supplier* | [Rating Agency 1] – [insert rating for Rating Agency 1] | [Rating Agency 1] – [insert threshold for Rating Agency 1] |
|  | [Rating Agency 2] – [insert rating for Rating Agency 2] | [Rating Agency 2] – [insert threshold for Rating Agency 2] |
|  | [etc.] | [etc.] |
| *[Guarantor]* | [Rating Agency 1] – [insert rating for Rating Agency 1] | [Rating Agency 1] – [insert threshold for Rating Agency 1] |
|  | [Rating Agency 2] – [insert rating for Rating Agency 2] | [Rating Agency 2] – [insert threshold for Rating Agency 2] |
|  | [etc.] | [etc.] |
| *[etc…]* | [etc.] | [etc.] |
| *[etc…]* | [etc.] | [etc.] |

## ANNEX 3: CALCULATION METHODOLOGY FOR FINANCIAL INDICATORS

The Supplier shall ensure that it uses the following general and specific methodologies for calculating the Financial Indicators against the Financial Target Thresholds:

General methodology

1. *Terminology*: The terms referred to in this Annex are those used by UK companies in their financial statements. Where the entity is not a UK company, the corresponding items should be used even if the terminology is slightly different (for example a charity would refer to a surplus or deficit rather than a profit or loss).
2. *Groups*: Where the entity is the holding company of a group and prepares consolidated financial statements, the consolidated figures should be used.
3. *Foreign currency conversion*: Figures denominated in foreign currencies should be converted at the exchange rate in force at the relevant date for which the Financial Indicator is being calculated.
4. *Treatment of non-underlying items*: Financial Indicators should be based on the figures in the financial statements before adjusting for non-underlying items.

Specific Methodology

|  |  |
| --- | --- |
| Financial Indicator | Specific Methodology |
| 1  [Operating Margin] | [The elements used to calculate the Operating Margin should be shown on the face of the Income Statement in a standard set of financial statements.  Figures for Operating Profit and Revenue should exclude the entity’s share of the results of any joint ventures or Associates.  Where an entity has an operating loss (i.e. where the operating profit is negative), Operating Profit should be taken to be zero.] |
| 2  [Free Cash Flow to Net Debt Ratio]  OR  [Net Debt to EBITDA Ratio] | *[“Free Cash Flow” = Net Cash Flow from Operating Activities – Capital Expenditure*  *“Capital Expenditure” = Purchase of property, plant & equipment + purchase of intangible assets*  *“Net Debt” = Bank overdrafts + Loans and borrowings + Finance Leases + Deferred consideration payable – Cash and cash equivalents*  The majority of the elements used to calculate the Free Cash Flow to Net Debt Ratio should be shown on the face of the Statement of Cash Flows and the Balance Sheet in a standard set of financial statements.  *Net Cash Flow from Operating Activities*: This should be stated after deduction of interest and tax paid.  *Capital expenditure*: The elements of capital expenditure may be described slightly differently but will be found under ‘Cash flows from investing activities’ in the Statement of Cash Flows; they should be limited to the purchase of fixed assets (including intangible assets) for the business and exclude acquisitions. The figure should be shown gross without any deduction for any proceeds of sale of fixed assets.  *Net Debt*: The elements of Net Debt may also be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest bearing liabilities (other than retirement benefit obligations) should be treated as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but not non-designated hedges). Borrowings should also include balances owed to other group members.  Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing.  Cash and cash equivalents should include short-term financial investments shown in current assets.  Where Net debt is negative (i.e. an entity has net cash), the relevant Financial Target Threshold should be treated as having been met.]  OR  *[“Net Debt” = Bank overdrafts + Loans and borrowings + Finance leases + Deferred consideration payable – Cash and cash equivalents*  *“EBITDA” = Operating profit + Depreciation charge + Amortisation charge*  The majority of the elements used to calculate the Net Debt to EBITDA Ratio should be shown on the face of the Balance sheet, Income statement and Statement of Cash Flows in a standard set of financial statements but will otherwise be found in the notes to the financial statements.  *Net Debt*: The elements of Net Debt may be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest bearing liabilities (other than retirement benefit obligations) should be included as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but not non-designated hedges). Borrowings should also include balances owed to other group members.  Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing.  Cash and cash equivalents should include short-term financial investments shown in current assets.  Where Net debt is negative (i.e. an entity has net cash), the relevant Financial Target Threshold should be treated as having been met.  *EBITDA*: Operating profit should be shown on the face of the Income Statement and, for the purposes of calculating this Financial Indicator, should include the entity’s share of the results of any joint ventures or Associates. *The depreciation and amortisation charges for the period may be found on the face of the* *Statement of Cash Flows or in a Note to the Accounts. Where EBITDA is negative, the relevant Financial Target Threshold should be treated as not having been met (unless Net Debt is also negative, in which case the relevant Financial Target Threshold should be treated as having been met).]* |
| 3  [Net Debt + Net Pension Deficit to EBITDA ratio] | *[“Net Debt” = Bank overdrafts + Loans and borrowings + Finance leases + Deferred consideration payable – Cash and cash equivalents*  *“Net Pension Deficit” = Retirement Benefit Obligations – Retirement Benefit Assets*  *“EBITDA” = Operating profit + Depreciation charge + Amortisation charge*  The majority of the elements used to calculate the Net Debt + Net Pension Deficit to EBITDA Ratio should be shown on the face of the Balance sheet, Income statement and Statement of Cash Flows in a standard set of financial statements but will otherwise be found in the notes to the financial statements.  *Net Debt*: The elements of Net Debt may be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest bearing liabilities (other than retirement benefit obligations) should be included as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but *not* non-designated hedges). Borrowings should also include balances owed to other group members.  Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing.  Cash and cash equivalents should include short-term financial investments shown in current assets.  *Net Pension Deficit*: Retirement Benefit Obligations and Retirement Benefit Assets may be shown on the face of the Balance Sheet or in the notes to the financial statements. They may also be described as pension benefits / obligations, post-employment obligations or other similar terms.  Where ‘Net Debt + Net Pension Deficit’ is negative, the relevant Financial Target Threshold should be treated as having been met.  *EBITDA*: Operating profit should be shown on the face of the Income Statement and, for the purposes of calculating this Financial Indicator, should include the entity’s share of the results of any joint ventures or Associates.  The depreciation and amortisation charges for the period may be found on the face of the Statement of Cash Flows or in a Note to the Accounts.  Where EBITDA is negative, the relevant Financial Target Threshold should be treated as not having been met (unless ‘Net Debt + Net Pension Deficit’ is also negative, in which case the relevant Financial Target Threshold should be regarded as having been met).] |
| 4  [Net Interest Paid Cover] | *[“Earnings Before Interest and Tax” = Operating profit*  *“Net Interest Paid” = Interest paid – Interest received*  Operating profit should be shown on the face of the Income Statement in a standard set of financial statements and, for the purposes of calculating this Financial Indicator, should include the entity’s share of the results of any joint ventures or Associates.  Interest received and interest paid should be shown on the face of the Cash Flow statement.  Where Net interest paid is negative (i.e. the entity has net interest received), the relevant Financial Target Threshold should be treated as having been met.] |
| 5  [Acid Ratio] | [All elements that are used to calculate the Acid Ratio are available on the face of the Balance Sheet in a standard set of financial statements.] |
| 6  [Net Asset value] | [Net Assets are shown (but sometimes not labelled) on the face of the Balance Sheet of a standard set of financial statements. Net Assets are sometimes called net worth or ‘Shareholders’ Funds’. They represent the net assets available to the shareholders. Where an entity has a majority interest in another entity in which there are also minority or non-controlling interests (i.e. where it has a subsidiary partially owned by outside investors), Net Assets should be taken inclusive of minority or non-controlling interests (as if the entity owned 100% of such entity).] |
| 7  [Group Exposure Ratio] | *[“Group Exposure” = Balances owed by Group Undertakings + Contingent liabilities assumed in support of Group Undertakings*  *“Gross Assets” = Fixed Assets + Current Assets*  *Group Exposure*: Balances owed by (i.e. receivable from) Group Undertakings are shown within Fixed assets or Current assets either on the face of the Balance Sheet or in the relevant notes to the financial statements. In many cases there may be no such balances, in particular where an entity is not a member of a group or is itself the ultimate holding company of the group.  Contingent liabilities assumed in support of Group Undertakings are shown in the Contingent Liabilities note in a standard set of financial statements. They include guarantees and security given in support of the borrowings of other group companies, often as part of group borrowing arrangements. Where the contingent liabilities are capped, the capped figure should be taken as their value. Where no cap or maximum is specified, the relevant Financial Target Threshold should automatically be regarded as not having been met.  In many cases an entity may not have assumed any contingent liabilities in support of Group Undertakings, in particular where an entity is not a member of a group or is itself the ultimate holding company of the group.  *Gross Assets*: Both Fixed assets and Current assets are shown on the face of the Balance Sheet] |
| 8  [Insert additional Financial Indicators as necessary] | *[Etc..]* |

**SCHEDULE 19**

**FINANCIAL REPORTS AND AUDIT RIGHTS**

# Schedule 19 (*Financial Reports and Audit Rights*)

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

|  |  |
| --- | --- |
| “Annual Contract Report” | the annual contract report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B; |
| “Audit Agents” | 1. the Authority’s internal and external auditors; 2. the Authority’s statutory or regulatory auditors; 3. the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; 4. HM Treasury or the Cabinet Office; 5. any party formally appointed by the Authority to carry out audit or similar review functions; and 6. successors or assigns of any of the above; |
| “Contract Amendment Report” | the contract amendment report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B; |
| “Final Reconciliation Report” | the final reconciliation report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B; |
| “Financial Model” | the latest Annual Contract Report or the latest Contract Amendment Report, whichever has been most recently approved by the Authority in accordance with Paragraph 2 of Part B; |
| “Financial Reports” | the reports listed in the table in Paragraph 1.1 of Part B; |
| “Financial Representative” | a reasonably skilled and experienced member of the Supplier’s staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports; |
| “Financial Transparency Objectives” | has the meaning given in Paragraph 1 of Part A; |
| “Material Change” | a Change which:   1. materially changes the profile of the Charges; or 2. varies the total Charges payable during the Term (as forecast in the latest Financial Model) by:    1. 5% or more; or    2. £1m or more; |
| “Onerous Contract” | a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it, as defined under International Accounting Standard 37; |
| “Onerous Contract Report” | means a report provided by the Supplier pursuant to Paragraph 3 of Part A to this Schedule; |
| “Open Book Data” | complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:   1. the Supplier’s Costs broken down against each Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software; 2. operating expenditure relating to the provision of the Services including an analysis showing:    1. the unit costs and quantity of consumables and bought-in services;    2. manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;    3. a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier’s Profit Margin; and    4. Reimbursable Expenses; 3. Overheads; 4. all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services; 5. the Supplier Profit achieved over the Term and on an annual basis; 6. confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier; 7. an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and 8. the actual Costs profile for each Service Period. |

## Part A: FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA

1. FINANCIAL TRANSPARENCY OBJECTIVES
   1. The Supplier acknowledges that the provisions of this Schedule are designed (inter alia) to facilitate, and the Supplier shall co-operate with the Authority in order to achieve, the following objectives:
      * 1. Understanding the Charges
           1. for the Authority to understand any payment sought from it by the Supplier including an analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Personnel in providing the Services and the Supplier Profit Margin; and
           2. for both Parties to be able to understand the Financial Model and Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;
        2. Agreeing the impact of Change
           1. for both Parties to agree the quantitative impact of any Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Supplier’s Charges;
           2. for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;
        3. Continuous improvement
           1. for the Parties to challenge each other with ideas for efficiency and improvements; and
           2. to enable the Authority to demonstrate that it is achieving value for money for the tax payer relative to current market prices,

(together the “Financial Transparency Objectives”).

1. OPEN BOOK DATA
   1. The Supplier acknowledges the importance to the Authority of the Financial Transparency Objectives and the Authority’s need for complete transparency in the way in which the Charges are calculated.
   2. During the Term, and for a period of 7 years following the end of the Term, the Supplier shall:
      * 1. maintain and retain the Open Book Data; and
        2. disclose and allow the Authority and/or the Audit Agents access to the Open Book Data.
2. ONEROUS CONTRACTS
   1. If the Supplier publicly designates the Contract as an Onerous Contract (including where the Supplier has identified the Contract as such in any published accounts or public reports and announcements), the Supplier shall promptly notify the Authority of the designation and shall prepare and deliver to the Authority within the timescales agreed by the Parties (an in any event, no later than 2 months following the publication of the designation) a draft Onerous Contract Report which includes the following:
      * 1. An initial root cause analysis of the issues and circumstances which may have contributed to the Contract being designated as an Onerous Contract;
        2. An initial risk analysis and impact assessment on the provision of the Services as a result of the Supplier’s designation of the Contract as an Onerous Contract;
        3. the measures which the Supplier intends to put in place to minimise and mitigate any adverse impact on the provision on the Services;
        4. details of any other options which could be put in place to remove the designation of the Contract as an Onerous Contract and/or which could minimise and mitigate any adverse impact on the provision of the Services.
   2. Following receipt of the Onerous Contract Report, the Authority shall review and comment on the report as soon as reasonably practicable and the Parties shall cooperate in good faith to agree the final form of the report, which shall be submitted to the Programme Board, such final form report to be agreed no later than 1 month following the Authority’s receipt of the draft Onerous Contract Report.
   3. The Programme Board shall meet within 14 Working Days of the final Onerous Contract Report being agreed by the Parties to discuss the contents of the report; and the Parties shall procure the attendance at the meeting of any key participants where reasonably required (including the Cabinet Office Markets and Suppliers team where the Supplier is a Strategic Supplier; representatives from any Key Sub-contractors/Monitored Suppliers; and the project’s senior responsible officers (or equivalent) for each Party).
   4. The Supplier acknowledges and agrees that the report is submitted to the Authority and Programme Board on an information only basis and the Authority and Programme Board’s receipt of and comments in relation to the report shall not be deemed to be an acceptance or rejection of the report nor shall it relieve the Supplier of any liability under this Contract. Any Changes to be agreed by the Parties pursuant to the report shall be subject to the Change Control Procedure.

## Part B: FINANCIAL REPORTS

1. PROVISION OF THE FINANCIAL REPORTS
   1. The Supplier shall provide
      * 1. the Contract Inception Report on or before the Effective Date; and
        2. during the Term the following financial reports to the Authority, in the frequency specified below:

|  |  |
| --- | --- |
| Financial Report | When to be provided |
| Contract Amendment Report | Within 1 month of a Material Change being agreed between the Supplier and the Authority |
| Quarterly Contract Report | Within 1 month of the end of each Quarter |
| Annual Contract Report | Within 1 month of the end of the Contract Year to which that report relates |
| Final Reconciliation Report | Within 6 months after the end of the Term |

* 1. The Supplier shall provide to the Authority the Financial Reports in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Authority to the Supplier on or before the Effective Date for the purposes of this Contract. The Authority shall be entitled to modify the template for any Financial Report by giving written notice to the Supplier, including a copy of the updated template.
  2. A copy of each Financial Report shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority’s copy of the relevant Financial Report shall be authoritative.
  3. Each Financial Report shall:
     + 1. be completed by the Supplier using reasonable skill and care;
       2. incorporate and use the same defined terms as are used in this Contract;
       3. quote all monetary values in pounds sterling;
       4. quote all Costs as exclusive of any VAT; and
       5. quote all Costs and Charges based on current prices.
  4. Each Annual Contract Report and the Final Reconciliation Report shall be certified by the Supplier’s Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Financial Report), acting with express authority, as:
     + 1. being accurate and not misleading;
       2. having been prepared in conformity with generally accepted accounting principles within the United Kingdom;
       3. being a true and fair reflection of the information included within the Supplier’s management and statutory accounts; and
       4. compliant with the requirements of Paragraph 1.6.
  5. The Supplier shall:
     + 1. prepare each Financial Report using the same methodology as that used for the Contract Inception Report;
       2. to the extent permitted by Law, ensure that each Annual Contract Report and each Contract Amendment Report (if any) is a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;
       3. to the extent permitted by Law, ensure that the Final Reconciliation Report is a true and fair reflection of the Costs; and
       4. not have any other internal financial model in relation to the Services inconsistent with the Financial Model.
  6. During the Term, and for a period of 18 months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Authority may have on any of the Financial Reports and/or Open Book Data.
  7. If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:
     + 1. the Costs incurred (or those forecast to be incurred) by the Supplier; and/or
       2. the forecast Charges for the remainder of the Term,

the Supplier shall, as soon as practicable, notify the Authority in writing of the event in question detailing the actual or anticipated effect. For the avoidance of doubt, notifications provided in accordance with this Paragraph 1.8 shall not have the effect of amending any provisions of this Contract.

1. FINANCIAL MODEL
   1. Following the delivery by the Supplier of each Annual Contract Report and any Contract Amendment Report:
      * 1. the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;
        2. the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant Financial Report and the Contract Inception Report or immediately preceding Annual Contract Report or Contract Amendment Report (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of the Authority; and
        3. the Authority shall either within 10 Working Days of the meeting referred to in Paragraph 2.1(a) notify the Supplier that:
           1. the relevant Financial Report contains errors or omissions or that further explanations or supporting information is required, in which event the Supplier shall make any necessary modifications to the Financial Report and/or supply the Authority with such supporting evidence as is required to address the Authority’s concerns within 10 Working Days of such notification and the Authority shall following receipt of such amended Financial Report and/or supporting information, approve or reject such Financial Report; or
           2. the Authority has approved the relevant Financial Report.
   2. Following approval by the Authority of the relevant Financial Report in accordance with Paragraph 2.1(c), that version shall become, with effect from the date of such approval, the current approved version of the Financial Model for the purposes of this Contract, a version of which shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority’s copy of the relevant Financial Report shall be authoritative.
   3. If the Parties are unable to reach agreement on any Financial Report within 30 Working Days of its receipt by the Authority, the matter shall be referred for determination in accordance with Schedule 23 (Dispute Resolution Procedure).
2. DISCUSSION OF QUARTERLY CONTRACT REPORTS AND FINAL RECONCILIATION REPORT
   1. Following the delivery by the Supplier of each Quarterly Contract Report, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.
   2. Following the delivery by the Supplier of the Final Reconciliation Report, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

## Part C: AUDIT RIGHTS

1. AUDIT RIGHTS
   1. The Authority, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of 18 months thereafter, to assess compliance by the Supplier of the Supplier’s obligations under this Contract, including for the following purposes:
      * 1. to verify the integrity and content of any financial reports prepared by or on behalf of the Supplier;
        2. to verify the accuracy of the Charges and any other amounts payable by the Authority under this Contract (and proposed or actual variations to such Charges and payments);
        3. to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
        4. to verify the Certificate of Costs and/or the Open Book Data;
        5. to verify the Supplier’s and each Key Sub-contractor’s compliance with this Contract and applicable Law;
        6. to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
        7. to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Key Sub-contractors or their ability to perform the Services;
        8. to obtain such information as is necessary to fulfil the Authority’s obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
        9. to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
        10. to carry out the Authority’s internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
        11. to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
        12. to verify the accuracy and completeness of any Management Information delivered or required by this Contract;
        13. to review any Performance Monitoring Reports and/or other records relating to the Supplier’s performance of the Services and to verify that these reflect the Supplier’s own internal reports and records;
        14. to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
        15. to review the accuracy and completeness of the Registers;
        16. to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
        17. to review the Supplier’s quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
        18. to review the Supplier’s compliance with the standards identified in the Specification;
        19. to inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or
        20. to review the integrity, confidentiality and security of the Authority Data.
   2. Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Contract, the Authority may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.
   3. Nothing in this Contract shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.
2. CONDUCT OF AUDITS
   1. The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
   2. Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:
      * 1. all information requested by the Authority within the permitted scope of the audit;
        2. reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
        3. access to the Supplier System; and
        4. access to Supplier Personnel.
   3. The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.
   4. The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days’ notice of its intention to conduct an audit.
   5. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 2, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.
3. USE OF SUPPLIER’S INTERNAL AUDIT TEAM
   1. As an alternative to the Authority’s right pursuant to Paragraph 1.1 to exercise an audit either itself or through its Audit Agents, the Authority may require in writing that an audit is undertaken by the Supplier’s own internal audit function for any of the purposes set out in Paragraph 1.1.
   2. Following the receipt of a request from the Authority under Paragraph 3.1 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:
      * 1. the resultant audit reports; and
        2. all relevant members of the Supplier’s internal audit team for the purpose of understanding such audit reports.
4. RESPONSE TO AUDITS
   1. If an audit undertaken pursuant to Paragraphs 1 or 3 identifies that:
      * 1. the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
        2. there is an error in a Financial Report, the Supplier shall promptly rectify the error;
        3. the Authority has overpaid any Charges, the Supplier shall pay to the Authority:
           1. the amount overpaid;
           2. interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and
           3. the reasonable costs incurred by the Authority in undertaking the audit,

the Authority may exercise its right to deduct such amount from the Charges if it prefers; and

* + - 1. the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority.

**SCHEDULE 20**

**ANTICIPATED SAVINGS – Not used**

# Schedule 20 (*Anticipated Savings*) - Not used

**SCHEDULE 21**

**GOVERNANCE**

# Schedule 21 (*Governance*)

1. DEFINITIONS
   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, 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 7; |
| “Service Management Board” | the body described in Paragraph 4; and |

1. MANAGEMENT OF THE SERVICES

**[DRAFTING NOTE: The Authority proposes to refine the management structure to best align with the solution proposed by the winning tenderer.]**

* 1. The Supplier and the Authority shall each appoint a project manager for the purposes of this Contract through whom the Services shall be managed at a day-to-day.
  2. 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.

1. BOARDS

Establishment and structure of the Boards

* 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.
  2. In relation to each Board, the:
     + 1. Authority Board Members;
       2. Supplier Board Members;
       3. frequency that the Board shall meet (unless otherwise agreed between the Parties);
       4. location of the Board's meetings; and
       5. planned start date by which the Board shall be established,

shall be as set out in Annex 1.

* 1. In the event that either Party wishes to replace any of its appointed Board Members, that Party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority Board Member has at all times a counterpart Supplier Board Member of equivalent seniority and expertise.

Board meetings

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

1. ROLE OF THE SERVICE MANAGEMENT BOARD
   1. The Service Management Board shall be responsible for the executive management of the Services and shall:
      * 1. be accountable to the Programme Board for comprehensive oversight of the Services and for the senior management of the operational relationship between the Parties;
        2. report to the Programme Board on significant issues requiring decision and resolution by the Programme Board and on progress against the high level Implementation Plan;
        3. receive reports from the Project Managers on matters such as issues relating to delivery of existing Services and performance against Performance Indicators, progress against the Implementation Plan and possible future developments;
        4. review and report to the Programme Board on service management, co-ordination of individual projects and any integration issues;
        5. deal with the prioritisation of resources and the appointment of Project Managers on behalf of the Parties;
        6. consider and resolve Disputes (including Disputes as to the cause of a Delay or the performance of the Services) in the first instance and if necessary escalate the Dispute to the Programme Board; and
        7. develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same.
2. ROLE OF THE PROGRAMME BOARD
   1. The Programme Board shall:
      * 1. provide senior level guidance, leadership and strategy for the overall delivery of the Services;
        2. be the point of escalation from the Change Management Board, and the Service Management Board; and
        3. carry out the specific obligations attributed to it in Paragraph 5.2.
   2. The Programme Board shall:
      * 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;
        2. receive and review reports from the Service Management Board and review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving, in particular value for money;
        3. determine business strategy and provide guidance on policy matters which may impact on the implementation of the Services or on any Optional Services;
        4. authorise the commissioning and initiation of, and assess opportunities for, Optional Services; and
        5. provide guidance and authorisation to the Change Management Board on relevant Changes.
3. ROLE OF THE CHANGE MANAGEMENT BOARD
   1. The Change Management Board shall assess the impact and approve or reject all Change Requests. Changes which will have a significant impact on the Services shall be escalated to the Programme Board.
   2. The Change Management Board shall:
      * 1. analyse and record the impact of all Changes, specifically whether the proposed Change:
           1. has an impact on other areas or aspects of this Contract and/or other documentation relating to the Services;
           2. has an impact on the ability of the Authority to meet its agreed business needs within agreed time-scales;
           3. will raise any risks or issues relating to the proposed Change; and
           4. will provide value for money in consideration of any changes to the Financial Model, future Charges and/or Performance Indicators and Target Performance Levels;
        2. provide recommendations, seek guidance and authorisation from the Programme Board as required; and
        3. approve or reject (close) all proposed Changes.
4. ROLE OF THE RISK MANAGEMENT BOARD
   1. The Risk Management Board shall identify and manage risks relating to the performance of the Services.
   2. The Risk Management Board shall:
      * 1. provide assurance to the Programme Board that risks are being effectively managed across the Services, including reporting the ‘top 5’ risks to the Programme Board on a monthly basis;
        2. identify the risks to be reported to the Programme Board via the regular risk reports;
        3. subject to the Change Control Procedure, accept or reject new risks proposed for inclusion in the Risk Register;
        4. ratify or refuse requests to close risks on the Risk Register; and
        5. identify risks relating to or arising out of the performance of the Services and provisional owners of these risks.
5. CONTRACT MANAGEMENT MECHANISMS
   1. Both Parties shall pro-actively manage risks attributed to them under the terms of this Contract.
   2. The Supplier shall develop, operate, maintain and amend, as agreed with the Authority, processes for:
      * 1. the identification and management of risks;
        2. the identification and management of issues; and
        3. monitoring and controlling project plans.
   3. The Risk Register shall be updated by the Supplier and submitted for review by the Risk Management Board.
6. ANNUAL REVIEW
   1. An annual review meeting shall be held throughout the Term on a date to be agreed between the Parties.
   2. The meetings shall be attended by the [insert role] of the Supplier and the [insert role] of the Authority and any other persons considered by the Authority necessary for the review.

## ANNEX 1: REPRESENTATION AND STRUCTURE OF BOARDS

Service Management Board

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

Programme Board

|  |  |
| --- | --- |
| Authority members of Programme Board | [ ] [Chairperson] |
| Supplier members of Programme Board |  |
| Start date for Programme Board meetings |  |
| Frequency of Programme Board meetings |  |
| Location of Programme Board meetings |  |

Change Management Board

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

Risk Management Board

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

**SCHEDULE 22**

**CHANGE CONTROL PROCEDURE**

# Schedule 22 (*Change Control Procedure*)

1. DEFINITIONS
   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 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; |
| “Fast-track Change” | any Contract Change which the Parties agree to expedite in accordance with Paragraph 8; |
| “Impact Assessment” | an assessment of a Change Request in accordance with Paragraph 5; |
| “Impact Assessment Estimate” | has the meaning given in Paragraph 4.3; |
| “Receiving Party” | the Party which receives a proposed Contract Change; 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. |

1. GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE
   1. This Schedule sets out the procedure for dealing with Changes.
   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.
   3. The Parties shall deal with Contract Change as follows:
      * 1. either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;
        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;
        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;
        4. the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;
        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
        6. if a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.

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* 1. Until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2, then:
     + 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. 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. The Supplier shall:
     + 1. within 10 Working Days of the Authority’s signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Contract updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
       2. thereafter provide to the Authority such further copies of the updated Contract as the Authority may from time to time request.

1. COSTS
   1. Subject to Paragraph 3.3:
      * 1. the costs of preparing each Change Request shall be borne by the Party making the Change Request; and
        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:
           1. such costs are below £[insert figure];
           2. the Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services; or
           3. such costs exceed those in the accepted Impact Assessment Estimate.
   2. The cost of any Contract Change shall be calculated and charged in accordance with the principles and any relevant day rates or day costs (as applicable) set out in Schedule 15 *(Charges and* Invoicing). The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.
   3. 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.
2. CHANGE REQUEST
   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 Annex 1 and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.
   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.
   3. If the Authority issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within ten (10) Working Days of the date of receiving the Change Request an estimate (“Impact Assessment Estimate”) of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Authority within ten (10) Working Days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Authority.
   4. 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:
      * 1. The nature of the request for clarification; and
        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.

1. IMPACT ASSESSMENT
   1. Each Impact Assessment shall be completed in good faith and shall include:
      * 1. details of the proposed Contract Change including the reason for the Contract Change; and
        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;
        3. any variation to the terms of this Contract that will be required as a result of that impact, including changes to:
           1. the Specification, the Performance Indicators and/or the Target Performance Levels;
           2. the format of Authority Data, as set out in the Specification or as otherwise described in writing by the Authority;
           3. the Mobilisation Plan and any other timetable previously agreed by the Parties;
           4. 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;
        4. details of the cost of implementing the proposed Contract Change;
        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;
        6. a timetable for the implementation of the Contract Change;
        7. details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
        8. such other information as the Authority may reasonably request in (or in response to) the Change Request.
   2. If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Clause 21 (*Protection of Personal Data*).
   3. Subject to the provisions of Paragraph 5.4, the Authority shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Impact Assessment, it.
   4. If the Authority is the Receiving Party 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. The calculation of costs for the purposes of Paragraphs 5.1(d) and (e) shall:
      * 1. be based on the Financial Model;
        2. facilitate the Financial Transparency Objectives;
        3. include estimated volumes of each type of resource to be employed and the applicable rate card;
        4. include full disclosure of any assumptions underlying such Impact Assessment;
        5. include evidence of the cost of any assets required for the Change; and
        6. include details of any new Sub-contracts necessary to accomplish the Change.
2. AUTHORITY’S RIGHT OF APPROVAL
   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:
      * 1. approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;
        2. in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
        3. in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within 5 Working Days of such request. Subject to Paragraph 5.4, on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract Change within 10 Working Days.
   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 the Supplier shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Authority'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.
   3. If the Authority does not sign the Change Authorisation Note within 10 Working Days, then the Supplier shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within 5 Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.
3. SUPPLIER’S RIGHT OF APPROVAL
   1. Following an Impact Assessment, if:
      * 1. the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:
           1. materially and adversely affect the risks to the health and safety of any person; and/or
           2. require the Services to be performed in a way that infringes any Law; and/or
        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 Specification 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.

1. FAST-TRACK CHANGES
   1. The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.
   2. If:
      * 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
        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.

* 1. 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.

1. OPERATIONAL CHANGE PROCEDURE
   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:
      * 1. have an impact on the business of the Authority;
        2. require a change to this Contract;
        3. have a direct impact on use of the Services; or
        4. involve the Authority in paying any additional Charges or other costs.
   2. The Authority may request an Operational Change by submitting a written request for Operational Change (“RFOC”) to the Supplier Representative.
   3. The RFOC shall include the following details:
      * 1. the proposed Operational Change; and
        2. the time-scale for completion of the Operational Change.
   4. The Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.
   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.
2. COMMUNICATIONS
   1. For any Change Communication to be valid under this Schedule, it must be sent to either the Authority Change Manager or the Supplier Change Manager, as applicable. The provisions of Clause 42 (*Notices*) shall apply to a Change Communication as if it were a notice.

## Annex 1: CHANGE REQUEST FORM

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| CR NO.: | TITLE: | | | TYPE OF CHANGE: | |
| CONTRACT: | | | REQUIRED BY DATE: | | |
| ACTION: | | NAME: | | | DATE: |
| RAISED BY: | | | | | |
| AREA(S) IMPACTED (*OPTIONAL FIELD*): | | | | | |
| ASSIGNED FOR IMPACT ASSESSMENT BY: | | | | | |
| ASSIGNED FOR IMPACT ASSESSMENT TO: | | | | | |
| SUPPLIER REFERENCE NO.: | | | | | |
| FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT): | | | | | |
| DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS: | | | | | |
| REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE: | | | | | |
| SIGNATURE OF REQUESTING CHANGE OWNER: | | | | | |
| DATE OF REQUEST: | | | | | |

## ANNEX 2: CHANGE AUTHORISATION NOTE

|  |  |  |  |
| --- | --- | --- | --- |
| CR NO.: | TITLE: | | DATE RAISED: |
| CONTRACT: | TYPE OF CHANGE: | | REQUIRED BY DATE: |
| [DELIVERABLE DATE: [*if any*] ] | | | |
| DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT: | | | |
| PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE: | | | |
| DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE BASIS): | | | |
| SIGNED ON BEHALF OF THE AUTHORITY: | | SIGNED ON BEHALF OF THE SUPPLIER: | |
| Signature:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | Signature:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
| Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
| Position:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | Position:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
| Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |

**SCHEDULE 23**

**DISPUTE RESOLUTION PROCEDURE**

# Schedule 23 (*Dispute Resolution Procedure*)

1. DEFINITIONS
   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:   1. another contract with the Authority or the Supplier which is relevant to this Contract; or 2. 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. |

1. DISPUTE NOTICES
   1. If a Dispute arises then:
      * 1. the Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
        2. if such attempts are not successful within a reasonable period, not being longer than 20 Working Days, either Party may issue to the other a Dispute Notice.
   2. A Dispute Notice:
      * 1. shall set out:
           1. the material particulars of the Dispute;
           2. the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
           3. if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and
        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.
   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(b), then:
      * 1. if it is served by the Authority it shall be treated as a Multi-Party Procedure Initiation Notice; and
        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.

* 1. 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:
     + 1. first by commercial negotiation (as prescribed in Paragraph 4);
       2. then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5); and
       3. lastly by recourse to arbitration (as prescribed in Paragraph 7) or litigation (in accordance with Clause 44 (*Governing Law and* *Jurisdiction*)).
  2. Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Contract and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.
  3. 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*).

1. EXPEDITED DISPUTE TIMETABLE
   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.
   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:
      * 1. in Paragraph 4.2(c), 10 Working Days;
        2. in Paragraph 5.2, 10 Working Days;
        3. in Paragraph 6.2, 5 Working Days; and
        4. in Paragraph 7.2, 10 Working Days.
   3. If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. 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.
2. COMMERCIAL NEGOTIATION
   1. Following the service of a Dispute Notice, then, so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Authority and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Authority’s [*insert role*] and the Supplier’s [*insert role*].
   2. If:
      * 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;
        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
        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”).

1. MEDIATION
   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).
   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.
   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.
   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.
2. EXPERT DETERMINATION
   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.
   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:
      * 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);
        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
        3. if the Dispute relates to a matter of a technical nature not falling within Paragraphs 6.2(a) or (b), on the instructions of the president (or equivalent) of:
           1. an appropriate body agreed between the Parties; or
           2. 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.
   3. The Expert shall act on the following basis:
      * 1. he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
        2. the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
        3. the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 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;
        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;
        5. the process shall be conducted in private and shall be confidential; and
        6. the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.
3. ARBITRATION
   1. 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.
   2. Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have 15 Working Days following receipt of such notice to serve a reply (a “Counter Notice”) on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such 15 Working Day period.
   3. If the Authority serves a Counter Notice, then:
      * 1. if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 7.5 shall apply; or
        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.
   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.
   5. The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 7.1 to 7.4:
      * 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(e), (f) and (g));
        2. the arbitration shall be administered by the LCIA;
        3. the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this 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;
        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;
        5. the chair of the arbitral tribunal shall be British;
        6. the arbitration proceedings shall take place in London and in the English language; and
        7. the seat of the arbitration shall be London.
4. URGENT RELIEF
   1. Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
      * 1. for interim or interlocutory remedies in relation to this Contract or infringement by the other Party of that Party’s Intellectual Property Rights; and/or
        2. where compliance with Paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.
5. MULTI-PARTY DISPUTES
   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”).
   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”.
   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.
   4. The Authority shall (acting reasonably) consider each Supplier Request and shall determine within 5 Working Days whether the Dispute is:
      * 1. a Multi-Party Dispute, in which case the Authority shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
        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.
   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.
   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:
      * 1. the Authority;
        2. the Supplier;
        3. each Related Third Party involved in the Multi-Party Dispute; and
        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”).

* 1. 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:
     + 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;
       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
       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.
  2. 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:
     + 1. either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case Paragraph 5 shall apply;
       2. either Party may request that the Multi-Party Dispute is referred to an expert in which case Paragraph 6 shall apply; and/or
       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.

* 1. If a Multi-Party Dispute is referred to arbitration in accordance with Paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub Contractor, by the Supplier.

**SCHEDULE 24**

**REPORTS AND RECORDS PROVISIONS**

# Schedule 24 (*Reports and Records Provisions*)

1. TRANSPARENCY REPORTS
   1. Within three (3) months of the Effective Date the Supplier shall provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) draft reports in accordance with Annex 1 (once approved, the “Transparency Reports”).
   2. If the Authority rejects any draft Transparency Report, the Supplier shall submit a revised version of the relevant report for further approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.
   3. The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1.
   4. Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under Paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
   5. The requirements for Transparency Reports are in addition to any other reporting requirements in this Contract.
2. OTHER REPORTS
   1. The Authority may require any or all of the following reports:
      * 1. delay reports;
        2. reports relating to tests carried out under Schedule 26 (Service Continuity Plan and Corporate Resolution Planning);
        3. reports which the Supplier is required to supply as part of the Management Information;
        4. annual reports on the Insurances;
        5. security reports; and
        6. Force Majeure Event reports.
3. RECORDS
   1. The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 1 and Annex 1 (together “Records”):
      * 1. in accordance with the requirements of The National Archives and Good Industry Practice;
        2. in chronological order;
        3. in a form that is capable of audit; and
        4. at its own expense.
   2. The Supplier shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.
   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.
   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.
   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.
   6. Without prejudice to the foregoing, the Supplier shall provide the Authority:
      * 1. as soon as they are available, and in any event within 60 Working Days after the end of the first 6 months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such 6 month period; and
        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.
4. Virtual Library
   1. The Supplier shall, no later than two (2) weeks prior to the Start Date and without charge to the Authority, create a Virtual Library on which the Supplier shall (subject to any applicable legislation governing the use or processing of personal data) make information about this Contract available in in accordance with the requirements outlined in this Schedule.
   2. The Supplier shall ensure that the Virtual Library is:
      * 1. capable of holding and allowing access to the information described in Annex 3 of this Schedule and includes full and accurate file details of all uploaded items including date and time of upload, version number and the name of the uploader;
        2. structured so that each document uploaded has a unique identifier which is automatically assigned;
        3. readily accessible by the Authority at all times in full via a user-friendly, password protected interface to such nominated users as are notified to the Supplier by the Authority from time to time,
        4. structured so as to allow nominated users to download either specific documents or the complete Virtual Library (to the extent it has Access Permission) in bulk and store and view the content offline (on a regular and automated basis);
        5. structured and maintained in accordance with the security requirements as set out in this Contract;
        6. backed up on a secure off-site system.
   3. For the avoidance of doubt, the Virtual Library (excluding any Software used to host it) shall form a database which constitute Project Specific IPR which shall be assigned to the Authority pursuant to Paragraph 2.1 of Schedule 32 (Intellectual Property Rights)of this Contract.
   4. The Supplier shall upload complete and accurate information specified in Annex 3 by the Initial Upload Date (except where prior to the launch of the Virtual Library in which case the date at which the Virtual Library is made available in accordance with Paragraph 4.1) onto Virtual Library in the format specified.
   5. Upon any document being uploaded to the Virtual Library, and where the Authority has been granted Access Permission to that document, the Supplier shall email on the same date as the upload, a copy of the document to the nominated Authority email address at:

[ ]

* 1. Except for notices under Clause 42.4 or items covered by Clause 42.6, where the Supplier is under an obligation to provide information to the Authority in a provision under this Contract, then the Supplier’s upload of that information onto the Virtual Library shall satisfy the Supplier’s obligation to provide the Authority with that information provided that the Authority has access in accordance with this Paragraph 4 and the uploaded information meets the requirements more particularly specified in the relevant provision.
  2. Except to the extent that the requirements provide for earlier and more regular Authority access to up-to-date information, Annex 3 shall not take precedence over any other obligation to provide information in this Contract and the Supplier shall refer to the applicable clause for further details as to the requirement.
  3. The Suppler shall provide each specified person (as set out in column 6 of the table at Annex 3) access to view and download the specified information in the Virtual Library in Annex 3 subject upon the occurrence of the event specified in the column marked Access Permission in Annex 3 to this Schedule.
  4. Where Access Permission is not listed (in column 6 of the table at Annex 3) 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 3) from the Initial Upload Date.
  5. Where Access Permission is specified as being granted to the Authority’s Third Party Auditor (prior to the Authority being granted access) it shall:
     + 1. be entitled to access, view and download information specified in Annex 3 subject to it entering into a confidentiality agreement with the Supplier to keep the contents confidential (except to the extent disclosure of the confidential information is required under Paragraph 4.10(b) of this Schedule); and
       2. report to the Authority (at its request) as to the completeness and accuracy of the information but not the substance of the information.
  6. The Supplier shall ensure that the Virtual Library retains in an accessible form all historic or superseded records of the information specified Annex 3. In order to maintain the integrity of the historic archive of the information and documentation and for the purposes of maintaining a clear audit trail, the Supplier shall not delete or overwrite any information that has been stored in the Virtual Library, except for the purposes of maintenance (provided no information is lost during maintenance) or to enable the Supplier to comply with Data Protection Legislation.
  7. 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.
  8. Where the Supplier becomes aware that any of the information provided on the Virtual Library is materially inaccurate, incomplete or out of date (other than in respect of historic versions of documents) the Supplier shall provide an update to the information within fourteen (14) days unless already due to be updated beforehand due to an Update Requirement specified in Annex 3.
  9. In the event of a conflict between any requirement in this Contract (excluding Annex 3) for the Supplier to provide information to the Authority and the requirements set out in Annex 3 of this Schedule, the requirement elsewhere in this Contract shall prevail.
  10. The Supplier shall ensure that all approved users of the Virtual Library are alerted by email each time that information in the Virtual Library is uploaded or updated as it occurs.
  11. No later than two (2) weeks prior to the Start Date, the Supplier shall provide training manuals or written instructions to the Authority relating to the use of the Virtual Library.
  12. On request by the Authority the Supplier shall provide the Authority’s nominated users with a reasonable level of training and ongoing support to enable them to make use of the Virtual Library.
  13. For the avoidance of doubt, the cost of any redactions, access restrictions or compliance with the Data Protection Legislation in respect of the information hosted on the Virtual Library shall be at the Supplier’s own cost and expense.

## ANNEX 1: TRANSPARENCY REPORTS

|  |  |  |  |
| --- | --- | --- | --- |
| TITLE | CONTENT | FORMAT | FREQUENCY |
| *(Performance)* |  |  |  |
| *(Charges)* |  |  |  |
| *(Major sub-contractors)* |  |  |  |
| *(Technical)* |  |  |  |
| *(Performance management)* |  |  |  |

## ANNEX 2: 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. Records of vetting or DBS checks on Supplier staff.
5. Notices, reports and other documentation submitted by any Expert.
6. 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.
7. Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
8. All formal notices, reports or submissions made by the Supplier to the Authority Representative in connection with the provision of the Services.
9. All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.
10. Documents prepared by the Supplier in support of claims for the Charges.
11. Documents submitted by the Supplier pursuant to the Change Control Procedure.
12. Documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure.
13. 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.
14. Invoices and records related to VAT sought to be recovered by the Supplier.
15. Financial records, including audited and un-audited accounts of the Guarantor and the Supplier.
16. 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.
17. All documents relating to the insurances to be maintained under this Contract and any claims made in respect of them.
18. All records and materials relating to security management including physical security; and
19. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Contract.

## ANNEX 3: RECORDS TO UPLOAD TO VIRTUAL LIBRARY

| Applicable Clause/ Paragraph | Required Data | Format of Data | Initial Upload Date | Update Requirement | Access Permission and Access Event (where applicable) |
| --- | --- | --- | --- | --- | --- |
| Cl.5.5 (e), (f), 5.8(b), Paragraph[s] 2.1(a) [and 2.2(a)(ii) | Documentation | As appropriate and agreed by the Authority | Within one (1) week of the issue of the Start Date or such other date for as agreed in writing by the Parties, or set out in the Specification. | Following delivery of period training presented by or on behalf of the Supplier | Authority |
| Cl 14.3 | Key Personnel | Sch 29 | Effective Date | On replacement of Key Personnel | Authority |
| Sch 3, Part B Para 2.3 | Performance Monitoring Report | Sch 3, Part B | Start Date | Within ten (10) Working Days of the end of each Service Period | Authority |
| Cl 24 | Evidence of Insurances | As requested by the Authority | Effective Date | Within fifteen (15) days after policy renewal or replacement | Authority |
| Sch 9 | Commercially Sensitive Information | Sch 9 | Effective Date | Upon Agreement by the Authority to vary the information | Authority and/or Auditor |
| Cl 16 and Schedule 32 (Intellectual Property Rights) | Software | Sch 2 and Annex 1 to Schedule 32 (Intellectual Property Rights) | Start Date | Upon Agreement by the Authority to vary the information | Authority |
| Cl 6.4 | Detailed Implementation Plan | Sch 13 | Within 20 Working Days of Effective Date | Every 3 months from Effective Date | Authority |
| Cl 33.8(h) | Annual slavery and human trafficking report | As appropriate and agreed by the Authority | Within twelve (12) months | Every twelve (12) months | Authority |
| Sch 15, Part E Para 1.1 | Template Invoice | As appropriate and agreed by the Authority | Within 10 Working Days of the Effective Date | Upon Agreement by the Authority to vary the template | Authority |
| Sch 15, Annex 4 | Risk Register | Sch 15, Annex 4 | Effective Date | Upon Agreement by the Authority to vary the by the Risk Management Board | Authority |
| Sch 17, Para 4 | Benchmarking Plan | Sch 17 | Upon receipt from Benchmarker | Approval of Plan | Authority and Auditor |
| Sch 17, Para 5 | Benchmarking report | Sch 17 | Upon receipt from Benchmarker | Any update | Authority and Auditor |
| Sch 18, Para 2.3(b) | Financial Indicator Reports | Sch 1819, Para 2.5 | As specified in Para2.3(b) of Sch 18 | As specified in Para 2.3(b) of Sch 18 | Authority |
| Sch 18 Para 4.3(b) | Financial Distress Remediation Plan | As appropriate and agreed by the Authority | As soon as reasonably practicable and in any event within 10 Working Days of initial notification or awareness of a Financial Distress Event | On a regular basis (not less than fortnightly) | Authority |
| Sch 19, Part B, Para 11.1 | Contract Amendment Report | Sch 19, 0, Para 1.2 | Within 1 month of a material change being agreed | - | Authority |
| Sch 19, Para 1.1 | Quarterly Contract Report | Sch 19, 0, Para 1.2 | Within 1 month of the end of each Quarter | - | Authority |
| Sch 19, 0, para 1.1 | Annual Contract Report | Sch 19, 0, Para 1.2 | Within 1 month of the end of the Contract Year to which that report relates | - | Authority |
| Sch 19, 0, para 1.1 | Financial Reconciliation Report | Sch 19, 0, Para 1.2 | Within 6 months after the end of the Term | - | Authority |
| Sch 21, Para 3.3 | Representation and Structure of boards | Sch 21 Annex 1 | Within 7 days of receipt of intention, or in the case of a non-Authority board member agreement by the Authority | - | Authority |
| Sch 21, Para 3.5(e) | Minutes of governance meetings (all boards) | As appropriate and agreed by the Authority | Within 7 days of receipt from chairperson | - | Authority |
| Sch 22 Para 4.3 | Impact Assessment Estimate | As appropriate and agreed by the Authority | Within 10 Working Days of date of receiving change request. | - | Authority |
| Sch 22 Para 5 | Impact Assessment | As appropriate and agreed by the Authority | Within the period agreed by the Impact Assessment Estimate | Within 10 Working Days of request by the Authority to update under Schedule 22 Para 5.4 | Authority |
| Sch 22, Para 2.5 | Update full copy of the Agreement and copy of annotated version illustrating changes | PDF and MS Word (editable) | Signature of Variation Date | Any variation | Authority |
| Sch 22, Para 4 | Change Request | Sch 22, Annex Annex 1 | Within 10 Working Days of Authority issuing the Change Request | - | Authority |
| Sch 23, Para 2.1 | Dispute Notice | Sch 23 Para 2.2 | No longer than 20 Working Days from an unresolved dispute arising | Any variation | Authority |
| Sch 23, Para 2.4 | Mediation Notice | As appropriate | When first served | Any variation | Authority |
| Sch 24, Para 1 | Reports and Records Provisions | Sch 24, Annex 1 | Within 3 months of the Effective Date | Frequency specified in Sch 24, Annex 1 | Authority |
| Sch 25, Para 2.1(a) | Register of All Assets, Sub-contracts and Other Relevant Agreements | As appropriate and agreed by the Authority | Within 3 months of the Effective Date | Any variation | Authority |
| Sch 25, Para 2.1(b) | Configuration Database of Technical Infrastructure and Operating Procedures | As appropriate and agreed by the Authority | Within 3 months of the Effective Date | Any variation | Authority |
| Sch 25, Para 3.1 | Exit Information | As appropriate and agreed by the Authority | On reasonable notice given by the Authority at any point during the Term | Within 10 Working Days of Authority’s written request | Authority and its potential Replacement Suppliers |
| Sch 25, Para 5.1 | Exit Plan | Sch 25, Para 5.3 | Within 3 months of the Effective Date | In the first month of each contract year; and  Within 14 days if requested by the Authority following a Financial Distress Event  Within 20 days after service of Termination Notice or 6 months prior to expiry of the Contract | Authority |
| Sch 25, Para 6.3(e) | Provide up to date Registers during the Termination Assistance Period | As appropriate | As requested by the Authority | As appropriate |  |
| Sch 25, Para 6.7(b) | Authority Data (handback) | Sch 25, Para 3 and/or as appropriate and agreed by the Authority | At the end of the Termination Assistance Period | - | Authority |
| Sch 25, Annex 1, Para 1.1, Para 1.2 Para 1.3 & Para 1.4 | Termination Services supporting documentation and knowledge transfer material | As appropriate and agreed by the Authority | As specified in the Termination Assistance Notice and in any event prior to the end of the Termination Assistance Period | As specified in the Termination Assistance Notice or otherwise requested by the Authority | - |
| Sch 26 Service Continuity | Service Continuity Plan | Sch 26, Para 2.2 | Within 40 Working Days from the Effective Date | Sch 26, Para 7.1 | Authority |
| Sch 26, Para 7.2 | Service Continuity Plan Review Report | Sch 26, Para 6.2 | Within 20 Working Days of the conclusion of each review of the Service Continuity Plan. | - | - |
| Sch 28, Part E, Para 1.1 | Supplier’s Provisional Supplier Personnel List and, Staffing Information | As appropriate and agreed by the Authority | Sch 28, Para 1.1(a) - (d) | At such intervals as are reasonably requested by the Authority | Authority |
| Sch 28, Part E, Para 1.2 | Supplier's Final Supplier Personnel List | As appropriate and agreed by the Authority | At least 20 Working Days prior to the Service Transfer Date | Upon any material change to the list of employees | Authority and, at the discretion of the Authority, the Replacement Supplier and/or any Replacement Subcontractor |
| Sch 28, Part E, Para 1.6 | Information relating to the manner in which the services are organised | As appropriate and agreed by the Authority | Effective Date | - | Authority |
| Sch 28, Part E, Para 1.7 | Payroll and benefits information | As appropriate and agreed by the Authority | Within 5 Working Days following the Service Transfer Date | - | Authority, any Replacement Supplier and/or Replacement Sub-contractor |
| Sch 28, Annex E1 | List of Notified Sub-contractors | As appropriate and agreed by the Authority | Effective Date | Upon any change | Authority |
| Sch 29 | Key Personnel | Sch 29 | Effective Date | As amended from time to time | Authority |
| Sch 31, Annex 1  Para 2.1 | Reports on Data Subject Access Requests | As appropriate and agreed by the Authority | As agreed with Authority | As agreed with Authority | Authority and Supplier |

**SCHEDULE 25**

**EXIT MANAGEMENT**

# Schedule 25 (*Exit Management*)

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

|  |  |
| --- | --- |
| “Emergency Exit” | any termination of this Contract which is a:   1. termination of the whole or part of this Contract in accordance with Clause 31 (*Termination Rights*), except where the period of notice given under that Clause is greater than or equal to 6 months; 2. termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 31 (*Termination Rights*); or 3. 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:   1. pursuant to Clause 31 (*Termination Rights*) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or 2. as a result of the expiry of the Initial Term or any Extension Period; |
| “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(b). |

1. OBLIGATIONS DURING THE TERM TO FACILITATE EXIT
   1. During the Term, the Supplier shall:
      * 1. create and maintain a register of all:
           1. Assets, detailing their:

make, model and asset number;

ownership and status as either Exclusive Assets or Non-Exclusive Assets;

Net Book Value;

condition and physical location; and

use (including technical specifications); and

* + - * 1. 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;
      1. 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. agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and
      3. 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.
  1. 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. 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.

1. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES
   1. On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
      * 1. details of the Service(s);
        2. a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
        3. an inventory of Authority Data in the Supplier's possession or control;
        4. details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
        5. a list of on-going and/or threatened disputes in relation to the provision of the Services;
        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
        7. such other material and information as the Authority shall reasonably require,

(together, the “Exit Information”).

* 1. The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this Paragraph 3.2 disclose any Supplier’s Confidential Information which is information relating to the Supplier’s or its Sub-contractors’ prices or costs).
  2. The Supplier shall:
     + 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
       2. provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Authority.
  3. The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
     + 1. prepare an informed offer for those Services; and
       2. not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

1. OBLIGATION TO ENTER INTO AN ETHICAL WALL AGREEMENT ON RE-TENDERING OF SERVICES
   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.
   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.
2. EXIT PLAN
   1. The Supplier shall, within 3 months after the Effective Date, deliver to the Authority an Exit Plan which:
      * 1. sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the Authority and/or its Replacement Supplier on the Partial Termination, expiry or termination of this Contract;
        2. complies with the requirements set out in Paragraph 5.2; and
        3. is otherwise reasonably satisfactory to the Authority.
   2. The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
   3. The Exit Plan shall set out, as a minimum:
      * 1. how the Exit Information is obtained;
        2. separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;
        3. a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Contract;
        4. the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
        5. the management structure to be employed during the Termination Assistance Period;
        6. a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
        7. how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
        8. the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in Annex 1 as are applicable);
        9. a timetable and critical issues for providing the Termination Services;
        10. how the Termination Services would be provided (if required) during the Termination Assistance Period;
        11. procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 28 (Staff Transfer); and
        12. how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.
   4. The Parties acknowledge that the migration of the Services from the Supplier to the Authority and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.
   5. The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) and if requested by the Authority following the occurrence of a Financial Distress Event, within 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

* 1. 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.
  2. 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).

1. TERMINATION SERVICES

Notification of Requirements for Termination Services

* 1. The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a “Termination Assistance Notice”) at least 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:
     + 1. the date from which Termination Services are required;
       2. the nature of the Termination Services required; and
       3. the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the expiry of the Initial Term or any Extension Period or earlier termination of this Contract;
  2. The Authority shall have:
     + 1. an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend 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
       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

* 1. Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:
     + 1. continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 6.1, provide the Termination Services;
       2. in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the Partial Termination, termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
       3. use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Authority;
       4. provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the Parties agree otherwise in accordance with Paragraph 6.5; and
       5. at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.
  2. Without prejudice to the Supplier’s obligations under Paragraph 6.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) 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.
  3. If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) and/or the applicable Service Credits to take account of such adverse effect.

Termination Obligations

* 1. The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any Partial Termination or termination.
  2. 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:
     + 1. cease to use the Authority Data;
       2. provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
       3. erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
       4. return to the Authority such of the following as is in the Supplier's possession or control:
          1. all copies of the Authority Software and any other software licensed by the Authority to the Supplier under this Contract;
          2. all materials created by the Supplier under this Contract in which the IPRs are owned by the Authority;
          3. any parts of the IT Environment and any other equipment which belongs to the Authority; and
          4. any items that have been on-charged to the Authority, such as consumables;
       5. vacate any Authority Premises unless access is required to continue to deliver the Services;
       6. provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after the Partial Termination, expiry or termination of this Contract to:
          1. such information relating to the Services as remains in the possession or control of the Supplier; and
          2. such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 6.7(f)(ii).
  3. Upon Partial Termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.
  4. Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the terminated Services shall be terminated with effect from the end of the Termination Assistance Period.

1. ASSETS, SUB-CONTRACTS AND SOFTWARE
   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:
      * 1. terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;
        2. (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
        3. terminate, enter into or vary any licence for software in connection with the Services.
   2. Within 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 6.3(e), the Authority shall provide written notice to the Supplier setting out:
      * 1. which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier in respect of the terminated Services (“Transferring Assets”);
           1. which, if any, of:

the Exclusive Assets that are not Transferable Assets; and

the Non-Exclusive Assets,

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

* + - 1. which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the “Transferring Contracts”),

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

* 1. With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:
     + 1. 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.
  2. Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same.
  3. Where the Supplier is notified in accordance with Paragraph 7.2(b) that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
     + 1. procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
       2. procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
  4. The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
  5. The Authority shall:
     + 1. accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
       2. once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
  6. The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.
  7. The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to Paragraph 7.6 both:
     + 1. in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
       2. in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the Supplier’s failure to comply with Clause 16 (*Intellectual Property Rights*) and/or Schedule 32 (Intellectual Property Rights)*.*

1. SUPPLIER PERSONNEL
   1. The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 28 (Staff Transfer) shall apply.
   2. The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier.
   3. During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Authority and/or the Replacement Supplier.
   4. The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
   5. The Supplier shall not for a period of 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.
2. CHARGES
   1. Except as otherwise expressly specified in this Agreement, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.
3. APPORTIONMENTS
   1. All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
      * 1. the amounts shall be annualised and divided by 365 to reach a daily rate;
        2. the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
        3. the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
   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. 1. The Termination Services to be provided by the Supplier shall include such of the following services as the Authority may specify:
      * 1. ceasing all non-critical Software changes (except where agreed in writing with the Authority);
        2. notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
        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;
        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;
        5. providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
        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;
        7. providing the Authority with any problem logs which have not previously been provided to the Authority;
        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;
        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;
        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;
        11. reviewing all Software libraries used in connection with the Services and providing details of these to the Authority and/or the Replacement Supplier;
        12. providing assistance and expertise as necessary to support the Authority and/or the Replacement Supplier develop the migration plan for business operations and Authority Data to the Replacement Supplier, which may include migration approach, testing of plans, contingency options, and handling of historic or archived Authority Data;
        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;
        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;
        15. assisting in establishing naming conventions for any new production site;
        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;
        17. generating a computer listing of the Source Code of [insert details of relevant Software] in a form and on media reasonably requested by the Authority;
        18. agreeing with the Authority a handover plan for all of the Supplier’s responsibilities relating to security;
        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;
        20. assisting with the loading, testing and implementation of the production databases;
        21. assisting in the execution of a parallel operation until the effective date of expiry or termination of this Contract;
        22. in respect of the maintenance and support of the Supplier System, providing historical performance data for the previous [insert time period];
        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);
        24. providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;
        25. answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;
        26. agreeing with the Authority and/or the Replacement Supplier a plan for the migration of the Authority Data to the Authority and/or the Replacement Supplier;
        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:
            1. 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
            2. 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
        28. knowledge transfer services, including:
            1. 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;
            2. 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;
            3. 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
            4. 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. The Supplier shall:
     + 1. provide a documented plan relating to the training matters referred to in Paragraph 1.1(n) for agreement by the Authority at the time of termination or expiry of this Contract;
       2. co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1(r), providing skills and expertise of a suitable standard; and
       3. fully co-operate in the execution of the Authority Data migration plan agreed pursuant to Paragraph 1.1(z), providing skills and expertise of a reasonably acceptable standard.
  2. 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.
  3. The information which the Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to Paragraph 1.1(aa) 1.1(z) shall include:
     + 1. copies of up-to-date procedures and operations manuals;
       2. product information;
       3. agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier;
       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;
       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;
       6. details of physical and logical security processes and tools which will be available to the Authority; and
       7. any relevant interface information,

and such information shall be updated by the Supplier at the end of the Termination Assistance Period.

* 1. 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. any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 1.5 shall:
          1. sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
          2. 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
       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

1. The Authority is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to the Procurement Regulations (defined below). The purpose of this document (“**Agreement**”) is to define the protocols to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Purpose (defined below).
2. The Authority is conducting a procurement exercise for the [supply/purchase/provision] of [insert details of project/goods/services] (the "**Purpose**").
3. 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. The following capitalised words and expressions shall have the following meanings in this Agreement and its recitals:

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

“**Agreement**” means this ethical walls agreement duly executed by the Parties;

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

"**Central Government 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:

1. Government Departments;
2. Non-Departmental Public Bodies or Assembly Sponsored Public Bodies (advisory, executive, or tribunal);
3. Non-Ministerial Departments; or
4. Executive Agencies;

"**Conflicted Personnel**" means any Representatives of:

1. the Counterparty;
2. any of the Counterparty’s Affiliates; and/or
3. 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:

* + - * 1. the Counterparty;
        2. any of the Counterparty's Affiliates;
        3. any Subcontractor; and
        4. any other Third Party,

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

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

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

"**Invitation to Tender**" or "**ITT**" means an invitation to submit tenders issued by the Authority as part of an ITT Process (and shall include an Invitation to Negotiate);

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

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

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

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

"**Procurement Regulations**" means the Public Contracts Regulations 2015, the Public Procurement (Amendment etc.)(EU Exit) Regulations 2020, the Defence and Security Public Contracts Regulations 2011, the Utilities Contracts Regulations 2016, and the Concession Contracts Regulations 2016, each as amended from time to time;

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

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

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

“**Subcontractor**” means an existing or proposed subcontractor of:

1. the Counterparty; and/or
2. any of the Counterparty’s Affiliates,

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

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

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

* + 1. Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.
    2. 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).
    3. Reference to persons includes legal and natural persons.
    4. Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.
    5. Reference to clauses and recitals is to clauses of and recitals to this Agreement.
    6. Reference to any gender includes any other.
    7. Reference to writing includes email.
    8. 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.
    9. The words "**include**" and "**including**" are to be construed without limitation.
    10. The singular includes the plural and vice versa.
    11. The headings contained in this Agreement shall not affect its construction or interpretation.
  1. ETHICAL WALLS
     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**

* + 1. The Counterparty:
       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 ITT Process; and
       2. acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives intend to take part in the ITT Process and because of the Counterparty's, any of its Affiliates’, any Subcontractors’ and/or any Representatives’ relationship with the Authority under any Contract, the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives have or have had access to information which could provide the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives with an advantage and render unfair an otherwise genuine and open competitive ITT Process.
    2. Where there is or is likely to be a conflict of interest, or the perception of a conflict of interest, of any kind in relation to the ITT Process, the Counterparty shall take such steps that are necessary to eliminate the conflict of interest to the Authority's satisfaction, including one or more of the following:
       1. not assigning any of the Conflicted Personnel to the Bid Team at any time;
       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;
       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:
          1. about the ITT Process (gleaned from the performance of any Contract or otherwise); and/or
          2. which would or could in the opinion of the Authority confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process,

becoming available to the Bid Team where the Authority has not made generally available that information to Other Bidders;

* + - 1. ensuring that by no act or omission by itself, its Affiliates, any Subcontractors and/or any Representatives and in particular the Bid Team results in information of any kind, however conveyed, in any format and however so stored about the ITT Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;
      2. 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];
      3. physically separating the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
      4. providing regular training to its Affiliates, any Subcontractors and/or Representatives to ensure it is complying with this Agreement;
      5. 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;
      6. ensuring that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
      7. complying with any other action as the Authority, acting reasonably, may direct in connection with the ITT Process and/or this Agreement.

Notification of Conflicts of Interest

* + 1. The Counterparty shall:
       1. notify the Authority immediately in writing of all perceived, potential and/or actual conflicts of interest that arise or have arisen;
       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
       3. seek the Authority's approval to the Proposed Avoidance Measures which the Authority shall have the right to grant, grant conditionally or deny (if the Authority rejects the Proposed Avoidance Measures the Counterparty shall repeat the process set out in this Clause 2.4 until such time as the Authority grants approval or the Counterparty withdraws from the ITT Process).
    2. 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.
    3. 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.
    4. The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with Clauses 2.5 and 2.6, does not constitute acceptance by the Authority of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Agreement.

**Exclusion from the ITT Process**

* + 1. 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 ITT Process, and the Authority may, in addition to the right to exclude, take such other steps as it deems necessary.
    2. 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**

* + 1. In no event shall the Authority be liable for any bid costs incurred by:
       1. the Counterparty or any of its Affiliates, any Representatives and/or any Subcontractors; or
       2. any Third Party,

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

**Specific Remedies**

* + 1. The Counterparty acknowledges and agrees that:
       1. neither damages nor specific performance are adequate remedies in the event of a breach of the obligations in Clause 2; and
       2. in the event of a breach of any of the obligations in Clause 2 which cannot be effectively remedied the Authority shall have the right to terminate both this Agreement and the Counterparty's participation in the ITT Process in each case with immediate effect on written notice.
  1. SOLE RESPONSIBILITY
     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.
  2. WAIVER AND INVALIDITY
     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.
     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.
  3. ASSIGNMENT AND NOVATION
     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.
     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:
        1. any Central Government Body; or
        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
        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.
     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.
  4. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999
     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.
  5. TRANSPARENCY
     1. The Parties acknowledge and agree that the Authority is under a legal duty pursuant to the Procurement Regulations to run transparent and fair procurement processes. Accordingly, the Authority may disclose the contents of this Agreement to Other Bidders (and/or potential Other Bidders) for the purposes of transparency and in order to evidence that a fair procurement process has been followed.
  6. NOTICES
     1. Any notices sent under this Agreement must be in writing.
     2. The following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

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

* + 1. Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:

|  |  |  |
| --- | --- | --- |
|  | **Counterparty** | **Authority** |
| **Contact** |  |  |
| **Address** |  |  |
| **Email** |  |  |

* + 1. 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.
  1. WAIVER AND CUMULATIVE REMEDIES
     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.
     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.
  2. TERM
     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]
  3. GOVERNING LAW AND JURISDICTION
     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.
     2. The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

|  |  |
| --- | --- |
| Signed by the Authority | Name:  Signature:  Position in Authority: |

|  |  |
| --- | --- |
| Signed by the Counterparty | Name:  Signature:  Position in Counterparty: |

**SCHEDULE 26**

**SERVICE CONTINUITY PLAN AND CORPORATE RESOLUTION PLANNING**

# Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*)

## Part A: SERVICE CONTINUITY PLAN

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

|  |  |
| --- | --- |
| “Business Continuity Plan” | has the meaning given in Paragraph 2.2(a)(ii); |
| “Business Continuity Services” | has the meaning given in Paragraph 4.2(b); |
| “Disaster” | the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for a period of [*insert details*] or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period; |
| “Disaster Recovery Plan” | has the meaning given in Paragraph 2.2(a)(iii); |
| “Disaster Recovery Services” | the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster; |
| “Disaster Recovery System” | the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services; |
| “Insolvency Continuity Plan” | has the meaning given in Paragraph 2.2(a)(iv). |
| “Review Report” | has the meaning given in Paragraphs 7.2(a) to 7.2(c); |
| “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; |

1. SERVICE CONTINUITY PLAN
   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:
      * 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); and
        2. the recovery of the Services in the event of a Disaster.
   2. The Service Continuity Plan shall:
      * 1. be divided into four parts:
           1. Part A which shall set out general principles applicable to the Service Continuity Plan;

* + - * 1. Part B which shall relate to business continuity (the “Business Continuity Plan”);

* + - * 1. Part C which shall relate to disaster recovery (the “Disaster Recovery Plan”);

* + - * 1. Part D which shall relate to an Insolvency Event of the Supplier(the “Insolvency Continuity Plan”); and
      1. unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4, 5 and 6.
  1. Following receipt of the draft Service Continuity Plan from the Supplier, the Authority shall:
     + 1. review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and
       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. If the Authority rejects the draft Service Continuity Plan:
     + 1. the Authority shall inform the Supplier in writing of its reasons for its rejection; and
       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.

1. SERVICE CONTINUITY PLAN: Part A – GENERAL PRINCIPLES AND REQUIREMENTS
   1. Part A of the Service Continuity Plan shall:
      * 1. set out how the business continuity, disaster recovery and insolvency continuity elements of the plan link to each other;
        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;
        3. contain an obligation upon the Supplier to liaise with the Authority with respect to issues concerning business continuity, disaster recovery and insolvency continuity where applicable;
        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 in each case as notified to the Supplier by the Authority from time to time;
        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;
        6. contain a risk analysis, including:
           1. failure or disruption scenarios and assessments and estimates of frequency of occurrence;
           2. identification of any single points of failure within the Services and processes for managing the risks arising therefrom;

* + - * 1. identification of risks arising from an Insolvency Event of the Supplier; and
        2. a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
      1. provide for documentation of processes, including business processes, and procedures;
      2. set out key contact details (including roles and responsibilities) for the Supplier and for the Authority;
      3. identify the procedures for reverting to “normal service”;
      4. set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
      5. 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
      6. 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.
  1. The Service Continuity Plan shall be designed so as to ensure that:
     + 1. the Services are provided in accordance with this Contract at all times during and after the invocation of the Service Continuity Plan;
       2. the adverse impact of any Disaster; service failure; an Insolvency Event of the Supplier; or disruption on the operations of the Authority, is minimal as far as reasonably possible;
       3. it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force; and
       4. there is a process for the management of disaster recovery testing detailed in the Service Continuity Plan.
  2. 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.

1. SERVICE CONTINUITY PLAN: Part B – BUSINESS CONTINUITY

PRINCIPLES AND CONTENTS

* 1. The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Authority expressly states otherwise in writing:
     + 1. the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
       2. the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
  2. The Business Continuity Plan shall:
     + 1. address the various possible levels of failures of or disruptions to the Services;
       2. set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the “Business Continuity Services”);
       3. specify any applicable 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. clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

1. SERVICE CONTINUITY PLAN: Part C – DISASTER RECOVERY

PRINCIPLES AND CONTENTS

* 1. The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
  2. The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
  3. The Disaster Recovery Plan shall include the following:
     + 1. details of the procedures and processes to be put in place by the Supplier in relation to the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
          1. identification of all potential disaster scenarios;
          2. risk analysis;
          3. documentation of processes and procedures;
          4. invocation rules;
          5. Service recovery procedures; and
          6. steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
       2. 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; and
       3. Disaster Recovery Plan testing and management arrangements during the invocation of the Disaster Recovery Plan.

1. SERVICE CONTINUITY PLAN: Part D – INSOLVENCY CONTINUITY PLAN

PRINCIPLES AND CONTENTS

* 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, as far as reasonably possible, minimal adverse impact.
  2. The Insolvency Continuity Plan shall include the following:
     + 1. communication strategies which are designed to minimise the potential disruption to the provision of the Services, and key contact details for operational ;
       2. plans to manage and mitigate identified risks;
       3. details of the roles and responsibilities of the Supplier management, to minimise and mitigate the effects of an Insolvency Event on the Services;
       4. details of the recovery team to be put in place by the Supplier; and
       5. sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the Supplier.

1. REVIEW AND AMENDMENT OF THE SERVICE CONTINUITY PLAN
   1. The Supplier shall review and update the Service Continuity Plan (and the risk analysis on which it is based):
      * 1. on a regular basis and as a minimum once every **12 months**;
        2. within three calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 9;
        3. within 14 days of a Financial Distress Event;
        4. within 30 days of a Corporate Change Event (unless the Relevant Authority (acting reasonably) agrees to a Corporate Change Event Grace Period, in which case that Corporate Change Event Grace Period will apply); and
        5. where the Authority requests any additional reviews (over and above those provided for in Paragraphs 7.1(a) to 7.1(d)) 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.
   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:
      * 1. the findings of the review;
        2. any changes in the risk profile associated with the Services; and
        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.
   3. Following receipt of the Review Report and the Supplier’s Proposals, the Authority shall:
      * 1. review and comment on the Review Report and the Supplier’s Proposals as soon as reasonably practicable; and
        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.
   4. If the Authority rejects the Review Report and/or the Supplier’s Proposals:
      * 1. the Authority shall inform the Supplier in writing of its reasons for its rejection; and
        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.
   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.
2. TESTING OF THE SERVICE CONTINUITY PLAN
   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.
   2. If the Authority requires an additional test of the Service Continuity Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the Service Continuity Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the Service Continuity Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
   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.
   4. The Supplier shall ensure that any use by it 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.
   5. The Supplier shall, within 20 Working Days of the conclusion of each test, provide to the Authority a report setting out:
      * 1. the outcome of the test;
        2. any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and
        3. the Supplier's proposals for remedying any such failures.
   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.
   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. 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.
3. INVOCATION OF THE SERVICE CONTINUITY PLAN
   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.
   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 where there is an Insolvency Event of the Supplier and the insolvency arrangements enable the Supplier to invoke the plan:

**SCHEDULE 27**

**CONDUCT OF CLAIMS**

# Schedule 27 (*Conduct of Claims*)

1. INDEMNITIES
   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”).
   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.
   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.
   4. With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
      * 1. the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
        2. the Indemnifier shall not bring the name of the Beneficiary into disrepute;
        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
        4. the Indemnifier shall conduct the Claim with all due diligence.
   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. the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
        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
        3. the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.
2. SENSITIVE CLAIMS
   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. 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
   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:
      * 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
        2. the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.
4. MITIGATION
   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 28**

**STAFF TRANSFER**

# Schedule 28 (*Staff Transfer*)

***[Drafting note: This schedule will be completed with the successful tenderer prior to contract signature in line with that tenderer’s solution documentation.***

***Tenderers will need to take their own legal advice on this Schedule 28 and, in particular, on Part D (Pensions).***

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

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

***If either Part A and/or Part B apply, then consider whether Part D (Pensions) shall apply and which Annex shall apply (either D1 (CSPS), D2 (NHSPS), D3 (LGPS) or D4 (Other Schemes)). Part D pensions may also apply where there is not a TUPE transfer for example where the incumbent provider is successful.***

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

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

***Part E (dealing with staff transfer on exit) shall apply to every Contract.***

***For further guidance on this Schedule contact Government Legal Department’s Employment Law Group]***

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

|  |  |
| --- | --- |
| “Admission Agreement” | as defined in Part A; |
| “Fair Deal Employees” | as defined in Part D; |
| “Former Supplier” | a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor); |
| “New Fair Deal” | the revised Fair Deal position set out in the HM Treasury guidance: *“Fair Deal for staff pensions: staff transfer from central government”* issued in October 2013 including:   1. any amendments to that document immediately prior to the Relevant Transfer Date; 2. any similar pension protection in accordance with the Annexes D1-D3 inclusive to Part D of this Schedule as notified to the Supplier by the Authority; |
| “Notified Sub-contractor” | a Sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date; |
| “Old Fair Deal” | HM Treasury Guidance *“Staff Transfers from Central Government: A Fair Deal for Staff Pensions”* issued in June 1999 including the supplementary guidance *“Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues”* issued in June 2004; |
| “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 Start Date; |
| “Service Transfer” | any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor; |
| “Service Transfer Date” | the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires; |
| “Staffing Information” | in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, all information required in ANNEX E2: STAFFING INFORMATION in the format specified and with the identities of Data Subjects anonymised where possible. The Authority may acting reasonably make changes to the format or information requested in ANNEX E2: STAFFING INFORMATION from time to time. |
| “Statutory Schemes” | means the CSPS, NHSPS or LGPS as defined in the Annexes to Part D of this Schedule; |
| “Supplier's Final Supplier Personnel List” | a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date; |
| “Supplier's Provisional Supplier Personnel List” | a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier; |
| “Transferring Authority Employees” | those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date; |
| “Transferring Former Supplier Employees” | in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and |
| “Transferring Supplier Employees” | those employees of the Supplier and/or the Supplier’s Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date. |

1. INTERPRETATION
   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.
2. APPLICABLE PARTS OF THIS SCHEDULE
   1. Only the following parts of this Schedule shall apply to this Contract:

**[Delete** if not applicable to the Contract]

* + - 1. [Part B (*Staff Transfer At Start Date – Transfer From Former Supplier*)]
      2. [Part C (*No Staff Transfer On Start Date*)]
      3. [Part D (*Pensions*)]
         1. [ - Annex D1 (*CSPS*) ]
         2. [ - Annex D2 (*NHSPS*) ]
         3. [ - Annex D3 (*LGPS*) ]
         4. [ - Annex D4 (*Other Schemes*) ]
      4. Part E (*Staff Transfer on Exit*)
         1. Annex E1 (*List Of Notified Sub-Contractors*)
         2. Annex E2 (*Staffing Information*)

## Part B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES

1. RELEVANT TRANSFERS
   1. The Authority and the Supplier agree that:
      * 1. the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
        2. as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-contractor and each such Transferring Former Supplier Employee.
   2. The Authority shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Authority shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.
2. FORMER SUPPLIER INDEMNITIES
   1. Subject to Paragraph 2.2, the Authority shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:
      * 1. any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
        2. the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
           1. any collective agreement applicable to the Transferring Former Supplier Employees; and/or
           2. any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
        3. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
           1. in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
           2. in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
        4. a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
        5. any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations; and
        6. any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.
   2. The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
      * 1. arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
        2. arising from the failure by the Supplier and/or any Sub-contractor to comply with its obligations under the Employment Regulations.
   3. If any person who is not identified by the Authority as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations then:
      * 1. the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Supplier; and
        2. the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
   4. If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
   5. If by the end of the 15 Working Day period specified in Paragraph 2.3(b):
      * 1. no such offer of employment has been made;
        2. such offer has been made but not accepted; or
        3. the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

* 1. Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
  2. The indemnity in Paragraph 2.6:
     + 1. shall not apply to:
          1. any claim for:

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

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

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

* + - * 1. any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and
      1. shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority and, if applicable, the Former Supplier, within 6 months of the Effective Date.
  1. If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

1. SUPPLIER INDEMNITIES AND OBLIGATIONS
   1. Subject to Paragraph 3.2, the Supplier shall indemnify the Authority and/or the Former Supplier against any Employee Liabilities arising from or as a result of:
      * 1. any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;
        2. the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:
           1. any collective agreement applicable to the Transferring Former Supplier Employee; and/or
           2. any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
        3. any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
        4. any proposal by the Supplier or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
        5. any statement communicated to or action undertaken by the Supplier or a Sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Supplier in writing;
        6. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
           1. in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
           2. in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
        7. a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
        8. any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
        9. a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above
   2. The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier’s failure to comply with its obligations under the Employment Regulations.
   3. The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.
2. INFORMATION
   1. The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and/or at the Authority’s direction, the Former Supplier, in writing such information as is necessary to enable the Authority and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
3. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE
   1. The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in:
      * 1. the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;
        2. Old Fair Deal; and/or
        3. the New Fair Deal.
   2. Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.
4. PROCUREMENT OBLIGATIONS
   1. Notwithstanding any other provisions of this Part B, where in this Part B the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.
5. PENSIONS
   1. The Supplier shall, and shall procure that each Sub-contractor shall, comply with:
      * 1. the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and
        2. Part D (and its Annexes) to this Staff Transfer Schedule.

## Part C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1. PROCEDURE IN THE EVENT OF TRANSFER
   1. The Authority and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.
   2. If any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations then:
      * 1. the Supplier 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
        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.
   3. If an offer referred to in Paragraph 1.2(b) 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.
   4. If by the end of the 15 Working Day period specified in Paragraph 1.2(b):
      * 1. no such offer of employment has been made;
        2. such offer has been made but not accepted; or
        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.

1. INDEMNITIES
   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:
      * 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 Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
        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. If any such person as is described in Paragraph 1.2 is neither re employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.
   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.
   4. The indemnities in Paragraph 2.1:
      * 1. shall not apply to:
           1. any claim for:

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

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

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

* + - * 1. 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
      1. shall apply only where the notification referred to in Paragraph 1.2(a) is made by the Supplier and/or any Sub-contractor to the Authority and, if applicable, Former Supplier within 6 months of the Effective Date.

1. PROCUREMENT OBLIGATIONS
   1. Where in this Part C the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

## Part D: PENSIONS

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

|  |  |
| --- | --- |
| "Actuary" | a Fellow of the Institute and Faculty of Actuaries; |
| "Admission Agreement" | either or both of the CSPS Admission Agreement (as defined in Annex D1: CSPS) or the LGPS Admission Agreement) as defined in Annex D3: LGPS), as the context requires; |
| “Best Value Direction” | the Best Value Authorities Staff Transfers (Pensions) Direction 2007 or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 (as appropriate); |
| "Broadly Comparable" | 1. in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary’s Department of a broad comparability certificate; and/or 2. in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme’s certificate of broad comparability issued by the Government Actuary’s Department,   and "Broad Comparability" shall be construed accordingly; |
| "CSPS" | the schemes as defined in Annex D1 to this Part D; |
| “Direction Letter/Determination” | has the meaning in Annex D2 to this Part D; |
| “Fair Deal Eligible Employees” | means each of the CSPS Eligible Employees (as defined in Annex D1 to this Part D), the NHSPS Eligible Employees (as defined in Annex D2 to this Part D) and/or the LGPS Eligible Employees (as defined in Annex D3 to this Part D) (as applicable) (and shall include any such employee who has been admitted to and/or remains eligible to join a Broadly Comparable pension scheme at the relevant time in accordance with Paragraph 10 or 11 of this Part D); |
| "Fair Deal Employees" | any of:   1. Transferring Authority Employees; 2. Transferring Former Supplier Employees; and/or 3. employees who are not Transferring Authority Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Sub-Contractor, and whose employment is not terminated in accordance with the provisions of Paragraphs 2.5 of Parts 0 or 0 or Paragraph 1.4 of Part C; 4. where the Supplier or a Sub-contractor was the Former Supplier, the employees of the Supplier (or Sub-contractor) 5. who at the Relevant Transfer Date are or become entitled to New Fair Deal or Best Value Direction protection in respect of any of the Statutory Schemes or a Broadly Comparable pension scheme provided in accordance with Paragraph 10 of this Part D as notified by the Authority; |
| "Fund Actuary" | a Fund Actuary as defined in Annex D3 to this Part D; |
| "LGPS" | the scheme as defined in Annex D3 to this Part D; |
| "NHSPS" | the schemes as defined in Annex D2 to this Part D; and |
| "New Fair Deal" | the revised Fair Deal position set out in the HM Treasury guidance: "*Fair Deal for Staff Pensions: Staff Transfer from Central Government*" issued in October 2013 including:  any amendments to that document immediately prior to the Relevant Transfer Date; and |
|  | any similar pension protection in accordance with the subsequent Annex D1-D3 inclusive as notified to the Supplier by the Authority. |

1. PARTICIPATION
   1. In respect of all or any Fair Deal Employees each of Annex D1: CSPS, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.
   2. The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter/Determination, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
   3. The Supplier undertakes:
      * 1. to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter/Determination or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
        2. subject to Paragraph 5 of Annex D3: LGPS to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.
   4. Where the Supplier is the Former Supplier (or a Sub-contractor is a sub-contractor of the Former Supplier) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Sub-contractor) at the Start Date, this Part D and its Annexes shall be modified accordingly so that the Supplier (or Sub-contractor) shall comply with its requirements from the Start Date or, where it previously provided a Broadly Comparable pension scheme, from the date it is able to close accrual of its Broadly Comparable pension scheme (following appropriate consultation and contractual changes as appropriate) if later. The Supplier (or Sub-contractor) shall make arrangements for a bulk transfer from its Broadly Comparable pension scheme to the relevant Statutory Scheme in accordance with the requirements of the previous contract with the Authority.
2. PROVISION OF INFORMATION
   1. The Supplier undertakes to the Authority:
      * 1. to provide all information which the Authority may reasonably request concerning matters referred to in this Part D as expeditiously as possible;
        2. not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the Authority (such consent not to be unreasonably withheld or delayed); and
        3. retain such records as would be necessary to manage the pension aspects in relation to any current or former Fair Deal Eligible Employees arising on expiry or termination of this Contract.
3. INDEMNITIES
   1. The Supplier shall indemnify and keep indemnified the Authority, [NHS Pensions,] any Replacement Supplier and/or any Replacement Sub-contractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:
      * 1. arise out of or in connection with any liability towards all and any Fair Deal Employees in respect of service on or after the Relevant Transfer Date which arises from any breach by the Supplier of this Part D, and/or the CSPS Admission Agreement and/or the Direction Letter/Determination and/or the LGPS Admission Agreement;
        2. relate to the payment of benefits under and/or participation in a pension scheme (as defined in section 150(1) Finance Act 2004) provided by the Supplier or a Sub-contractor on and after the Relevant Transfer Date until the date of termination or expiry of this Contract, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with Paragraphs 10 or 11 of this Part D;
        3. relate to claims by Fair Deal Employees of the Supplier and/or of any Sub-contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
           1. relate to any rights to benefits under a pension scheme (as defined in section 150(1) Finance Act 2004) in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract;
           2. arise out of the failure of the Supplier and/or any relevant Sub-contractor to comply with the provisions of this Part D before the date of termination or expiry of this Contract; and/or
        4. arise out of or in connection with the Supplier (or its Sub-contractor) allowing anyone who is not an NHSPS Fair Deal Employee to join or claim membership of the NHSPS at any time during the Term.
   2. The indemnities in this Part D and its Annexes:
      * 1. shall survive termination of this Contract; and
        2. shall not be affected by the caps on liability contained in Clause 23 (*Limitations on Liability*).
4. DISPUTES
   1. The Dispute Resolution Procedure will not apply to any dispute (i) between the Authority and/or the Supplier or (ii) between their respective actuaries and/or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the Authority and/or the Supplier be referred to an independent Actuary:
      * 1. who will act as an expert and not as an arbitrator;
        2. whose decision will be final and binding on the Authority and/or the Supplier; and
        3. whose expenses shall be borne equally by the Authority and/or the Supplier unless the independent Actuary shall otherwise direct.
   2. The independent Actuary shall be agreed by the Parties or, failing such agreement the independent Actuary shall be appointed by the President for the time being of the Institute and Faculty of Actuaries on the application by the Parties.
5. THIRD PARTY RIGHTS
   1. The Parties agree Clause 41 (*Third Party Rights*) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation in respect of to him or her by the Supplier under this Part D, in his or her or its own right under section 1(1) of the CRTPA.
   2. Further, the Supplier must ensure that the CRTPA will apply to any Sub-contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Sub-contractor in his or her own right under section 1(1) of the CRTPA.
6. BREACH
   1. The Supplier agrees to notify the Authority should it breach any obligations it has under this Part D and agrees that the Authority shall be entitled to terminate its Contract for material Default in the event that the Supplier:
      * 1. commits an irremediable breach of any provision or obligation it has under this Part D; or
        2. commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Authority giving particulars of the breach and requiring the Supplier to remedy it.
7. TRANSFER TO ANOTHER EMPLOYER/SUB-CONTRACTORS
   1. Save on expiry or termination of this Contract, if the employment of any Fair Deal Eligible Employee transfers to another employer (by way of a transfer under the Employment Regulations or other form of compulsory transfer of employment), the Supplier shall or shall procure that any relevant Sub-contractor shall:
      * 1. notify the Authority as far as reasonably practicable in advance of the transfer to allow the Authority to make the necessary arrangements for participation with the relevant Statutory Scheme(s);
        2. consult with about, and inform those Fair Deal Eligible Employees of, the pension provisions relating to that transfer; and
        3. procure that the employer to which the Fair Deal Eligible Employees are transferred (the "New Employer") complies with the provisions of this Part D and its Annexes provided that references to the "Supplier" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Eligible Employees so transferred to the New Employer.
8. PENSION ISSUES ON EXPIRY OR TERMINATION
   1. The provisions of Part E: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Contract.
   2. The Supplier shall (and shall procure that any of its Sub-contractors shall) prior to the termination of this Contract provide all such co-operation and assistance (including co-operation and assistance from the Broadly Comparable pension scheme’s Actuary) as the Replacement Supplier and/or NHS Pension and/or CSPS and/or the relevant Administering Authority and/or the Authority may reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection following a Service Transfer.
9. BROADLY COMPARABLE PENSION SCHEME ON RELEVANT TRANSFER DATE
   1. If the terms of any of Paragraphs 4 of Annex D2: NHSPS or 3.1 of Annex D3: LGPS applies, the Supplier must (and must, where relevant, procure that each of its Sub-contractors will) ensure that, with effect from the Relevant Transfer Date until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Authority.
   2. Such Broadly Comparable pension scheme must be:
      * 1. established by the Relevant Transfer Date;
        2. a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
        3. capable of receiving a bulk transfer payment from the relevant Statutory Scheme or from a Former Supplier’s Broadly Comparable pension scheme (unless otherwise instructed by the Authority);
        4. capable of paying a bulk transfer payment to the Replacement Supplier’s Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Authority); and
        5. maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Authority).
   3. Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any of its Sub-contractors shall):
      * 1. supply to the Authority details of its (or its Sub-contractor’s) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the Relevant Transfer Date) covering all relevant Fair Deal Employees, as soon as it is able to do so before the Relevant Transfer Date (where possible) and in any event no later than seven (7) days after receipt of the certificate;
        2. be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995;
        3. instruct any such Broadly Comparable pension scheme’s Actuary to provide all such co-operation and assistance in agreeing bulk transfer process with the Actuary to the Former Supplier’s Broadly Comparable pension scheme or the Actuary to the relevant Statutory Scheme (as appropriate) and to provide all such co-operation and assistance with any other Actuary appointed by the Authority (where applicable). This will be with a view to the bulk transfer terms providing day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme in respect of any Fair Deal Eligible Employee who consents to such a transfer; and
        4. provide a replacement Broadly Comparable pension scheme in accordance with this Paragraph 10 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Sub-contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-contractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).
   4. Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any of its Sub-contractors shall) prior to the termination of this Contract:
      * 1. allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier’s Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be on a past service reserve basis which should be calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits). The actuarial basis for this past service reserve basis should be aligned to the funding requirements of the Broadly Comparable pension scheme in place at the time the bulk transfer terms are offered. The bulk transfer terms shall be subject to an underpin in relation to any service credits awarded in the Broadly Comparable pension scheme in accordance with Paragraph 10.3(c) such that the element of the past service reserve amount which relates to such service credits shall be no lower than that required by the bulk transfer terms that were agreed in accordance with Paragraph 10.3(c) but using the last day of the Fair Deal Eligible Employees’ employment with the Supplier or Sub-contractor (as appropriate) as the date used to determine the actuarial assumptions; and
        2. if the transfer payment paid by the trustees of the Broadly Comparable pension scheme is less (in the opinion of the Actuary to the Replacement Supplier’s Broadly Comparable pension scheme (or to the relevant Statutory Scheme if applicable)) than the transfer payment which would have been paid had Paragraph 10.4(a) been complied with, the Supplier shall (or shall procure that the Sub-contractor shall) pay the amount of the difference to the Replacement Supplier’s Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) or as the Authority shall otherwise direct. The Supplier shall indemnify the Authority or the Replacement Supplier’s Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Authority directs) for any failure to pay the difference as required under this Paragraph.
10. BROADLY COMPARABLE PENSION SCHEME IN OTHER CIRCUMSTANCES
    1. If the terms of any of Paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and/or 3.2 of Annex D3: LGPS apply, the Supplier must (and must, where relevant, procure that each of its Sub-contractors will) ensure that, with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Eligible Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme at the date of cessation of participation in the relevant Statutory Scheme, and then on such terms as may be decided by the Authority.
    2. Such Broadly Comparable pension scheme must be:
       * 1. established by the date of cessation of participation in the Statutory Scheme;
         2. a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
         3. capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the Authority);
         4. capable of paying a bulk transfer payment to the Replacement Supplier’s Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Authority); and
         5. maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Authority).
    3. Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 11, the Supplier shall (and shall procure that any of its Sub-contractors shall):
       * 1. supply to the Authority details of its (or its Sub-contractor’s) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the date of cessation of participation in the Statutory Scheme) covering all relevant Fair Deal Eligible Employees, as soon as it is able to do so before the cessation of participation in the Statutory Scheme (where possible) and in any event no later than seven (7) days after receipt of the certificate;
         2. be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995; and
         3. where required to do so by the Authority, instruct any such Broadly Comparable pension scheme’s Actuary to provide all such co-operation and assistance in agreeing a bulk transfer process with the Actuary to the relevant Statutory Scheme and to provide all such co-operation and assistance with any other Actuary appointed by the Authority (where applicable). The Supplier must ensure that day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme are provided in respect of any Fair Deal Employee who consents to such a transfer from the Statutory Scheme and the Supplier shall be fully responsible for any costs of providing those credits in excess of the bulk transfer payment received by the Broadly Comparable pension scheme; and
         4. provide a replacement Broadly Comparable pension scheme in accordance with this Paragraph 11 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Sub-contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-contractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).
    4. Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 11, the Supplier shall (and shall procure that any of its Sub-contractors shall) prior to the termination of this Contract allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier’s Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be sufficient to secure day for day and/or pound for pound credits (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) in the Replacement Supplier’s Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the Replacement Supplier’s Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) to fund the required credits (“the Shortfall”), the Supplier or the Sub-contractor (as agreed between them) must pay the Replacement Supplier’s Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) the Shortfall as required, provided that in the absence of any agreement between the Supplier and any Sub-contractor, the Shortfall shall be paid by the Supplier. The Supplier shall indemnify the Authority or the Replacement Supplier’s Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Authority directs) for any failure to pay the Shortfall under this Paragraph.
11. RIGHT OF SET-OFF
    1. The Authority shall have a right to set off against any payments due to the Supplier under this Contract an amount equal to:
       * 1. any unpaid employer’s contributions or employee’s contributions or any other financial obligations under the CSPS or any CSPS Admission Agreement in respect of the CSPS Eligible Employees whether due from the Supplier or from any relevant Sub-contractor or due from any third party under any indemnity, bond or guarantee;
         2. any unpaid employer’s contributions or employee’s contributions or any other financial obligations under the NHSPS or any Direction Letter/Determination in respect of the NHSPS Eligible Employees whether due from the Supplier or from any relevant Sub-contractor or due from any third party under any indemnity, bond or guarantee; or
         3. any unpaid employer’s contributions or employee’s contributions or any other financial obligations under the LGPS or any LGPS Admission Agreement in respect of the LGPS Eligible Employees whether due from the Supplier or from any relevant Sub-contractor or due from any third party under any indemnity, bond or guarantee;

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

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

### ANNEX D1: CSPS

1. DEFINITIONS
   1. In this Annex D1: CSPS to Part D: Pensions, the following words have the following meanings:

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

1. FUTURE SERVICE BENEFITS
   1. In accordance with New Fair Deal, the Supplier and/or any of its Sub-contractors to which the employment of any CSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not an employer which participates automatically in the CSPS, shall each secure a CSPS Admission Agreement to ensure that CSPS Fair Deal Employees or CSPS Eligible Employees as appropriate shall be either admitted into, or offered continued membership of, the relevant section of the CSPS that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date. The Supplier and/or any of its Sub-contractors shall procure that the CSPS Fair Deal Employees continue to accrue benefits in the CSPS in accordance with the provisions governing the relevant section of the CSPS for service from (and including) the Relevant Transfer Date.
   2. If the Supplier and/or any of its Sub-contractors enters into a CSPS Admission Agreement in accordance with Paragraph 2.1 but the CSPS Admission Agreement is terminated during the term of this Contract for any reason at a time when the Supplier or Sub-contractor still employs any CSPS Eligible Employees, the Supplier shall (and procure that its Sub-contractors shall) at no extra cost to the Authority, offer the remaining CSPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the CSPS on the date those CSPS Eligible Employees ceased to participate in the CSPS in accordance with the provisions of Paragraph 11 of Part D.

### ANNEX D2: NHSPS

1. DEFINITIONS
   1. In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings:

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| "Direction Letter/Determination" | an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Sub-contractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Sub-contractor in the NHSPS in respect of the NHSPS Fair Deal Employees; |
| “NHS Broadly Comparable Employees” | means each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:   1. their employment with the Authority, an NHS Body or other employer which participates automatically in the NHSPS; or 2. their employment with a Former Supplier who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Authority, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),   but who is now ineligible to participate in the NHSPS under the rules of the NHSPS and in respect of whom the Authority has agreed are to be provided with a Broadly Comparable pension scheme to provide Pension Benefits that are Broadly Comparable to those provided under the NHSPS. |
| “NHSPS Eligible Employees” | any NHSPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the NHSPS under a Direction Letter/Determination Letter. |
| "NHSPS Fair Deal Employees" | means other than the NHS Broadly Comparable Employees, each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:   1. their employment with the Authority, an NHS Body or other employer which participates automatically in the NHSPS; or 2. their employment with a Former Supplier who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Authority, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),   and, in each case, being continuously engaged for more than fifty per cent (50%) of their employed time in the delivery of services (the same as or similar to the Services).  For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the Services and being covered by an "open" Direction Letter/Determination or other NHSPS "access" facility but who has never been employed directly by the Authority, an NHS Body or other body which participates automatically in the NHSPS is not an NHSPS Fair Deal Employee; |
| "NHS Body" | has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012; |
| "NHS Pensions" | NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS; |
| "NHSPS" | the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and the Public Service Pensions Act 2013 governed by subsequent regulations under those Acts including the NHS Pension Scheme Regulations; |
| "NHS Pension Scheme Regulations" | as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time; |
| "NHS Premature Retirement Rights" | rights to which any NHSPS Fair Deal Employee (had they remained in the employment of the Authority, an NHS Body or other employer which participates automatically in the NHSPS) would have been or is entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time; |
| "Pension Benefits" | any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor’s benefits provided under an occupational pension scheme; and |

1. MEMBERSHIP OF THE NHSPS
   1. In accordance with New Fair Deal, the Supplier and/or any of its Sub-contractors to which the employment of any NHSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not an NHS Body or other employer which participates automatically in the NHSPS, shall each secure a Direction Letter/Determination to enable the NHSPS Fair Deal Employees to retain either continuous active membership of or eligibility for the NHSPS for so long as they remain employed in connection with the delivery of the Services under this Contract.
   2. Where it is not possible for the Supplier and/or any of its Sub-contractors to secure a Direction Letter/Determination on or before the Relevant Transfer Date, the Supplier must secure a Direction Letter/Determination as soon as possible after the Relevant Transfer Date, and in the period between the Relevant Transfer Date and the date the Direction Letter/Determination is secure, the Provider must ensure that:
      * 1. all employer's and NHSPS Fair Deal Employees' contributions intended to go to the NHSPS are kept in a separate bank account; and
        2. the Pension Benefits and Premature Retirement Rights of NHSPS Fair Deal Employees are not adversely affected.
   3. The Supplier must supply to the Authority a complete copy of each Direction Letter/Determination within 5 Working Days of receipt of the Direction Letter/Determination.
   4. The Supplier must ensure (and procure that each of its Sub-contractors (if any) ensures) that all of its NHSPS Fair Deal Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter/Determination.
   5. The Supplier will (and will procure that its Sub-contractors (if any) will) comply with the terms of the Direction Letter/Determination, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health and Social Care in respect of the NHSPS Fair Deal Employees for so long as it remains bound by the terms of any such Direction Letter/Determination.
   6. Where any employee omitted from the Direction Letter/Determination supplied in accordance with Paragraph 2 of this Annex are subsequently found to be an NHSPS Fair Deal Employee, the Supplier will (and will procure that its Sub-contractors (if any) will) treat that person as if they had been an NHSPS Fair Deal Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
   7. The Supplier will (and will procure that its Sub-contractors (if any) will) provide any indemnity, bond or guarantee required by NHS Pensions in relation to a Direction Letter/Determination.
2. NHS PREMATURE RETIREMENT RIGHTS
   1. From the Relevant Transfer Date until the Service Transfer Date, the Supplier must provide (and/or must ensure that its Sub-contractors (if any) provide) NHS Premature Retirement Rights in respect of the NHSPS Fair Deal Employees that are identical to the benefits they would have received had they remained employees of the Authority, an NHS Body or other employer which participates automatically in the NHSPS.
3. NHS BROADLY COMPARABLE EMPLOYEES
   1. The Supplier shall (and procure that its Sub-contractors shall), with effect from the Relevant Transfer Date, offer the NHSPS Broadly Comparable Employees membership of a pension scheme which is Broadly Comparable to NHSPS on the Relevant Transfer Date in accordance with Paragraph 10 of Part D. For the avoidance of doubt, this requirement is separate from any requirement to offer a Broadly Comparable pension scheme in accordance with Paragraph 5.2 below.
4. BREACH AND CANCELLATION OF ANY DIRECTION LETTER/DETERMINATION(S)
   1. The Supplier agrees that the Authority is entitled to make arrangements with NHS Pensions for the Authority to be notified if the Supplier (or its Sub-contractors) breaches the terms of its Direction Letter/Determination. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Authority in the event that it (or its Sub-contractor) breaches the terms of its Direction Letter/Determination.
   2. If the Supplier (or its Sub-contractors, if relevant) ceases to participate in the NHSPS for whatever reason, the Supplier (or any such Sub-contractor, as appropriate) shall offer the NHSPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the NHSPS on the date the NHSPS Eligible Employees ceased to participate in the NHSPS in accordance with the provisions of Paragraph 11 of Part D.
5. COMPENSATION
   1. If the Supplier (or its Sub-contractor, if relevant) is unable to provide the NHSPS Fair Deal Employees with either membership of:
      * 1. the NHSPS (having used its best endeavours to secure a Direction Letter/Determination); or
        2. a Broadly Comparable pension scheme,

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

* 1. This flexibility for the Authority to allow compensation in place of Pension Benefits is in addition to and not instead of the Authority’s right to terminate the Contract under Paragraph 7 (*Breach*) of Part D of this Schedule.

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

### ANNEX D3: LGPS

1. DEFINITIONS
   1. In this Annex D3 LGPS to Part D: Pensions, the following words have the following meanings:

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| “2013 Regulations” | the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) (as amended from time to time); |
| "Administering Authority" | in relation to the Fund [insert name], the relevant administering authority of that Fund for the purposes of the 2013 Regulations; |
| "Fund Actuary" | the actuary to a Fund appointed by the Administering Authority of the Fund; |
| "Fund" | [insert name], a pension fund within the LGPS; |
| [“Initial Contribution Rate”] | [XX %] of pensionable pay (as defined in the 2013 Regulations);] |
| "LGPS" | the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme; |
| "LGPS Admission Agreement" | an admission agreement within the meaning in Schedule 1 of the 2013 Regulations; |
| "LGPS Admission Body" | an admission body (within the meaning of Part 3 of Schedule 2 of the 2013 Regulations); |
| "LGPS Eligible Employees" | any LGPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the LGPS under an LGPS Admission Agreement; |
| "LGPS Fair Deal Employees" | any Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the LGPS or a pension scheme that is Broadly Comparable to the LGPS in accordance with the provisions in accordance with the provisions of New Fair Deal and/or the Best Value Direction; and |
| "LGPS Regulations" | the 2013 Regulations and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (SI 2014/525), and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS. |

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

OPTION 1

* 1. [Any LGPS Fair Deal Employees who:
     + 1. were active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall be admitted to the LGPS with effect on and from the Relevant Transfer Date; and
       2. were eligible to join the LGPS (or a Broadly Comparable pension scheme) but were not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall retain the ability to join the LGPS on or after the Relevant Transfer Date if they wish to do so. ]

OPTION 2

[Any LGPS Fair Deal Employees whether:

* + - 1. active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date; or
      2. eligible to join the LGPS (or a Broadly Comparable pension scheme) but not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date

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

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

1. BROADLY COMPARABLE SCHEME
   1. If the Supplier and/or any of its Sub-contractors is unable to obtain an LGPS Admission Agreement in accordance with Paragraph 2.1 because the Administering Authority will not allow it to participate in the Fund, the Supplier shall (and procure that its Sub-contractors shall), with effect from the Relevant Transfer Date, offer the LGPS Fair Deal Employees membership of a pension scheme which is Broadly Comparable to LGPS on the Relevant Transfer Date in accordance with the provisions of Paragraph 10 of Part D.
   2. If the Supplier and/or any of its Sub-contractors becomes an LGPS Admission Body in accordance with Paragraph 2.1 but the LGPS Admission Agreement is terminated during the term of this Contract for any reason at a time when the Supplier or Sub-contractors still employs any LGPS Eligible Employees, the Supplier shall (and procure that its Sub-contractors shall) at no extra cost to the Authority, offer the remaining LGPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the LGPS on the date the LGPS Eligible Employees ceased to participate in the LGPS in accordance with the provisions of Paragraph 11 of Part D.
2. DISCRETIONARY BENEFITS
   1. Where the Supplier and/or any of its Sub-contractors is an LGPS Admission Body, the Supplier shall (and procure that its Sub-contractors shall) comply with its obligations under regulation 60 of the 2013 Regulations in relation to the preparation of a discretionary policy statement.
3. LGPS RISK SHARING
   1. Subject to Paragraphs 5.4 to 5.10, if at any time during the term of this Contract the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Supplier or any Sub-contractor to pay employer contributions or other payments to the Fund in aggregate in excess of the Initial Contribution Rate, the excess of employer contributions above the Initial Contribution Rate for a Contract Year (the “Excess Amount”) shall be paid by the Supplier or the Sub-contractor, as the case may be, and the Supplier shall be reimbursed by the Authority.
   2. Subject to Paragraphs 5.4 to 5.9 and 5.11, if at any time during the term of this Contract, the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Supplier or any Sub-contractor to pay employer contributions or payments to the Fund in aggregate below the Initial Contribution Rate for a Contract Year, the Supplier shall reimburse the Authority an amount equal to A–B (the “Refund Amount”) where:

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

B = the amount of contributions or payments actually paid by the Supplier or Sub-contractor for that Contract Year, as the case may be, to the Fund.

* 1. Subject to Paragraphs 5.4 to 5.10, where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Supplier or any Sub-contractor is required to pay any exit payment under Regulation 64(2) of the 2013 Regulations (the “Exit Payment”), such Exit Payment shall be paid by the Supplier or any Sub-contractor (as the case may be) and the Supplier shall be reimbursed by the Authority.
  2. The Supplier and any Sub-contractors shall at all times be responsible for the following costs:
     + 1. any employer contributions relating to the costs of early retirement benefits arising on redundancy or as a result of business efficiency under Regulation 30(7) of the 2013 Regulations or otherwise;
       2. any payment of Fund benefits to active members on the grounds of ill health or infirmity of mind or body under Regulation 35 of the 2013 Regulations or otherwise;
       3. any payment of Fund benefits to deferred or deferred pensioner members on the grounds of ill health or infirmity of mind or body under Regulation 38 of the 2013 Regulations or otherwise;
       4. any employer contributions relating to the costs of early or flexible retirement where the actuarial reduction is waived in whole or in part or a cost neutral reduction is not applied with the consent of the Supplier or any relevant Sub-contractor including without limitation any decision made under Regulation 30(8) of the 2013 Regulations or Schedule 2 of The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014;
       5. any employer contributions relating to the costs of enhanced benefits made at the discretion of the Supplier or any relevant Sub-contractors including without limitation additional pension awarded under Regulation 31 of the 2013 Regulations or otherwise;
       6. any increase to the employer contribution rate resulting from the award of pay increases by the Supplier or relevant Sub-contractors in respect of all or any of the LGPS Eligible Employees in excess of the pay increases assumed in the Fund's most recent actuarial valuation (unless the Supplier and/or any Sub-contractor is contractually bound to provide such increases on the Relevant Transfer Date);
       7. to the extent not covered above, any other costs arising out of or in connection with the exercise of any discretion or the grant of any consent under the LGPS Regulations by the Supplier or any relevant Sub-contractors where a member does not have an absolute entitlement to that benefit under the LGPS;
       8. any cost of the administration of the Fund that are not met through the Supplier's or Sub-contractor’s employer contribution rate, including without limitation an amount specified in a notice given by the Administering Authority under Regulation 70 of the 2013 Regulations;
       9. the costs of any reports and advice requested by or arising from an instruction given by the Supplier or a Sub-contractor from the Fund Actuary; and/or
       10. any interest payable under the 2013 Regulations or LGPS Administration Agreement.
  3. For the purposes of calculating any Exit Payment, Excess Amount or Refund Amount, any part of such an amount which is attributable to any costs which the Supplier or Sub-contractors are responsible for in accordance with Paragraph 5.4 above shall be disregarded and excluded from the calculation. In the event of any dispute as to level of any cost that should be excluded from the calculation, the opinion of the Fund Actuary shall be final and binding.
  4. Where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Supplier or any Sub-contractor receives payment of an exit credit payment under Regulation 64(2) of the 2013 Regulations (the “Exit Credit”), the Supplier shall (or procure that any Sub-contractor shall) reimburse the Authority an amount equal to the Exit Credit within twenty (20) Working Days of receipt of the Exit Credit.
  5. The Supplier shall (or procure that the Sub-contractor shall) notify the Authority in writing within twenty (20) Working Days:
     + 1. of the end of each Contract Year of any Excess Amount or Refund Amount due in respect of the Contract Year that has just ended and provide a reasonable summary of how the Excess Amount or Refund Amount was calculated; and
       2. of being informed by the Administering Authority of any Exit Payment or Exit Credit that is determined by as being due from or to the Supplier or a Sub-contractor and provide a copy of any revised rates and adjustments certificate detailing the Exit Payment or Exit Credit and its calculation.
  6. Within twenty (20) Working Days of receiving the notification under Paragraph 5.7 above, the Authority shall either:
     + 1. notify the Supplier in writing of its acceptance of the Excess Amount, Refund Amount or Exit Payment;
       2. request further information or evidence about the Excess Amount, Refund Amount or Exit Payment from the Supplier; and/or
       3. request a meeting with the Supplier to discuss or clarify the information or evidence provided.
  7. Where the Excess Amount, Refund Amount or Exit Payment is agreed following the receipt of further information or evidence or following a meeting in accordance with Paragraph 5.8 above, the Authority shall notify the Supplier in writing. In the event that the Supplier and the Authority are unable to agree the amount of the Excess Amount, Refund Amount or Exit Payment then they shall follow the Dispute Resolution Procedure.
  8. Any Excess Amount or Exit Payment agreed by the Authority or in accordance with the Dispute Resolution Procedure shall be paid by the Authority within timescales as agreed between Authority and Supplier. The amount to be paid by the Authority shall be an amount equal to the Excess Amount or Exit Payment less an amount equal to any corporation tax relief which has been claimed in respect of the Excess Amount or Exit Payment by the Supplier or a Sub-contractor.
  9. Any Refund Amount agreed by the Authority or in accordance with the Dispute Resolution Procedure as payable by the Supplier or any Sub-contractor to the Authority, shall be paid by the Supplier or any Sub-contractor forthwith as the liability has been agreed. In the event the Supplier or any Sub-contractor fails to pay any agreed Refund Amount, the Authority shall demand in writing the immediate payment of the agreed Refund Amount by the Supplier and the Supplier shall make payment within seven (7) Working Days of such demand.
  10. This Paragraph 5 shall survive termination of this Contract.

### ANNEX D4: OTHER SCHEMES

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

### Part E: EMPLOYMENT EXIT PROVISIONS

1. PRE-SERVICE TRANSFER OBLIGATIONS
   1. The Supplier agrees that within 20 Working Days of the earliest of:
      * 1. receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
        2. receipt of the giving of notice of early termination or any Partial Termination of this Contract;
        3. the date which is 12 months before the end of the Term; and
        4. receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 month period),

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

* 1. At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:
     + 1. the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
       2. the Staffing Information in relation to the Supplier’s Final Supplier Personnel List (insofar as such information has not previously been provided).
  2. The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.
  3. The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
  4. From the date of the earliest event referred to in Paragraph 1.1(a), 1.1(b) and 1.1(c), the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier’s Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):
     + 1. replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
       2. make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including pensions and any payments connected with the termination of employment);
       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;
       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;
       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
       6. terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

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

* 1. During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:
     + 1. the numbers of employees engaged in providing the Services;
       2. the percentage of time spent by each employee engaged in providing the Services;
       3. the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up pursuant to the provisions of any of the Annexes to Part D (*Pensions*) of this Schedule 28 (*Staff Transfer*) (as appropriate); and
       4. a description of the nature of the work undertaken by each employee by location.
  2. 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 Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
     + 1. the most recent month's copy pay slip data;
       2. details of cumulative pay for tax and pension purposes;
       3. details of cumulative tax paid;
       4. tax code;
       5. details of any voluntary deductions from pay; and
       6. bank/building society account details for payroll purposes.

1. EMPLOYMENT REGULATIONS EXIT PROVISIONS
   1. The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.
   2. The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.
   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:
      * 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. the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:
           1. any collective agreement applicable to the Transferring Supplier Employees; and/or
           2. 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;
        3. any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
        4. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
           1. in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
           2. in relation to any employee who is not identified in the Supplier’s Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
        5. a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
        6. any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee identified in the Supplier’s Final Supplier Personnel List for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Contract and/or the Employment Regulations; and
        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.
   4. The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
      * 1. arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
        2. arising from the Replacement Supplier’s failure, and/or Replacement Sub-contractor’s failure, to comply with its obligations under the Employment Regulations.
   5. If any person who is not identified in the Supplier’s Final Supplier Personnel list claims, or it is determined in relation to any person who is not identified in the Supplier’s 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:
      * 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. the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
   6. If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
   7. If after the 15 Working Day period specified in Paragraph 2.5(b) has elapsed:
      * 1. no such offer of employment has been made;
        2. such offer has been made but not accepted; or
        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.

* 1. 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. The indemnity in Paragraph 2.8:
     + 1. shall not apply to:
          1. any claim for:

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

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

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

* + - * 1. 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
      1. shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date.
  1. If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.
  2. The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier’s Final Supplier Personnel list before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
     + 1. the Supplier and/or any Sub-contractor; and
       2. the Replacement Supplier and/or the Replacement Sub-contractor.
  3. 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.
  4. Subject to Paragraph 2.14, 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:
     + 1. any act or omission of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee identified in the Supplier’s Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
       2. the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
          1. any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier’s Final Supplier Personnel List; and/or
          2. any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier’s Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;
       3. any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier’s Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
       4. any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier’s Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier’s Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
       5. any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier’s Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
       6. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
          1. in relation to any Transferring Supplier Employee identified in the Supplier’s Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
          2. in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier’s Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
       7. a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier’s Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and
       8. any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier’s Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.
  5. The indemnities in Paragraph 2.13 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:

Completion notes

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.*
2. *This spreadsheet is used to collect information from the current employer (transferor) about employees performing the relevant services to help plan for a potential TUPE transfer. Some or all of this information may be disclosed to bidders as part of a procurement process. The information should not reveal the employees' identities.*
3. *If the information cannot be included on this form, attach the additional information, such as relevant policies, and cross reference to the item number and employee number where appropriate.*

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| EMPLOYEE DETAILS & KEY TERMS | | | | | | | |
| Details | Job Title | Grade / band | Work Location | Age | Employment status (for example, employee, fixed-term employee, self-employed, agency worker)? | Continuous service date (dd/mm/yy) | Date employment started with existing employer |
| Emp No 1 |  |  |  |  |  |  |  |
| Emp No 2 |  |  |  |  |  |  |  |
| Emp No |  |  |  |  |  |  |  |
| Emp No |  |  |  |  |  |  |  |
| Emp No |  |  |  |  |  |  |  |
| Emp No |  |  |  |  |  |  |  |
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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 |  |  |  |  |  |  |  |
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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 |  |  |  |  |  |  |  |  |
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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 |  |  |  |  |  |  |
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|  | PENSIONS | | | | | |
| Details | Employee pension contribution rate | Employer pension contribution rate | Please provide the name of the pension scheme and a link to the pension scheme website | Is the scheme an occupational pension scheme as defined in the Pension Schemes Act 1993? | If the scheme is not an occupational pension scheme, what type of scheme is it? E.g. personal pension scheme? | Type of pension provision e.g. defined benefit (CARE or final salary, and whether a public sector scheme e.g. CSPS, NHSPS, LGPS etc. or a broadly comparable scheme) or a defined contribution scheme or an auto enrolment master trust? |
| Emp No 1 |  |  |  |  |  |  |
| Emp No 2 |  |  |  |  |  |  |
| Emp No |  |  |  |  |  |  |
| Emp No |  |  |  |  |  |  |
| Emp No |  |  |  |  |  |  |
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|  | PENSIONS | | | | | |
| Details | If the Employee is in the Local Government Pension Scheme, please supply details of Fund and Administering Authority. | If the Employee is in the Civil Service Pension Scheme, please provide details of the Admission Agreement. | If the Employee is in the NHSPS, please provide details of the Direction Letter. | If the Employee is in a broadly comparable pension scheme, please supply a copy of the GAD certificate of Broad Comparability. | Did Fair Deal or any other similar pension protection for ex-public sector employees apply to the employee when they TUPE transferred into your employment? If so, what was the nature of that protection (e.g. right to participate in a public sector pension scheme, or a broadly comparable scheme, or to bulk transfer past pension service into their current scheme)? | If Fair Deal, Best Value or other pension protection applied, which public sector employer did they originally transfer out of and when? |
| Emp No 1 |  |  |  |  |  |  |
| Emp No 2 |  |  |  |  |  |  |
| Emp No |  |  |  |  |  |  |
| Emp No |  |  |  |  |  |  |
| Emp No |  |  |  |  |  |  |
| Emp No |  |  |  |  |  |  |
| Emp No |  |  |  |  |  |  |

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

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**SCHEDULE 29**

**KEY PERSONNEL**

# Schedule 29 (*Key Personnel*)

1. This Schedule lists the key roles (“**Key Roles**”) and names of the persons who the Supplier shall appoint to fill those Key Roles at the Start Date (“**Key Personnel**”).

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| KEY ROLE | Name of KEY Personnel | Responsibilities/Authorities | Phase of the project during which they will be a MEMBER OF Key Personnel | MINIMUM PERIOD in Key Role |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

**Schedule 30**

**[Deed of guarantee]**

# **Schedule** **30 (*Deed of******Guarantee*)**

***[Drafting Note: this is a draft form of guarantee is set out for information purposes, unless you are notified by the Authority that it requires this guarantee should your tender submission be successful.]***

[Insert the name of the Guarantor]

- and -

[Insert the name of the Beneficiary]

DEED OF GUARANTEE

THIS DEED is executed as a deed and dated [Insert date of execution] (the “Deed”)

BETWEEN:

1. [INSERT NAME OF THE GUARANTOR] [a company incorporated in [England and Wales] under registered number [insert registered number] whose registered office is at [insert registered office]] [OR] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] (the "Guarantor"); and
2. [INSERT NAME OF THE AUTHORITY], [acting on behalf of the Crown] of [insert the Authority’s address] (the "Authority").

together the “Parties” and each a “Party”.

BACKGROUND:

1. The Authority [has awarded] a contract dated [insert date] to [insert details of the Supplier] (the “Supplier”) for the provision of [insert details of goods or services to be provided] (the “Guaranteed Agreement”).
2. It is a condition of the Authority entering into the Guaranteed Agreement that the Supplier procures the execution and delivery to the Authority of a parent company guarantee substantially in the form of this Deed.
3. The Guarantor has agreed to guarantee the due performance of the Guaranteed Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

Definitions

* 1. The following definitions apply in this Deed:

|  |  |
| --- | --- |
| "Business Day" | means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business; |
| "Control" | means the power of a person to secure that the affairs of a body corporate are conducted in accordance with the wishes of that person:   1. by means of the holding of shares or the possession of voting power in relation to that body or any other body corporate; or 2. as a result of any powers conferred by the constitutional or corporate documents, or any other document regulating that body or any other body corporate; |
| "Guaranteed Agreement" | has the meaning given to it in Recital (A); |
| "Guaranteed Obligations" | has the meaning given to it in Clause 2.1(a); |
| "Supplier" | has the meaning given to it in Recital (A); |
| "VAT" | means value added tax or any equivalent tax chargeable in the UK or elsewhere. |

Interpretation

* 1. Unless otherwise stated, any reference in this Deed to:
     + 1. the "Guarantor", the "Authority", the “Supplier” or any other person shall be construed so as to include their successors in title, permitted assigns and permitted transferees, whether direct or indirect;
       2. "assets" includes present and future properties, revenues and rights of every description;
       3. this "Deed", or any other agreement or instrument is a reference to, this deed or other agreement or instrument as amended, novated, supplemented, extended or restated;
       4. "indebtedness" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
       5. a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
       6. the words “including”, “includes”, “in particular”, “for example” or similar shall be construed as illustrative and without limitation to the generality of the related general words; and
       7. a time of day is a reference to London time.

1. GUARANTEE AND INDEMNITY
   1. The Guarantor:
      * 1. guarantees to the Authority the due and punctual performance of all of the Supplier's present and future obligations under and in connection with the Guaranteed Agreement if and when they become due and performable in accordance with the terms of the Guaranteed Agreement (the “Guaranteed Obligations”);
        2. shall pay to the Authority from time to time on demand all monies (together with interest on such sum accrued before and after the date of demand until the date of payment) that have become payable by the Supplier to the Authority under or in connection with the Guaranteed Agreement but which has not been paid at the time the demand is made; and
        3. shall, if the Supplier fails to perform in full and on time any of the Guaranteed Obligations and upon written notice from the Authority, immediately on demand perform or procure performance of the same at the Guarantor’s own expense.
   2. The Guarantor, as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under Clause 2.1, shall indemnify and keep indemnified the Authority in full and on demand from and against all and any losses, damages, costs and expenses suffered or incurred by the Authority arising out of, or in connection with:
      * 1. any failure by the Supplier to perform or discharge the Guaranteed Obligations; or
        2. any of the Guaranteed Obligations being or becoming wholly or partially unenforceable for any reason,
        3. provided that the Guarantor's liability under this Clause 2.2 shall be no greater than the Supplier's liability under the Guaranteed Agreement was (or would have been had the relevant Guaranteed Obligation been fully enforceable).
2. AUTHORITY PROTECTIONS

Continuing Guarantee

* 1. This Deed is, and shall at all times be, a continuing and irrevocable security until the Guaranteed Obligations have been satisfied or performed in full, and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Authority may at any time hold for the performance of the Guaranteed Obligations and may be enforced without first having recourse to any such security.

Preservation of the Guarantor's liability

* 1. The Guarantor's liability under this Deed shall not be reduced, discharged or otherwise adversely affected by:
     + 1. any arrangement made between the Supplier and the Authority;
       2. any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations;
       3. any alteration in the obligations undertaken by the Supplier whether by way of any variation referred to in Clause 4 or otherwise;
       4. any waiver or forbearance by the Authority whether as to payment, time, performance or otherwise;
       5. the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Supplier or any other person;
       6. any unenforceability, illegality or invalidity of any of the provisions of the Guaranteed Agreement or any of the Supplier's obligations under the Guaranteed Agreement, so that this Deed shall be construed as if there were no such unenforceability, illegality or invalidity;
       7. any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, Control or ownership, insolvency, liquidation, administration, voluntary arrangement, or appointment of a receiver, of the Supplier or any other person.

Immediate demand

* 1. The Guarantor waives any right it may have to require the Authority to proceed against, enforce any other right or claim for payment against, or take any other action against, the Supplier or any other person before claiming from the Guarantor under this Guarantee.

Deferral of rights

* 1. Until all amounts which may be or become payable under the Guaranteed Agreement or this Deed have been irrevocably paid in full, the Guarantor shall not, as a result of this Deed or any payment performance under this Deed:
     + 1. be subrogated to any right or security of the Authority;
       2. claim or prove in competition with the Authority against the Supplier or any other person;
       3. demand or accept repayment in whole or in part of any indebtedness due from the Supplier;
       4. take the benefit of, share in or enforce any security or other guarantee or indemnity against the Supplier; or
       5. claim any right of contribution, set-off or indemnity from the Supplier,

without the prior written consent of the Authority (and in such case only in accordance with any written instructions of the Authority).

* 1. If the Guarantor receives any payment or other benefit in breach of Clause 3.4, or as a result of any action taken in accordance with a written instruction of the Authority given pursuant to Clause 3.4, such payment of other benefit, and any benefit derived directly or indirectly by the Guarantor therefrom, shall be held by the Guarantor on trust for the Authority applied towards the discharge of the Guarantor’s obligations to the Authority under this Deed.

1. VARIATION OF THE GUARANTEED AGREEMENT
   1. The Guarantor confirms that it intends that this Deed shall extend and apply from time to time to any variation, increase, extension or addition of the Guaranteed Agreement, however, fundamental, and any associated fees, costs and/or expenses.
2. PAYMENT AND COSTS
   1. All sums payable by the Guarantor under this Deed shall be paid in full to the Authority in pounds sterling:
      * 1. without any set-off, condition or counterclaim whatsoever; and
        2. free and clear of any deductions or withholdings whatsoever except as may be required by applicable law which is binding on the Guarantor.
   2. If any deduction or withholding is required by any applicable law to be made by the Guarantor:
      * 1. the amount of the payment due from the Guarantor shall be increased to an amount which (after making any deduction or withholding) leaves an amount equal to the payment which would have been due if no deduction or withholding had been required; and
        2. the Guarantor shall promptly deliver to the Authority all receipts issued to it evidencing each deduction or withholding which it has made.
   3. The Guarantor shall not and may not direct the application by the Authority of any sums received by the Authority from the Guarantor under any of the terms in this Deed.
   4. The Guarantor shall pay interest on any amount due under this Deed at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
   5. The Guarantor shall, on a full indemnity basis, pay to the Authority on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and any VAT on those costs and expenses) which the Authority incurs in connection with:
      * 1. the preservation, or exercise and enforcement, of any rights under or in connection with this Deed or any attempt to do so; and
        2. any discharge or release of this Deed.
3. CONDITIONAL DISCHARGE
   1. Any release, discharge or settlement between the Guarantor and the Authority in relation to this Deed shall be conditional on no right, security, disposition or payment to the Authority by the Guarantor, the Supplier or any other person being avoided, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency for any other reason.
   2. If any such right, security, disposition or payment as referred to in Clause 6.1 is avoided, set aside or ordered to be refunded, the Authority shall be entitled subsequently to enforce this Deed against the Guarantor as if such release, discharge or settlement had not occurred and any such security, disposition or payment has not been made.
4. REPRESENTATIONS AND WARRANTIES
   1. The Guarantor represents and warrants to the Authority that:
      * 1. it is duly incorporated with limited liability and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name, and has power to carry on its business as now being conducted and to own its property and other assets;
        2. it has full power under its constitution or equivalent constitutional documents in the jurisdiction in which it is established to enter into this Deed;
        3. it has full power to perform the obligations expressed to be assumed by it or contemplated by this Deed;
        4. it has been duly authorised to enter into this Deed;
        5. it has taken all necessary corporate action to authorise the execution, delivery and performance of this Deed;
        6. this Deed when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;
        7. all necessary consents and authorisations for the giving and implementation of this Deed have been obtained;
        8. that its entry into and performance of its obligations under this Deed will not constitute any breach of or default under any contractual, government or public obligation binding on it; and
        9. that it is not engaged in any litigation or arbitration proceedings that might affect its capacity or ability to perform its obligations under this Deed and to the best of its knowledge no such legal or arbitration proceedings have been threatened or are pending against it.
5. ASSIGNMENT
   1. The Authority shall be entitled by notice in writing to the Guarantor to assign the benefit of this Deed at any time to any person without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this Deed.
   2. The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed without the prior written consent of the Authority.
6. VARIATION
   1. No variation of this Deed shall be effective unless it is in writing and signed by the parties.
7. DEMANDS AND NOTICES
   1. Any demand or notice served by the Authority on the Guarantor under this Deed shall be in writing, addressed to:
      * 1. For the Attention of [insert details]
        2. [Address of the Guarantor in England and Wales]
   2. or such other address in England and Wales as the Guarantor has from time to time notified to the Authority in writing in accordance with the terms of this Deed as being an address or facsimile number for the receipt of such demands or notices.
   3. Any notice or demand served on the Guarantor or the Authority under this Deed shall be deemed to have been served:
      * 1. if delivered by hand, at the time of delivery; or
        2. if posted, at 10.00 a.m. on the second Business Day after it was put into the post.
   4. In proving service of a notice or demand on the Guarantor it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter.
   5. Any notice purported to be served on the Authority under this Deed shall only be valid when received in writing by the Authority.
8. ENTIRE AGREEMENT
   1. This Deed constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
   2. The Guarantor acknowledges that it has not entered into this Deed in reliance upon, nor has it been induced to enter into this Deed by, any representation, warranty or undertaking made by or on behalf of the Authority (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed.
9. WAIVER
   1. No failure or delay by the Authority to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
   2. Any waiver by the Authority of any terms of this Deed, or of any Guaranteed Obligations, shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
10. SEVERANCE
    1. If any provision or part-provision of this Deed is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Deed.
11. THIRD PARTY RIGHTS
    1. A person who is not a Party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any of its terms but this does not affect any third party right which exists or is available independently of that Act.
12. GOVERNING LAW AND JURISDICTION
    1. This Deed and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
    2. The Guarantor irrevocably agrees for the benefit of the Authority that the courts of England shall have jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Deed or its subject matter or formation.
    3. Nothing contained in Clause 15.2 shall limit the rights of the Authority to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
    4. The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
    5. [The Guarantor irrevocably appoints [Insert name of agent] of [Insert address of agent] as its agent to receive on its behalf in England or Wales service of any proceedings under this Clause 15. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Guarantor) and shall be valid until such time as the Authority has received prior written notice that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the Guarantor shall appoint a substitute acceptable to the Authority and deliver to the Authority the new agent's name and address within England and Wales.]

|  |  |
| --- | --- |
| Executed as a deed by [insert the name of the Guarantor] acting by [insert name of Director] a director, in the presence of a witness: |  |
| ……………………………………………. [Signature of Witness] | ……………………………………………. [Signature of Director]  Name of Director:  …………………………………………… |
| Name of Witness: | …………………………………………… |
| Address of Witness: | ……………………………………….  ………………………………………. |
| Occupation of Witness: | ………………………………………. |

**SCHEDULE 31**

**PROCESSING PERSONAL DATA**

# Schedule 31 (*Processing Personal Data*)

**[DRAFTING NOTE. The Authority proposes to conduct a data privacy impact assessment with the successful tenderer prior to contract signature and this schedule will be completed in line with the outcome of that exercise and other legal obligations arising under data privacy legislation.]**

* 1. This Schedule shall be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Schedule shall be with the Authority at its absolute discretion.
  2. The contact details of the Authority’s Data Protection Officer are: [Insert Contact details]
  3. The contact details of the Supplier’s Data Protection Officer are: [Insert Contact details]
  4. The Processor shall comply with any further written instructions with respect to processing by the Controller.
  5. Any such further instructions shall be incorporated into this Schedule.

|  |  |
| --- | --- |
| Description | Details |
| Identity of Controller for each Category of Personal Data | The Authority is Controller and the Supplier is Processor  The Parties acknowledge that in accordance with Clause 21.2 to 23.15 and for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor of the following Personal Data:   * *[Insert the scope of Personal Data for which the purposes and means of the processing by the Supplier is determined by the Authority]*   The Supplier is Controller and the Authority is Processor  *The Parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the Controller and the Authority is the Processor in accordance with* *Clause 21.2* *to* *21.15 of the following Personal Data:*   * *[Insert the scope of Personal Data for which the purposes and means of the processing by the Authority is determined by the Supplier]*   The Parties are Joint Controllers  *The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:*   * *[Insert the scope of Personal Data for which the purposes and means of the processing is determined by both Parties together]*   The Parties are Independent Controllers of Personal Data  *The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:*   * *Business contact details of Supplier Personnel,* * *Business contact details of any directors, officers, employees, agents, consultants and contractors of the Authority (excluding the Supplier Personnel) engaged in the performance of the Authority’s duties under this Contract).* * *[Insert the scope of other Personal Data provided by one Party who is Data Controller to the other Party who will separately determine the nature and purposes of its processing the Personal Data on receipt.*   *e.g. where (1) the Supplier has professional or regulatory obligations in respect of Personal Data received, (2) a standardised service is such that the Authority cannot dictate the way in which Personal Data is processed by the Supplier, or (3) where the Supplier comes to the transaction with Personal Data for which it is already Controller for use by the Authority]* |
| Duration of the processing | *[Clearly set out the duration of the processing including dates]* |
| Nature and purposes of the processing | *[Please be as specific as possible, but make sure that you cover all intended purposes.*  *The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.*  *The purpose might include: employment processing, statutory obligation, recruitment assessment etc]* |
| Type of Personal Data | *[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]* |
| Categories of Data Subject | *[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]* |
| Plan for return and destruction of the data once the processing is complete  UNLESS requirement under law to preserve that type of data | *[Describe how long the data will be retained for, how it be returned or destroyed]* |
| Locations at which the Supplier and/or its Sub-contractors process Personal Data under this Contract | *[Clearly identify each location]* |
| Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal Data processed under this Contract Agreement against a breach of security (insofar as that breach of security relates to data) or a Personal Data Breach | *[Please be as specific as possible]* |

## ANNEX 1: Joint Controller Agreement

1. Joint Controller Status and Allocation of Responsibilities
   1. With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 1 (*Joint Controller Agreement*) in replacement of Clause 21.2-21.15 (*Where one Party is* *Controller and the other Party is Processor*) and 21.17-24.28 (*Independent* *Controllers of Personal Data*). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.
   2. The Parties agree that the [Supplier/Authority]:
      * 1. is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;
        2. shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
        3. is solely responsible for the Parties’ compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;
        4. is responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
        5. shall make available to Data Subjects the essence of this Joint Controller Agreement (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the [Supplier’s/Authority’s] privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).
   3. Notwithstanding the terms of Paragraph 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Data Controller.
2. Undertakings of both Parties
   1. The Supplier and the Authority each undertake that they shall:
      * 1. report to the other Party every [x] months on:
           1. the volume of Data Subject Access Requests (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
           2. the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
           3. any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party’s obligations under applicable Data Protection Legislation;
           4. any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
           5. any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

that it has received in relation to the subject matter of the Contract during that period;

* + - 1. notify each other immediately if it receives any request, complaint or communication made as referred to in Paragraphs 2.1(a)(i) to (v); and
      2. provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Paragraphs 2.1(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation.
      3. not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under this Contract or is required by Law) that disclosure or transfer of Personal Data is otherwise considered to be lawful processing of that Personal Data in accordance with Article 6 of the UK GDPR or EU GDPR (as the context requires). For the avoidance of doubt to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex.
      4. request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information.
      5. ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data
      6. take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
         1. are aware of and comply with their duties under this Annex 1 (*Joint Controller Agreement*) and those in respect of Confidential Information
         2. are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;
         3. have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
      7. ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
         1. nature of the data to be protected;
         2. harm that might result from a Data Loss Event;
         3. state of technological development; and
         4. cost of implementing any measures.
      8. ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds;
      9. ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event;
      10. where the Personal Data is subject to UK GDPR, not transfer such Personal Data outside of the UK unless the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
          1. the transfer is in accordance with Article 45 of the UK GDPR or DPA 2018 Section 73; or
          2. 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) as agreed with the non-transferring Party which could include the International Data Transfer Agreement or International Data Transfer Agreement Addendum to the European Commission’s SCCs as published by the Information Commissioner’s Office and as set out in Annex 2 to Schedule 31 (*Processing Personal Data*) (as appropriate), as well as any additional measures;
          3. the Data Subject has enforceable rights and effective legal remedies;
          4. the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
          5. 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
      11. where the Personal Data is subject to EU GDPR, not transfer such Personal Data outside of the EU unless the prior written consent of non-transferring Party has been obtained and the following conditions are fulfilled:
          1. the transfer is in accordance with Article 45 of the EU GDPR; or
          2. the transferring Party has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the non-transferring Party which could include relevant parties entering into Standard Contractual Clauses in the European Commission’s decision 2021/914/EU set out in Annex 3 to Schedule 31 (*Processing Personal Data*) as well as any additional measures;
          3. the Data Subject has enforceable rights and effective legal remedies;
          4. the transferring Party complies with its obligations under the EU GDPR by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
          5. 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.
  1. Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its’ obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations

1. Data Protection Breach
   1. Without prejudice to Paragraph 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:
      * 1. sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;
        2. all reasonable assistance, including:
           1. co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
           2. co-operation with the other Party including taking such reasonable steps as are directed by the Authority to assist in the investigation, mitigation and remediation of a Personal Data Breach;
           3. co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach;
           4. providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Paragraph 3.2.
   2. Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as if it was that Party’s own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:
      * 1. the nature of the Personal Data Breach;
        2. the nature of Personal Data affected;
        3. the categories and number of Data Subjects concerned;
        4. the name and contact details of the Supplier’s Data Protection Officer or other relevant contact from whom more information may be obtained;
        5. measures taken or proposed to be taken to address the Personal Data Breach; and
        6. describe the likely consequences of the Personal Data Breach.
2. Audit
   1. The Supplier shall permit:
      * 1. the Authority, or a third-party auditor acting under the Authority’s direction, to conduct, at the Authority’s cost, data privacy and security audits, assessments and inspections concerning the Supplier’s data security and privacy procedures relating to Personal Data, its compliance with this Annex 1 and the Data Protection Legislation.
        2. the Authority, or a third-party auditor acting under the Authority’s direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 of the UK GDPR by the Supplier so far as relevant to the Contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.
   2. The Authority may, in its sole discretion, require the Supplier to provide evidence of the Supplier’s compliance with Paragraph 4.1 in lieu of conducting such an audit, assessment or inspection.
3. Impact Assessments
   1. The Parties shall:
      * 1. provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to processing operations, risks and measures);
        2. maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with this Contract, in accordance with the terms of Article 30 of the UK GDPR.
4. ICO Guidance
   1. The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant Central Government Body. The Authority may on not less than thirty (30) Working Days’ notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Central Government Body.
5. Liabilities for Data Protection Breach

*[Guidance:* ***This paragraph represents a risk share, you may wish to reconsider the apportionment of liability and whether recoverability of losses are likely to be hindered by the contractual limitation of liability provisions]***

* 1. If financial penalties are imposed by the Information Commissioner on either the Authority or the Supplier for a Personal Data Breach ("Financial Penalties") then the following shall occur:
     + 1. If in the view of the Information Commissioner, the Authority is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Authority, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Authority, then the Authority shall be responsible for the payment of such Financial Penalties. In this case, the Authority will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such data incident. The Supplier shall provide to the Authority and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such data incident;
       2. If in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a breach that the Authority is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Authority and its auditors, on request and at the Supplier’s sole cost, full cooperation and access to conduct a thorough audit of such data incident; or
       3. If no view as to responsibility is expressed by the Information Commissioner, then the Authority and the Supplier shall work together to investigate the relevant data incident and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any Financial Penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in Schedule 23 (Dispute Resolution Procedure).
  2. If either the Authority or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction (“Court”) by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.
  3. In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the “Claim Losses”):
     + 1. if the Authority is responsible for the relevant breach, then the Authority shall be responsible for the Claim Losses;
       2. if the Supplier is responsible for the relevant breach, then the Supplier shall be responsible for the Claim Losses; and
       3. if responsibility is unclear, then the Authority and the Supplier shall be responsible for the Claim Losses equally.
  4. Nothing in Paragraphs 7.2-7.3 shall preclude the Authority and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the breach and the legal and financial obligations of the Authority.

1. Termination
   1. If the Supplier is in material Default under any of its obligations under this Annex 1 (*Joint Controller Agreement*), the Authority shall be entitled to terminate this Contract by issuing a Termination Notice to the Supplier in accordance with Clause 31 (*Termination Rights*).
2. Sub-Processing
   1. In respect of any Processing of Personal performed by a third party on behalf of a Party, that Party shall:
      * 1. carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by this Contract, and provide evidence of such due diligence to the other Party where reasonably requested; and
        2. ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.
3. Data Retention
   1. The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by a Party for statutory compliance purposes or as otherwise required by this Contract), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.

## ANNEX 2:

## PART A: INTERNATIONAL DATA TRANSFER AGREEMENT

# Logo Description automatically generatedStandard Data Protection Clauses to be issued by the Commissioner under S119A(1) Data Protection Act 2018

## International Data Transfer Agreement

**VERSION A1.0, in force 21 March 2022**

This IDTA has been issued by the Information Commissioner for Parties making Restricted Transfers. The Information Commissioner considers that it provides Appropriate Safeguards for Restricted Transfers when it is entered into as a legally binding contract.

## Part 1: Tables

### Table 1: Parties and signatures

|  |  |  |
| --- | --- | --- |
| **Start date** |  | |
| **The Parties** | **Exporter (who sends the Restricted Transfer)** | **Importer (who receives the Restricted Transfer)** |
| **Parties’ details** | Full legal name:  Trading name (if different):  Main address (if a company registered address):  Official registration number (if any) (company number or similar identifier): | Full legal name:  Trading name (if different):  Main address (if a company registered address):  Official registration number (if any) (company number or similar identifier): |
| **Key Contact** | Full Name (optional):  Job Title:  Contact details including email: | Full Name (optional):  Job Title:  Contact details including email: |
| **Importer Data Subject Contact** |  | Job Title:  Contact details including email: |
| **Signatures confirming each Party agrees to be bound by this IDTA** | Signed for and on behalf of the **Exporter** set out above  Signed:  Date of signature:  Full name:  Job title: | Signed for and on behalf of the **Importer** set out above  Signed:  Date of signature:  Full name:  Job title: |

### Table 2: Transfer Details

|  |  |
| --- | --- |
| **UK country’s law that governs the IDTA:** | England and Wales  Northern Ireland  Scotland |
| **Primary place for legal claims to be made by the Parties** | England and Wales  Northern Ireland  Scotland |
| **The status of the Exporter** | In relation to the Processing of the Transferred Data:  Exporter is a Controller  Exporter is a Processor or Sub-Processor |
| **The status of the Importer** | In relation to the Processing of the Transferred Data:  Importer is a Controller  Importer is the Exporter’s Processor or Sub-Processor  Importer is **not** the Exporter’s Processor or Sub-Processor (and the Importer has been instructed by a Third Party Controller) |
| **Whether UK GDPR applies to the Importer** | UK GDPR applies to the Importer’s Processing of the Transferred Data  UK GDPR does not apply to the Importer’s Processing of the Transferred Data |
| **Linked Agreement** | **If the Importer is the Exporter’s Processor or Sub-Processor** – the agreement(s) between the Parties which sets out the Processor’s or Sub-Processor’s instructions for Processing the Transferred Data:  Name of agreement:  Date of agreement:  Parties to the agreement:  Reference (if any):  **Other agreements** – any agreement(s) between the Parties which set out additional obligations in relation to the Transferred Data, such as a data sharing agreement or service agreement:  Name of agreement:  Date of agreement:  Parties to the agreement:  Reference (if any):  **If the Exporter is a Processor or Sub-Processor** – the agreement(s) between the Exporter and the Party(s) which sets out the Exporter’s instructions for Processing the Transferred Data:  Name of agreement:  Date of agreement:  Parties to the agreement:  Reference (if any): |
| **Term** | The Importer may Process the Transferred Data for the following time period:  the period for which the Linked Agreement is in force  time period:  (only if the Importer is a Controller or not the Exporter’s Processor or Sub-Processor) no longer than is necessary for the Purpose. |
| **Ending the IDTA before the end of the Term** | the Parties cannot end the IDTA before the end of the Term unless there is a breach of the IDTA or the Parties agree in writing.  the Parties can end the IDTA before the end of the Term by serving:        months’ written notice, as set out in Section 29 (How to end this IDTA without there being a breach). |
| **Ending the IDTA when the Approved IDTA changes** | Which Parties may end the IDTA as set out in Section 29.2:  Importer  Exporter  neither Party |
| **Can the Importer make further transfers of the Transferred Data?** | The Importer MAY transfer on the Transferred Data to another organisation or person (who is a different legal entity) in accordance with Section 16.1 (Transferring on the Transferred Data).  The Importer MAY NOT transfer on the Transferred Data to another organisation or person (who is a different legal entity) in accordance with Section 16.1 (Transferring on the Transferred Data). |
| **Specific restrictions when the Importer may transfer on the Transferred Data** | The Importer MAY ONLY forward the Transferred Data in accordance with Section 16.1:  if the Exporter tells it in writing that it may do so.  to:  to the authorised receivers (or the categories of authorised receivers) set out in:  there are no specific restrictions. |
| **Review Dates** | No review is needed as this is a one-off transfer and the Importer does not retain any Transferred Data  First review date:  The Parties must review the Security Requirements at least once:  each       month(s)  each quarter  each 6 months  each year  each       year(s)  each time there is a change to the Transferred Data, Purposes, Importer Information, TRA or risk assessment |
|  |  |

### Table 3: Transferred Data

|  |  |
| --- | --- |
| **Transferred Data** | The personal data to be sent to the Importer under this IDTA consists of:  The categories of Transferred Data will update automatically if the information is updated in the Linked Agreement referred to.  The categories of Transferred Data will NOT update automatically if the information is updated in the Linked Agreement referred to. The Parties must agree a change under Section 5.3. |
| **Special Categories of Personal Data and criminal convictions and offences** | The Transferred Data includes data relating to:  racial or ethnic origin  political opinions  religious or philosophical beliefs  trade union membership  genetic data  biometric data for the purpose of uniquely identifying a natural person  physical or mental health  sex life or sexual orientation  criminal convictions and offences  none of the above  set out in:  And:  The categories of special category and criminal records data will update automatically if the information is updated in the Linked Agreement referred to.  The categories of special category and criminal records data will NOT update automatically if the information is updated in the Linked Agreement referred to. The Parties must agree a change under Section 5.3. |
| **Relevant Data Subjects** | The Data Subjects of the Transferred Data are:  The categories of Data Subjects will update automatically if the information is updated in the Linked Agreement referred to.  The categories of Data Subjects will not update automatically if the information is updated in the Linked Agreement referred to. The Parties must agree a change under Section 5.3. |
| **Purpose** | The Importer may Process the Transferred Data for the following purposes:  The Importer may Process the Transferred Data for the purposes set out in:  In both cases, any other purposes which are compatible with the purposes set out above.  The purposes will update automatically if the information is updated in the Linked Agreement referred to.  The purposes will NOT update automatically if the information is updated in the Linked Agreement referred to. The Parties must agree a change under Section 5.3. |

## Table 4: Security Requirements

|  |  |
| --- | --- |
| **Security of Transmission** |  |
| **Security of Storage** |  |
| **Security of Processing** |  |
| **Organisational security measures** |  |
| **Technical security minimum requirements** |  |
| **Updates to the Security Requirements** | The Security Requirements will update automatically if the information is updated in the Linked Agreement referred to.  The Security Requirements will NOT update automatically if the information is updated in the Linked Agreement referred to. The Parties must agree a change under Section 5.3. |

## Part 2: Extra Protection Clauses

|  |  |
| --- | --- |
| **Extra Protection Clauses:** |  |
| **(i) Extra technical security protections** |  |
| **(ii) Extra organisational protections** |  |
| **(iii) Extra contractual protections** |  |

## Part 3: Commercial Clauses

|  |  |
| --- | --- |
| **Commercial Clauses** |  |

## Part 4: Mandatory Clauses

### Information that helps you to understand this IDTA

1. This IDTA and Linked Agreements
   1. Each Party agrees to be bound by the terms and conditions set out in the IDTA, in exchange for the other Party also agreeing to be bound by the IDTA.
   2. This IDTA is made up of:
      1. Part one: Tables;
      2. Part two: Extra Protection Clauses;
      3. Part three: Commercial Clauses; and
      4. Part four: Mandatory Clauses.
   3. The IDTA starts on the Start Date and ends as set out in Sections 29 or 30.
   4. If the Importer is a Processor or Sub-Processor instructed by the Exporter: the Exporter must ensure that, on or before the Start Date and during the Term, there is a Linked Agreement which is enforceable between the Parties and which complies with Article 28 UK GDPR (and which they will ensure continues to comply with Article 28 UK GDPR).
   5. References to the Linked Agreement or to the Commercial Clauses are to that Linked Agreement or to those Commercial Clauses only in so far as they are consistent with the Mandatory Clauses.
2. Legal Meaning of Words
   1. If a word starts with a capital letter it has the specific meaning set out in the Legal Glossary in Section 36.
   2. To make it easier to read and understand, this IDTA contains headings and guidance notes. Those are not part of the binding contract which forms the IDTA.
3. You have provided all the information required
   1. The Parties must ensure that the information contained in Part one: Tables is correct and complete at the Start Date and during the Term.
   2. In Table 2: Transfer Details, if the selection that the Parties are Controllers, Processors or Sub-Processors is wrong (either as a matter of fact or as a result of applying the UK Data Protection Laws) then:
      1. the terms and conditions of the Approved IDTA which apply to the correct option which was not selected will apply; and
      2. the Parties and any Relevant Data Subjects are entitled to enforce the terms and conditions of the Approved IDTA which apply to that correct option.
   3. In Table 2: Transfer Details, if the selection that the UK GDPR applies is wrong (either as a matter of fact or as a result of applying the UK Data Protection Laws), then the terms and conditions of the IDTA will still apply to the greatest extent possible.
4. How to sign the IDTA
   1. The Parties may choose to each sign (or execute):
      1. the same copy of this IDTA;
      2. two copies of the IDTA. In that case, each identical copy is still an original of this IDTA, and together all those copies form one agreement;
      3. a separate, identical copy of the IDTA. In that case, each identical copy is still an original of this IDTA, and together all those copies form one agreement,

unless signing (or executing) in this way would mean that the IDTA would not be binding on the Parties under Local Laws.

1. Changing this IDTA
   1. Each Party must not change the Mandatory Clauses as set out in the Approved IDTA, except only:
      1. to ensure correct cross-referencing: cross-references to Part one: Tables (or any Table), Part two: Extra Protections, and/or Part three: Commercial Clauses can be changed where the Parties have set out the information in a different format, so that the cross-reference is to the correct location of the same information, or where clauses have been removed as they do not apply, as set out below;
      2. to remove those Sections which are expressly stated not to apply to the selections made by the Parties in Table 2: Transfer Details, that the Parties are Controllers, Processors or Sub-Processors and/or that the Importer is subject to, or not subject to, the UK GDPR. The Exporter and Importer understand and acknowledge that any removed Sections may still apply and form a part of this IDTA if they have been removed incorrectly, including because the wrong selection is made in Table 2: Transfer Details;
      3. so the IDTA operates as a multi-party agreement if there are more than two Parties to the IDTA. This may include nominating a lead Party or lead Parties which can make decisions on behalf of some or all of the other Parties which relate to this IDTA (including reviewing Table 4: Security Requirements and Part two: Extra Protection Clauses, and making updates to Part one: Tables (or any Table), Part two: Extra Protection Clauses, and/or Part three: Commercial Clauses); and/or
      4. to update the IDTA to set out in writing any changes made to the Approved IDTA under Section 5.4, if the Parties want to. The changes will apply automatically without updating them as described in Section 5.4;

provided that the changes do not reduce the Appropriate Safeguards.

* 1. If the Parties wish to change the format of the information included in Part one: Tables, Part two: Extra Protection Clauses or Part three: Commercial Clauses of the Approved IDTA, they may do so by agreeing to the change in writing, provided that the change does not reduce the Appropriate Safeguards.
  2. If the Parties wish to change the information included in Part one: Tables, Part two: Extra Protection Clauses or Part three: Commercial Clauses of this IDTA (or the equivalent information), they may do so by agreeing to the change in writing, provided that the change does not reduce the Appropriate Safeguards.
  3. From time to time, the ICO may publish a revised Approved IDTA which:
     1. makes reasonable and proportionate changes to the Approved IDTA, including correcting errors in the Approved IDTA; and/or
     2. reflects changes to UK Data Protection Laws.

The revised Approved IDTA will specify the start date from which the changes to the Approved IDTA are effective and whether an additional Review Date is required as a result of the changes. This IDTA is automatically amended as set out in the revised Approved IDTA from the start date specified.

1. Understanding this IDTA
   1. This IDTA must always be interpreted in a manner that is consistent with UK Data Protection Laws and so that it fulfils the Parties’ obligation to provide the Appropriate Safeguards.
   2. If there is any inconsistency or conflict between UK Data Protection Laws and this IDTA, the UK Data Protection Laws apply.
   3. If the meaning of the IDTA is unclear or there is more than one meaning, the meaning which most closely aligns with the UK Data Protection Laws applies.
   4. Nothing in the IDTA (including the Commercial Clauses or the Linked Agreement) limits or excludes either Party’s liability to Relevant Data Subjects or to the ICO under this IDTA or under UK Data Protection Laws.
   5. If any wording in Parts one, two or three contradicts the Mandatory Clauses, and/or seeks to limit or exclude any liability to Relevant Data Subjects or to the ICO, then that wording will not apply.
   6. The Parties may include provisions in the Linked Agreement which provide the Parties with enhanced rights otherwise covered by this IDTA. These enhanced rights may be subject to commercial terms, including payment, under the Linked Agreement, but this will not affect the rights granted under this IDTA.
   7. If there is any inconsistency or conflict between this IDTA and a Linked Agreement or any other agreement, this IDTA overrides that Linked Agreement or any other agreements, even if those agreements have been negotiated by the Parties. The exceptions to this are where (and in so far as):
      1. the inconsistent or conflicting terms of the Linked Agreement or other agreement provide greater protection for the Relevant Data Subject’s rights, in which case those terms will override the IDTA; and
      2. a Party acts as Processor and the inconsistent or conflicting terms of the Linked Agreement are obligations on that Party expressly required by Article 28 UK GDPR, in which case those terms will override the inconsistent or conflicting terms of the IDTA in relation to Processing by that Party as Processor.
   8. The words “include”, “includes”, “including”, “in particular” are used to set out examples and not to set out a finite list.
   9. References to:
      1. singular or plural words or people, also includes the plural or singular of those words or people;
      2. legislation (or specific provisions of legislation) means that legislation (or specific provision) as it may change over time. This includes where that legislation (or specific provision) has been consolidated, re-enacted and/or replaced after this IDTA has been signed; and
      3. any obligation not to do something, includes an obligation not to allow or cause that thing to be done by anyone else.
2. Which laws apply to this IDTA
   1. This IDTA is governed by the laws of the UK country set out in Table 2: Transfer Details. If no selection has been made, it is the laws of England and Wales. This does not apply to Section 35 which is always governed by the laws of England and Wales.

### How this IDTA provides Appropriate Safeguards

1. The Appropriate Safeguards
   1. The purpose of this IDTA is to ensure that the Transferred Data has Appropriate Safeguards when Processed by the Importer during the Term. This standard is met when and for so long as:
      1. both Parties comply with the IDTA, including the Security Requirements and any Extra Protection Clauses; and
      2. the Security Requirements and any Extra Protection Clauses provide a level of security which is appropriate to the risk of a Personal Data Breach occurring and the impact on Relevant Data Subjects of such a Personal Data Breach, including considering any Special Category Data within the Transferred Data.
   2. The Exporter must:
      1. ensure and demonstrate that this IDTA (including any Security Requirements and Extra Protection Clauses) provides Appropriate Safeguards; and
      2. (if the Importer reasonably requests) provide it with a copy of any TRA.
   3. The Importer must:
      1. before receiving any Transferred Data, provide the Exporter with all relevant information regarding Local Laws and practices and the protections and risks which apply to the Transferred Data when it is Processed by the Importer, including any information which may reasonably be required for the Exporter to carry out any TRA (the “Importer Information”);
      2. co-operate with the Exporter to ensure compliance with the Exporter’s obligations under the UK Data Protection Laws;
      3. review whether any Importer Information has changed, and whether any Local Laws contradict its obligations in this IDTA and take reasonable steps to verify this, on a regular basis. These reviews must be at least as frequent as the Review Dates; and
      4. inform the Exporter as soon as it becomes aware of any Importer Information changing, and/or any Local Laws which may prevent or limit the Importer complying with its obligations in this IDTA. This information then forms part of the Importer Information.
   4. The Importer must ensure that at the Start Date and during the Term:
      1. the Importer Information is accurate;
      2. it has taken reasonable steps to verify whether there are any Local Laws which contradict its obligations in this IDTA or any additional information regarding Local Laws which may be relevant to this IDTA.
   5. Each Party must ensure that the Security Requirements and Extra Protection Clauses provide a level of security which is appropriate to the risk of a Personal Data Breach occurring and the impact on Relevant Data Subjects of such a Personal Data Breach.
2. Reviews to ensure the Appropriate Safeguards continue
   1. Each Party must:
      1. review this IDTA (including the Security Requirements and Extra Protection Clauses and the Importer Information) at regular intervals, to ensure that the IDTA remains accurate and up to date and continues to provide the Appropriate Safeguards. Each Party will carry out these reviews as frequently as the relevant Review Dates or sooner; and
      2. inform the other party in writing as soon as it becomes aware if any information contained in either this IDTA, any TRA or Importer Information is no longer accurate and up to date.
   2. If, at any time, the IDTA no longer provides Appropriate Safeguards the Parties must Without Undue Delay:
      1. pause transfers and Processing of Transferred Data whilst a change to the Tables is agreed. The Importer may retain a copy of the Transferred Data during this pause, in which case the Importer must carry out any Processing required to maintain, so far as possible, the measures it was taking to achieve the Appropriate Safeguards prior to the time the IDTA no longer provided Appropriate Safeguards, but no other Processing;
      2. agree a change to Part one: Tables or Part two: Extra Protection Clauses which will maintain the Appropriate Safeguards (in accordance with Section 5); and
      3. where a change to Part one: Tables or Part two: Extra Protection Clauses which maintains the Appropriate Safeguards cannot be agreed, the Exporter must end this IDTA by written notice on the Importer.
3. The ICO
   1. Each Party agrees to comply with any reasonable requests made by the ICO in relation to this IDTA or its Processing of the Transferred Data.
   2. The Exporter will provide a copy of any TRA, the Importer Information and this IDTA to the ICO, if the ICO requests.
   3. The Importer will provide a copy of any Importer Information and this IDTA to the ICO, if the ICO requests.

### The Exporter

1. Exporter’s obligations
   1. The Exporter agrees that UK Data Protection Laws apply to its Processing of the Transferred Data, including transferring it to the Importer.
   2. The Exporter must:
      1. comply with the UK Data Protection Laws in transferring the Transferred Data to the Importer;
      2. comply with the Linked Agreement as it relates to its transferring the Transferred Data to the Importer; and
      3. carry out reasonable checks on the Importer’s ability to comply with this IDTA, and take appropriate action including under Section 9.2, Section 29 or Section 30, if at any time it no longer considers that the Importer is able to comply with this IDTA or to provide Appropriate Safeguards.
   3. The Exporter must comply with all its obligations in the IDTA, including any in the Security Requirements, and any Extra Protection Clauses and any Commercial Clauses.
   4. The Exporter must co-operate with reasonable requests of the Importer to pass on notices or other information to and from Relevant Data Subjects or any Third Party Controller where it is not reasonably practical for the Importer to do so. The Exporter may pass these on via a third party if it is reasonable to do so.
   5. The Exporter must co-operate with and provide reasonable assistance to the Importer, so that the Importer is able to comply with its obligations to the Relevant Data Subjects under Local Law and this IDTA.

### The Importer

1. General Importer obligations
   1. The Importer must:
      1. only Process the Transferred Data for the Purpose;
      2. comply with all its obligations in the IDTA, including in the Security Requirements, any Extra Protection Clauses and any Commercial Clauses;
      3. comply with all its obligations in the Linked Agreement which relate to its Processing of the Transferred Data;
      4. keep a written record of its Processing of the Transferred Data, which demonstrate its compliance with this IDTA, and provide this written record if asked to do so by the Exporter;
      5. if the Linked Agreement includes rights for the Exporter to obtain information or carry out an audit, provide the Exporter with the same rights in relation to this IDTA; and
      6. if the ICO requests, provide the ICO with the information it would be required on request to provide to the Exporter under this Section 12.1 (including the written record of its Processing, and the results of audits and inspections).
   2. The Importer must co-operate with and provide reasonable assistance to the Exporter and any Third Party Controller, so that the Exporter and any Third Party Controller are able to comply with their obligations under UK Data Protection Laws and this IDTA.
2. Importer’s obligations if it is subject to the UK Data Protection Laws
   1. If the Importer’s Processing of the Transferred Data is subject to UK Data Protection Laws, it agrees that:
      1. UK Data Protection Laws apply to its Processing of the Transferred Data, and the ICO has jurisdiction over it in that respect; and
      2. it has and will comply with the UK Data Protection Laws in relation to the Processing of the Transferred Data.
   2. If Section 13.1 applies and the Importer complies with Section 13.1, it does not need to comply with:

* Section 14 (Importer’s obligations to comply with key data protection principles);
* Section 15 (What happens if there is an Importer Personal Data Breach);
* Section 15 (How Relevant Data Subjects can exercise their data subject rights); and
* Section 21 (How Relevant Data Subjects can exercise their data subject rights – if the Importer is the Exporter’s Processor or Sub-Processor).

1. Importer’s obligations to comply with key data protection principles
   1. The Importer does not need to comply with this Section 14 if it is the Exporter’s Processor or Sub-Processor.
   2. The Importer must:
      1. ensure that the Transferred Data it Processes is adequate, relevant and limited to what is necessary for the Purpose;
      2. ensure that the Transferred Data it Processes is accurate and (where necessary) kept up to date, and (where appropriate considering the Purposes) correct or delete any inaccurate Transferred Data it becomes aware of Without Undue Delay; and
      3. ensure that it Processes the Transferred Data for no longer than is reasonably necessary for the Purpose.
2. What happens if there is an Importer Personal Data Breach
   1. If there is an Importer Personal Data Breach, the Importer must:
      1. take reasonable steps to fix it, including to minimise the harmful effects on Relevant Data Subjects, stop it from continuing, and prevent it happening again. If the Importer is the Exporter’s Processor or Sub-Processor: these steps must comply with the Exporter’s instructions and the Linked Agreement and be in co-operation with the Exporter and any Third Party Controller; and
      2. ensure that the Security Requirements continue to provide (or are changed in accordance with this IDTA so they do provide) a level of security which is appropriate to the risk of a Personal Data Breach occurring and the impact on Relevant Data Subjects of such a Personal Data Breach.
   2. If the Importer is a Processor or Sub-Processor: if there is an Importer Personal Data Breach, the Importer must:
      1. notify the Exporter Without Undue Delay after becoming aware of the breach, providing the following information:
         1. a description of the nature of the Importer Personal Data Breach;
         2. (if and when possible) the categories and approximate number of Data Subjects and Transferred Data records concerned;
         3. likely consequences of the Importer Personal Data Breach;
         4. steps taken (or proposed to be taken) to fix the Importer Personal Data Breach (including to minimise the harmful effects on Relevant Data Subjects, stop it from continuing, and prevent it happening again) and to ensure that Appropriate Safeguards are in place;
         5. contact point for more information; and
         6. any other information reasonably requested by the Exporter,
      2. if it is not possible for the Importer to provide all the above information at the same time, it may do so in phases, Without Undue Delay; and
      3. assist the Exporter (and any Third Party Controller) so the Exporter (or any Third Party Controller) can inform Relevant Data Subjects or the ICO or any other relevant regulator or authority about the Importer Personal Data Breach Without Undue Delay.
   3. If the Importer is a Controller: if the Importer Personal Data Breach is likely to result in a risk to the rights or freedoms of any Relevant Data Subject the Importer must notify the Exporter Without Undue Delay after becoming aware of the breach, providing the following information:
      1. a description of the nature of the Importer Personal Data Breach;
      2. (if and when possible) the categories and approximate number of Data Subjects and Transferred Data records concerned;
      3. likely consequences of the Importer Personal Data Breach;
      4. steps taken (or proposed to be taken) to fix the Importer Personal Data Breach (including to minimise the harmful effects on Relevant Data Subjects, stop it from continuing, and prevent it happening again) and to ensure that Appropriate Safeguards are in place;
      5. contact point for more information; and
      6. any other information reasonably requested by the Exporter.

If it is not possible for the Importer to provide all the above information at the same time, it may do so in phases, Without Undue Delay.

* 1. If the Importer is a Controller: if the Importer Personal Data Breach is likely to result in a high risk to the rights or freedoms of any Relevant Data Subject, the Importer must inform those Relevant Data Subjects Without Undue Delay, except in so far as it requires disproportionate effort, and provided the Importer ensures that there is a public communication or similar measures whereby Relevant Data Subjects are informed in an equally effective manner.
  2. The Importer must keep a written record of all relevant facts relating to the Importer Personal Data Breach, which it will provide to the Exporter and the ICO on request.

This record must include the steps it takes to fix the Importer Personal Data Breach (including to minimise the harmful effects on Relevant Data Subjects, stop it from continuing, and prevent it happening again) and to ensure that Security Requirements continue to provide a level of security which is appropriate to the risk of a Personal Data Breach occurring and the impact on Relevant Data Subjects of such a Personal Data Breach.

1. Transferring on the Transferred Data
   1. The Importer may only transfer on the Transferred Data to a third party if it is permitted to do so in Table 2: Transfer Details Table, the transfer is for the Purpose, the transfer does not breach the Linked Agreement, and one or more of the following apply:
      1. the third party has entered into a written contract with the Importer containing the same level of protection for Data Subjects as contained in this IDTA (based on the role of the recipient as controller or processor), and the Importer has conducted a risk assessment to ensure that the Appropriate Safeguards will be protected by that contract; or
      2. the third party has been added to this IDTA as a Party; or
      3. if the Importer was in the UK, transferring on the Transferred Data would comply with Article 46 UK GDPR; or
      4. if the Importer was in the UK transferring on the Transferred Data would comply with one of the exceptions in Article 49 UK GDPR; or
      5. the transfer is to the UK or an Adequate Country.
   2. The Importer does not need to comply with Section 16.1 if it is transferring on Transferred Data and/or allowing access to the Transferred Data in accordance with Section 23 (Access Requests and Direct Access).
2. Importer’s responsibility if it authorises others to perform its obligations
   1. The Importer may sub-contract its obligations in this IDTA to a Processor or Sub-Processor (provided it complies with Section 16).
   2. If the Importer is the Exporter’s Processor or Sub-Processor: it must also comply with the Linked Agreement or be with the written consent of the Exporter.
   3. The Importer must ensure that any person or third party acting under its authority, including a Processor or Sub-Processor, must only Process the Transferred Data on its instructions.
   4. The Importer remains fully liable to the Exporter, the ICO and Relevant Data Subjects for its obligations under this IDTA where it has sub-contracted any obligations to its Processors and Sub-Processors, or authorised an employee or other person to perform them (and references to the Importer in this context will include references to its Processors, Sub-Processors or authorised persons).

### What rights do individuals have?

1. The right to a copy of the IDTA
   1. If a Party receives a request from a Relevant Data Subject for a copy of this IDTA:
      1. it will provide the IDTA to the Relevant Data Subject and inform the other Party, as soon as reasonably possible;
      2. it does not need to provide copies of the Linked Agreement, but it must provide all the information from those Linked Agreements referenced in the Tables;
      3. it may redact information in the Tables or the information provided from the Linked Agreement if it is reasonably necessary to protect business secrets or confidential information, so long as it provides the Relevant Data Subject with a summary of those redactions so that the Relevant Data Subject can understand the content of the Tables or the information provided from the Linked Agreement.
2. The right to Information about the Importer and its Processing
   1. The Importer does not need to comply with this Section 19 if it is the Exporter’s Processor or Sub-Processor.
   2. The Importer must ensure that each Relevant Data Subject is provided with details of:

* the Importer (including contact details and the Importer Data Subject Contact);
* the Purposes; and
* any recipients (or categories of recipients) of the Transferred Data;

The Importer can demonstrate it has complied with this Section 19.2 if the information is given (or has already been given) to the Relevant Data Subjects by the Exporter or another party.

The Importer does not need to comply with this Section 19.2 in so far as to do so would be impossible or involve a disproportionate effort, in which case, the Importer must make the information publicly available.

* 1. The Importer must keep the details of the Importer Data Subject Contact up to date and publicly available. This includes notifying the Exporter in writing of any such changes.
  2. The Importer must make sure those contact details are always easy to access for all Relevant Data Subjects and be able to easily communicate with Data Subjects in the English language Without Undue Delay.

1. How Relevant Data Subjects can exercise their data subject rights
   1. The Importer does not need to comply with this Section 20 if it is the Exporter’s Processor or Sub-Processor.
   2. If an individual requests, the Importer must confirm whether it is Processing their Personal Data as part of the Transferred Data.
   3. The following Sections of this Section 20, relate to a Relevant Data Subject’s Personal Data which forms part of the Transferred Data the Importer is Processing.
   4. If the Relevant Data Subject requests, the Importer must provide them with a copy of their Transferred Data:
      1. Without Undue Delay (and in any event within one month);
      2. at no greater cost to the Relevant Data Subject than it would be able to charge if it were subject to the UK Data Protection Laws;
      3. in clear and plain English that is easy to understand; and
      4. in an easily accessible form

together with

* + 1. (if needed) a clear and plain English explanation of the Transferred Data so that it is understandable to the Relevant Data Subject; and
    2. information that the Relevant Data Subject has the right to bring a claim for compensation under this IDTA.
  1. If a Relevant Data Subject requests, the Importer must:
     1. rectify inaccurate or incomplete Transferred Data;
     2. erase Transferred Data if it is being Processed in breach of this IDTA;
     3. cease using it for direct marketing purposes; and
     4. comply with any other reasonable request of the Relevant Data Subject, which the Importer would be required to comply with if it were subject to the UK Data Protection Laws.
  2. The Importer must not use the Transferred Data to make decisions about the Relevant Data Subject based solely on automated processing, including profiling (the “Decision-Making”), which produce legal effects concerning the Relevant Data Subject or similarly significantly affects them, except if it is permitted by Local Law and:
     1. the Relevant Data Subject has given their explicit consent to such Decision-Making; or
     2. Local Law has safeguards which provide sufficiently similar protection for the Relevant Data Subjects in relation to such Decision-Making, as to the relevant protection the Relevant Data Subject would have if such Decision-Making was in the UK; or
     3. the Extra Protection Clauses provide safeguards for the Decision-Making which provide sufficiently similar protection for the Relevant Data Subjects in relation to such Decision-Making, as to the relevant protection the Relevant Data Subject would have if such Decision-Making was in the UK.

1. How Relevant Data Subjects can exercise their data subject rights– if the Importer is the Exporter’s Processor or Sub-Processor
   1. Where the Importer is the Exporter’s Processor or Sub-Processor: If the Importer receives a request directly from an individual which relates to the Transferred Data it must pass that request on to the Exporter Without Undue Delay. The Importer must only respond to that individual as authorised by the Exporter or any Third Party Controller.
2. Rights of Relevant Data Subjects are subject to the exemptions in the UK Data Protection Laws
   1. The Importer is not required to respond to requests or provide information or notifications under Sections 18, 19, 20, 21 and 23 if:
      1. it is unable to reasonably verify the identity of an individual making the request; or
      2. the requests are manifestly unfounded or excessive, including where requests are repetitive. In that case the Importer may refuse the request or may charge the Relevant Data Subject a reasonable fee; or
      3. a relevant exemption would be available under UK Data Protection Laws, were the Importer subject to the UK Data Protection Laws.

If the Importer refuses an individual’s request or charges a fee under Section 22.1.2 it will set out in writing the reasons for its refusal or charge, and inform the Relevant Data Subject that they are entitled to bring a claim for compensation under this IDTA in the case of any breach of this IDTA.

### How to give third parties access to Transferred Data under Local Laws

1. Access requests and direct access
   1. In this Section ‎23 an “Access Request” is a legally binding request (except for requests only binding by contract law) to access any Transferred Data and “Direct Access” means direct access to any Transferred Data by public authorities of which the Importer is aware.
   2. The Importer may disclose any requested Transferred Data in so far as it receives an Access Request, unless in the circumstances it is reasonable for it to challenge that Access Request on the basis there are significant grounds to believe that it is unlawful.
   3. In so far as Local Laws allow and it is reasonable to do so, the Importer will Without Undue Delay provide the following with relevant information about any Access Request or Direct Access: the Exporter; any Third Party Controller; and where the Importer is a Controller, any Relevant Data Subjects.
   4. In so far as Local Laws allow, the Importer must:
      1. make and keep a written record of Access Requests and Direct Access, including (if known): the dates, the identity of the requestor/accessor, the purpose of the Access Request or Direct Access, the type of data requested or accessed, whether it was challenged or appealed, and the outcome; and the Transferred Data which was provided or accessed; and
      2. provide a copy of this written record to the Exporter on each Review Date and any time the Exporter or the ICO reasonably requests.
2. Giving notice
   1. If a Party is required to notify any other Party in this IDTA it will be marked for the attention of the relevant Key Contact and sent by e-mail to the e-mail address given for the Key Contact.
   2. If the notice is sent in accordance with Section 24.1, it will be deemed to have been delivered at the time the e-mail was sent, or if that time is outside of the receiving Party’s normal business hours, the receiving Party’s next normal business day, and provided no notice of non-delivery or bounceback is received.
   3. The Parties agree that any Party can update their Key Contact details by giving 14 days’ (or more) notice in writing to the other Party.
3. General clauses
   1. In relation to the transfer of the Transferred Data to the Importer and the Importer’s Processing of the Transferred Data, this IDTA and any Linked Agreement:
      1. contain all the terms and conditions agreed by the Parties; and
      2. override all previous contacts and arrangements, whether oral or in writing.
   2. If one Party made any oral or written statements to the other before entering into this IDTA (which are not written in this IDTA) the other Party confirms that it has not relied on those statements and that it will not have a legal remedy if those statements are untrue or incorrect, unless the statement was made fraudulently.
   3. Neither Party may novate, assign or obtain a legal charge over this IDTA (in whole or in part) without the written consent of the other Party, which may be set out in the Linked Agreement.
   4. Except as set out in Section 17.1, neither Party may sub contract its obligations under this IDTA without the written consent of the other Party, which may be set out in the Linked Agreement.
   5. This IDTA does not make the Parties a partnership, nor appoint one Party to act as the agent of the other Party.
   6. If any Section (or part of a Section) of this IDTA is or becomes illegal, invalid or unenforceable, that will not affect the legality, validity and enforceability of any other Section (or the rest of that Section) of this IDTA.
   7. If a Party does not enforce, or delays enforcing, its rights or remedies under or in relation to this IDTA, this will not be a waiver of those rights or remedies. In addition, it will not restrict that Party’s ability to enforce those or any other right or remedy in future.
   8. If a Party chooses to waive enforcing a right or remedy under or in relation to this IDTA, then this waiver will only be effective if it is made in writing. Where a Party provides such a written waiver:
      1. it only applies in so far as it explicitly waives specific rights or remedies;
      2. it shall not prevent that Party from exercising those rights or remedies in the future (unless it has explicitly waived its ability to do so); and
      3. it will not prevent that Party from enforcing any other right or remedy in future.

### What happens if there is a breach of this IDTA?

1. Breaches of this IDTA
   1. Each Party must notify the other Party in writing (and with all relevant details) if it:
      1. has breached this IDTA; or
      2. it should reasonably anticipate that it may breach this IDTA, and provide any information about this which the other Party reasonably requests.
   2. In this IDTA “Significant Harmful Impact” means that there is more than a minimal risk of a breach of the IDTA causing (directly or indirectly) significant damage to any Relevant Data Subject or the other Party.
2. Breaches of this IDTA by the Importer
   1. If the Importer has breached this IDTA, and this has a Significant Harmful Impact, the Importer must take steps Without Undue Delay to end the Significant Harmful Impact, and if that is not possible to reduce the Significant Harmful Impact as much as possible.
   2. Until there is no ongoing Significant Harmful Impact on Relevant Data Subjects:
      1. the Exporter must suspend sending Transferred Data to the Importer;
      2. If the Importer is the Exporter’s Processor or Sub-Processor: if the Exporter requests, the importer must securely delete all Transferred Data or securely return it to the Exporter (or a third party named by the Exporter); and
      3. if the Importer has transferred on the Transferred Data to a third party receiver under Section 16, and the breach has a Significant Harmful Impact on Relevant Data Subject when it is Processed by or on behalf of that third party receiver, the Importer must:
         1. notify the third party receiver of the breach and suspend sending it Transferred Data; and
         2. if the third party receiver is the Importer’s Processor or Sub-Processor: make the third party receiver securely delete all Transferred Data being Processed by it or on its behalf, or securely return it to the Importer (or a third party named by the Importer).
   3. If the breach cannot be corrected Without Undue Delay, so there is no ongoing Significant Harmful Impact on Relevant Data Subjects, the Exporter must end this IDTA under Section 30.1.
3. Breaches of this IDTA by the Exporter
   1. If the Exporter has breached this IDTA, and this has a Significant Harmful Impact, the Exporter must take steps Without Undue Delay to end the Significant Harmful Impact and if that is not possible to reduce the Significant Harmful Impact as much as possible.
   2. Until there is no ongoing risk of a Significant Harmful Impact on Relevant Data Subjects, the Exporter must suspend sending Transferred Data to the Importer.
   3. If the breach cannot be corrected Without Undue Delay, so there is no ongoing Significant Harmful Impact on Relevant Data Subjects, the Importer must end this IDTA under Section 30.1.

### Ending the IDTA

1. How to end this IDTA without there being a breach
   1. The IDTA will end:
      1. at the end of the Term stated in Table 2: Transfer Details; or
      2. if in Table 2: Transfer Details, the Parties can end this IDTA by providing written notice to the other: at the end of the notice period stated;
      3. at any time that the Parties agree in writing that it will end; or
      4. at the time set out in Section 29.2.
   2. If the ICO issues a revised Approved IDTA under Section 5.4, if any Party selected in Table 2 “Ending the IDTA when the Approved IDTA changes”, will as a direct result of the changes in the Approved IDTA have a substantial, disproportionate and demonstrable increase in:
      1. its direct costs of performing its obligations under the IDTA; and/or
      2. its risk under the IDTA,

and in either case it has first taken reasonable steps to reduce that cost or risk so that it is not substantial and disproportionate, that Party may end the IDTA at the end of a reasonable notice period, by providing written notice for that period to the other Party before the start date of the revised Approved IDTA.

1. How to end this IDTA if there is a breach
   1. A Party may end this IDTA immediately by giving the other Party written notice if:
      1. the other Party has breached this IDTA and this has a Significant Harmful Impact. This includes repeated minor breaches which taken together have a Significant Harmful Impact, and
         1. the breach can be corrected so there is no Significant Harmful Impact, and the other Party has failed to do so Without Undue Delay (which cannot be more than 14 days of being required to do so in writing); or
         2. the breach and its Significant Harmful Impact cannot be corrected;
      2. the Importer can no longer comply with Section 8.3, as there are Local Laws which mean it cannot comply with this IDTA and this has a Significant Harmful Impact.
2. What must the Parties do when the IDTA ends?
   1. If the parties wish to bring this IDTA to an end or this IDTA ends in accordance with any provision in this IDTA, but the Importer must comply with a Local Law which requires it to continue to keep any Transferred Data then this IDTA will remain in force in respect of any retained Transferred Data for as long as the retained Transferred Data is retained, and the Importer must:
      1. notify the Exporter Without Undue Delay, including details of the relevant Local Law and the required retention period;
      2. retain only the minimum amount of Transferred Data it needs to comply with that Local Law, and the Parties must ensure they maintain the Appropriate Safeguards, and change the Tables and Extra Protection Clauses, together with any TRA to reflect this; and
      3. stop Processing the Transferred Data as soon as permitted by that Local Law and the IDTA will then end and the rest of this Section 29 will apply.
   2. When this IDTA ends (no matter what the reason is):
      1. the Exporter must stop sending Transferred Data to the Importer; and
      2. if the Importer is the Exporter’s Processor or Sub-Processor: the Importer must delete all Transferred Data or securely return it to the Exporter (or a third party named by the Exporter), as instructed by the Exporter;
      3. if the Importer is a Controller and/or not the Exporter’s Processor or Sub-Processor: the Importer must securely delete all Transferred Data.
      4. the following provisions will continue in force after this IDTA ends (no matter what the reason is):

* **Section 1** (This IDTA and Linked Agreements);
* **Section 2** (Legal Meaning of Words);
* **Section 6** (Understanding this IDTA);
* **Section 7** (Which laws apply to this IDTA);
* **Section 10** (The ICO);
* Sections 11.1 and 11.4 (Exporter’s obligations);
* Sections 12.1.2, 12.1.3, 12.1.4, 12.1.5 and 12.1.6 (General Importer obligations);
* Section 13.1 (Importer’s obligations if it is subject to UK Data Protection Laws);
* **Section 17** (Importer’s responsibility if it authorised others to perform its obligations);
* **Section 24** (Giving notice);
* **Section 25** (General clauses);
* **Section 31** (What must the Parties do when the IDTA ends);
* **Section 32** (Your liability);
* **Section 33** (How Relevant Data Subjects and the ICO may bring legal claims);
* **Section 34** (Courts legal claims can be brought in);
* **Section 35** (Arbitration); and
* **Section 36** (Legal Glossary).

### How to bring a legal claim under this IDTA

1. Your liability
   1. The Parties remain fully liable to Relevant Data Subjects for fulfilling their obligations under this IDTA and (if they apply) under UK Data Protection Laws.
   2. Each Party (in this Section, “Party One”) agrees to be fully liable to Relevant Data Subjects for the entire damage suffered by the Relevant Data Subject, caused directly or indirectly by:
      1. Party One’s breach of this IDTA; and/or
      2. where Party One is a Processor, Party One’s breach of any provisions regarding its Processing of the Transferred Data in the Linked Agreement;
      3. where Party One is a Controller, a breach of this IDTA by the other Party if it involves Party One’s Processing of the Transferred Data (no matter how minimal)

in each case unless Party One can prove it is not in any way responsible for the event giving rise to the damage.

* 1. If one Party has paid compensation to a Relevant Data Subject under Section 32.2, it is entitled to claim back from the other Party that part of the compensation corresponding to the other Party’s responsibility for the damage, so that the compensation is fairly divided between the Parties.
  2. The Parties do not exclude or restrict their liability under this IDTA or UK Data Protection Laws, on the basis that they have authorised anyone who is not a Party (including a Processor) to perform any of their obligations, and they will remain responsible for performing those obligations.

1. How Relevant Data Subjects and the ICO may bring legal claims
   1. The Relevant Data Subjects are entitled to bring claims against the Exporter and/or Importer for breach of the following (including where their Processing of the Transferred Data is involved in a breach of the following by either Party):

* **Section 1** (This IDTA and Linked Agreements);
* **Section 3** (You have provided all the information required by Part one: Tables and Part two: Extra Protection Clauses);
* **Section 8** (The Appropriate Safeguards);
* **Section 9** (Reviews to ensure the Appropriate Safeguards continue);
* **Section 11** (Exporter’s obligations);
* **Section 12** (General Importer Obligations);
* **Section 13** (Importer’s obligations if it is subject to UK Data Protection Laws);
* **Section 14** (Importer’s obligations to comply with key data protection laws);
* **Section 15** (What happens if there is an Importer Personal Data Breach);
* **Section 16** (Transferring on the Transferred Data);
* **Section 17** (Importer’s responsibility if it authorises others to perform its obligations);
* **Section 18** (The right to a copy of the IDTA);
* **Section 19** (The Importer’s contact details for the Relevant Data Subjects);
* **Section 20** (How Relevant Data Subjects can exercise their data subject rights);
* **Section 21** (How Relevant Data Subjects can exercise their data subject rights– if the Importer is the Exporter’s Processor or Sub-Processor);
* **Section 23** (Access Requests and Direct Access);
* **Section 26** (Breaches of this IDTA);
* **Section 27** (Breaches of this IDTA by the Importer);
* **Section 28** (Breaches of this IDTA by the Exporter);
* **Section 30** (How to end this IDTA if there is a breach);
* **Section 31** (What must the Parties do when the IDTA ends); and
* any other provision of the IDTA which expressly or by implication benefits the Relevant Data Subjects.
  1. The ICO is entitled to bring claims against the Exporter and/or Importer for breach of the following Sections: Section 10 (The ICO), Sections 11.1 and 11.2 (Exporter’s obligations), Section 12.1.6 (General Importer obligations) and Section 13 (Importer’s obligations if it is subject to UK Data Protection Laws).
  2. No one else (who is not a Party) can enforce any part of this IDTA (including under the Contracts (Rights of Third Parties) Act 1999).
  3. The Parties do not need the consent of any Relevant Data Subject or the ICO to make changes to this IDTA, but any changes must be made in accordance with its terms.
  4. In bringing a claim under this IDTA, a Relevant Data Subject may be represented by a not-for-profit body, organisation or association under the same conditions set out in Article 80(1) UK GDPR and sections 187 to 190 of the Data Protection Act 2018.

1. Courts legal claims can be brought in
   1. The courts of the UK country set out in Table 2: Transfer Details have non-exclusive jurisdiction over any claim in connection with this IDTA (including non-contractual claims).
   2. The Exporter may bring a claim against the Importer in connection with this IDTA (including non-contractual claims) in any court in any country with jurisdiction to hear the claim.
   3. The Importer may only bring a claim against the Exporter in connection with this IDTA (including non-contractual claims) in the courts of the UK country set out in the Table 2: Transfer Details
   4. Relevant Data Subjects and the ICO may bring a claim against the Exporter and/or the Importer in connection with this IDTA (including non-contractual claims) in any court in any country with jurisdiction to hear the claim.
   5. Each Party agrees to provide to the other Party reasonable updates about any claims or complaints brought against it by a Relevant Data Subject or the ICO in connection with the Transferred Data (including claims in arbitration).
2. Arbitration
   1. Instead of bringing a claim in a court under Section 34, any Party, or a Relevant Data Subject may elect to refer any dispute arising out of or in connection with this IDTA (including non-contractual claims) to final resolution by arbitration under the Rules of the London Court of International Arbitration, and those Rules are deemed to be incorporated by reference into this Section ‎35.
   2. The Parties agree to submit to any arbitration started by another Party or by a Relevant Data Subject in accordance with this Section ‎‎35.
   3. There must be only one arbitrator. The arbitrator (1) must be a lawyer qualified to practice law in one or more of England and Wales, or Scotland, or Northern Ireland and (2) must have experience of acting or advising on disputes relating to UK Data Protection Laws.
   4. London shall be the seat or legal place of arbitration. It does not matter if the Parties selected a different UK country as the ‘primary place for legal claims to be made’ in Table 2: Transfer Details.
   5. The English language must be used in the arbitral proceedings.
   6. English law governs this Section ‎‎35. This applies regardless of whether or not the parties selected a different UK country’s law as the ‘UK country’s law that governs the IDTA’ in Table 2: Transfer Details.
3. Legal Glossary

| **Word or Phrase** | **Legal definition (this is how this word or phrase must be interpreted in the IDTA)** |
| --- | --- |
| Access Request | As defined in Section 23, as a legally binding request (except for requests only binding by contract law) to access any Transferred Data. |
| Adequate Country | A third country, or:   * a territory; * one or more sectors or organisations within a third country; * an international organisation;   which the Secretary of State has specified by regulations provides an adequate level of protection of Personal Data in accordance with Section 17A of the Data Protection Act 2018. |
| Appropriate Safeguards | The standard of protection over the Transferred Data and of the Relevant Data Subject’s rights, which is required by UK Data Protection Laws when you are making a Restricted Transfer relying on standard data protection clauses under Article 46(2)(d) UK GDPR. |
| Approved IDTA | The template IDTA A1.0 issued by the ICO and laid before Parliament in accordance with s119A of the Data Protection Act 2018 on 2 February 2022, as it is revised under Section 5.4. |
| Commercial Clauses | The commercial clauses set out in Part three. |
| Controller | As defined in the UK GDPR. |
| Damage | All material and non-material loss and damage. |
| Data Subject | As defined in the UK GDPR. |
| Decision-Making | As defined in Section 20.6, as decisions about the Relevant Data Subjects based solely on automated processing, including profiling, using the Transferred Data. |
| Direct Access | As defined in Section 23 as direct access to any Transferred Data by public authorities of which the Importer is aware. |
| Exporter | The exporter identified in Table 1: Parties & Signature. |
| Extra Protection Clauses | The clauses set out in Part two: Extra Protection Clauses. |
| ICO | The Information Commissioner. |
| Importer | The importer identified in Table 1: Parties & Signature. |
| Importer Data Subject Contact | The Importer Data Subject Contact identified in Table 1: Parties & Signature, which may be updated in accordance with Section 19. |
| Importer Information | As defined in Section 8.3.1, as all relevant information regarding Local Laws and practices and the protections and risks which apply to the Transferred Data when it is Processed by the Importer, including for the Exporter to carry out any TRA. |
| Importer Personal Data Breach | A ‘personal data breach’ as defined in UK GDPR, in relation to the Transferred Data when Processed by the Importer. |
| Linked Agreement | The linked agreements set out in Table 2: Transfer Details (if any). |
| Local Laws | Laws which are not the laws of the UK and which bind the Importer. |
| Mandatory Clauses | Part four: Mandatory Clauses of this IDTA. |
| Notice Period | As set out in Table 2: Transfer Details. |
| Party/Parties | The parties to this IDTA as set out in Table 1: Parties & Signature. |
| Personal Data | As defined in the UK GDPR. |
| Personal Data Breach | As defined in the UK GDPR. |
| Processing | As defined in the UK GDPR.  When the IDTA refers to Processing by the Importer, this includes where a third party Sub-Processor of the Importer is Processing on the Importer’s behalf. |
| Processor | As defined in the UK GDPR. |
| Purpose | The ‘Purpose’ set out in Table 2: Transfer Details, including any purposes which are not incompatible with the purposes stated or referred to. |
| Relevant Data Subject | A Data Subject of the Transferred Data. |
| Restricted Transfer | A transfer which is covered by Chapter V of the UK GDPR |
| Review Dates | The review dates or period for the Security Requirements set out in Table 2: Transfer Details, and any review dates set out in any revised Approved IDTA. |
| Significant Harmful Impact | As defined in Section 26.2 as where there is more than a minimal risk of the breach causing (directly or indirectly) significant harm to any Relevant Data Subject or the other Party. |
| Special Category Data | As described in the UK GDPR, together with criminal conviction or criminal offence data. |
| Start Date | As set out in Table 1: Parties and signature. |
| Sub-Processor | A Processor appointed by another Processor to Process Personal Data on its behalf.  This includes Sub-Processors of any level, for example a Sub-Sub-Processor. |
| Tables | The Tables set out in Part one of this IDTA. |
| Term | As set out in Table 2: Transfer Details. |
| Third Party Controller | The Controller of the Transferred Data where the Exporter is a Processor or Sub-Processor  If there is not a Third Party Controller this can be disregarded. |
| Transfer Risk Assessment or TRA | A risk assessment in so far as it is required by UK Data Protection Laws to demonstrate that the IDTA provides the Appropriate Safeguards |
| Transferred Data | Any Personal Data which the Parties transfer, or intend to transfer under this IDTA, as described in Table 2: Transfer Details |
| UK Data Protection Laws | All laws relating to data protection, the processing of personal data, privacy and/or electronic communications in force from time to time in the UK, including the UK GDPR and the Data Protection Act 2018. |
| UK GDPR | As defined in Section 3 of the Data Protection Act 2018. |
| Without Undue Delay | Without undue delay, as that phase is interpreted in the UK GDPR. |

## Alternative Part 4 Mandatory Clauses:

|  |  |
| --- | --- |
| **Mandatory Clauses** | Part 4: Mandatory Clauses of the Approved IDTA, being the template IDTA A.1.0 issued by the ICO and laid before Parliament in accordance with s119A of the Data Protection Act 2018 on 2 February 2022, as it is revised under Section ‎5.4 of those Mandatory Clauses. |

## PART B: INTERNATIONAL DATA TRANSFER AGREEMENT ADDENDUM TO THE EU COMMISSION STANDARD CONTRACTUAL CLAUSES

# Logo Description automatically generatedStandard Data Protection Clauses to be issued by the Commissioner under S119A(1) Data Protection Act 2018

## International Data Transfer Addendum to the EU Commission Standard Contractual Clauses

**VERSION B1.0, in force 21 March 2022**

This Addendum has been issued by the Information Commissioner for Parties making Restricted Transfers. The Information Commissioner considers that it provides Appropriate Safeguards for Restricted Transfers when it is entered into as a legally binding contract.

## Part 1: Tables

### Table 1: Parties

|  |  |  |
| --- | --- | --- |
| 1. **Start date** |  | |
| 1. **The Parties** | 1. **Exporter (who sends the Restricted Transfer)** | 1. **Importer (who receives the Restricted Transfer)** |
| 1. **Parties’ details** | 1. Full legal name: 2. Trading name (if different): 3. Main address (if a company registered address): 4. Official registration number (if any) (company number or similar identifier): | 1. Full legal name: 2. Trading name (if different): 3. Main address (if a company registered address): 4. Official registration number (if any) (company number or similar identifier): |
| 1. **Key Contact** | 1. Full Name (optional): 2. Job Title: 3. Contact details including email: | 1. Full Name (optional): 2. Job Title: 3. Contact details including email: |
| 1. **Signature (if required for the purposes of Section ‎2)** |  |  |

### Table 2: Selected SCCs, Modules and Selected Clauses

|  |  |
| --- | --- |
| 1. **Addendum EU SCCs** | The version of the Approved EU SCCs which this Addendum is appended to, detailed below, including the Appendix Information:   1. Date: 2. Reference (if any): 3. Other identifier (if any): 4. Or   the Approved EU SCCs, including the Appendix Information and with only the following modules, clauses or optional provisions of the Approved EU SCCs brought into effect for the purposes of this Addendum: |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| 1. Module | 1. Module in operation | 1. Clause 7 (Docking Clause) | 1. Clause 11  (Option) | 1. Clause 9a (Prior Authorisation or General Authorisation) | 1. Clause 9a (Time period) | 1. Is personal data received from the Importer combined with personal data collected by the Exporter? |
| 1. 1 |  |  |  |  |  |  |
| 1. 2 |  |  |  |  |  |  |
| 1. 3 |  |  |  |  |  |  |
| 1. 4 |  |  |  |  |  |  |

### Table 3: Appendix Information

“**Appendix Information**” means the information which must be provided for the selected modules as set out in the Appendix of the Approved EU SCCs (other than the Parties), and which for this Addendum is set out in:

|  |
| --- |
| 1. Annex 1A: List of Parties: |
| 1. Annex 1B: Description of Transfer: |
| 1. Annex II: Technical and organisational measures including technical and organisational measures to ensure the security of the data: |
| 1. Annex III: List of Sub processors (Modules 2 and 3 only): |

### Table 4: Ending this Addendum when the Approved Addendum Changes

|  |  |
| --- | --- |
| 1. **Ending this Addendum when the Approved Addendum changes** | 1. Which Parties may end this Addendum as set out in Section 19: 2. Importer 3. Exporter 4. neither Party |

## Part 2: Mandatory Clauses

### Entering into this Addendum

1. Each Party agrees to be bound by the terms and conditions set out in this Addendum, in exchange for the other Party also agreeing to be bound by this Addendum.
2. Although Annex 1A and Clause 7 of the Approved EU SCCs require signature by the Parties, for the purpose of making Restricted Transfers, the Parties may enter into this Addendum in any way that makes them legally binding on the Parties and allows data subjects to enforce their rights as set out in this Addendum. Entering into this Addendum will have the same effect as signing the Approved EU SCCs and any part of the Approved EU SCCs.

### Interpretation of this Addendum

1. Where this Addendum uses terms that are defined in the Approved EU SCCs those terms shall have the same meaning as in the Approved EU SCCs. In addition, the following terms have the following meanings:

|  |  |
| --- | --- |
| 1. Addendum | 1. This International Data Transfer Addendum which is made up of this Addendum incorporating the Addendum EU SCCs. |
| 1. Addendum EU SCCs | 1. The version(s) of the Approved EU SCCs which this Addendum is appended to, as set out in Table 2, including the Appendix Information. |
| 1. Appendix Information | 1. As set out in Table ‎3. |
| 1. Appropriate Safeguards | 1. The standard of protection over the personal data and of data subjects’ rights, which is required by UK Data Protection Laws when you are making a Restricted Transfer relying on standard data protection clauses under Article 46(2)(d) UK GDPR. |
| 1. Approved Addendum | 1. The template Addendum issued by the ICO and laid before Parliament in accordance with s119A of the Data Protection Act 2018 on 2 February 2022, as it is revised under Section 18. |
| 1. Approved EU SCCs | 1. The Standard Contractual Clauses set out in the Annex of Commission Implementing Decision (EU) 2021/914 of 4 June 2021. |
| 1. ICO | 1. The Information Commissioner. |
| 1. Restricted Transfer | 1. A transfer which is covered by Chapter V of the UK GDPR. |
| 1. UK | 1. The United Kingdom of Great Britain and Northern Ireland. |
| 1. UK Data Protection Laws | 1. All laws relating to data protection, the processing of personal data, privacy and/or electronic communications in force from time to time in the UK, including the UK GDPR and the Data Protection Act 2018. |
| 1. UK GDPR | 1. As defined in section 3 of the Data Protection Act 2018. |

1. This Addendum must always be interpreted in a manner that is consistent with UK Data Protection Laws and so that it fulfils the Parties’ obligation to provide the Appropriate Safeguards.
2. If the provisions included in the Addendum EU SCCs amend the Approved SCCs in any way which is not permitted under the Approved EU SCCs or the Approved Addendum, such amendment(s) will not be incorporated in this Addendum and the equivalent provision of the Approved EU SCCs will take their place.
3. If there is any inconsistency or conflict between UK Data Protection Laws and this Addendum, UK Data Protection Laws applies.
4. If the meaning of this Addendum is unclear or there is more than one meaning, the meaning which most closely aligns with UK Data Protection Laws applies.
5. Any references to legislation (or specific provisions of legislation) means that legislation (or specific provision) as it may change over time. This includes where that legislation (or specific provision) has been consolidated, re-enacted and/or replaced after this Addendum has been entered into.

### Hierarchy

1. Although Clause 5 of the Approved EU SCCs sets out that the Approved EU SCCs prevail over all related agreements between the parties, the parties agree that, for Restricted Transfers, the hierarchy in Section 10 will prevail.
2. Where there is any inconsistency or conflict between the Approved Addendum and the Addendum EU SCCs (as applicable), the Approved Addendum overrides the Addendum EU SCCs, except where (and in so far as) the inconsistent or conflicting terms of the Addendum EU SCCs provides greater protection for data subjects, in which case those terms will override the Approved Addendum.
3. Where this Addendum incorporates Addendum EU SCCs which have been entered into to protect transfers subject to the General Data Protection Regulation (EU) 2016/679 then the Parties acknowledge that nothing in this Addendum impacts those Addendum EU SCCs.

### Incorporation of and changes to the EU SCCs

1. This Addendum incorporates the Addendum EU SCCs which are amended to the extent necessary so that:
   1. together they operate for data transfers made by the data exporter to the data importer, to the extent that UK Data Protection Laws apply to the data exporter’s processing when making that data transfer, and they provide Appropriate Safeguards for those data transfers;
   2. Sections 9 to 11 override Clause 5 (Hierarchy) of the Addendum EU SCCs; and
   3. this Addendum (including the Addendum EU SCCs incorporated into it) is (1) governed by the laws of England and Wales and (2) any dispute arising from it is resolved by the courts of England and Wales, in each case unless the laws and/or courts of Scotland or Northern Ireland have been expressly selected by the Parties.
2. Unless the Parties have agreed alternative amendments which meet the requirements of Section 12, the provisions of Section 15 will apply.
3. No amendments to the Approved EU SCCs other than to meet the requirements of Section 12 may be made.
4. The following amendments to the Addendum EU SCCs (for the purpose of Section 12) are made:
5. References to the “Clauses” means this Addendum, incorporating the Addendum EU SCCs;
6. In Clause 2, delete the words:

“and, with respect to data transfers from controllers to processors and/or processors to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679”;

1. Clause 6 (Description of the transfer(s)) is replaced with:

“The details of the transfers(s) and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred) are those specified in Annex I.B where UK Data Protection Laws apply to the data exporter’s processing when making that transfer.”;

1. Clause 8.7(i) of Module 1 is replaced with:

“it is to a country benefitting from adequacy regulations pursuant to Section 17A of the UK GDPR that covers the onward transfer”;

1. Clause 8.8(i) of Modules 2 and 3 is replaced with:

“the onward transfer is to a country benefitting from adequacy regulations pursuant to Section 17A of the UK GDPR that covers the onward transfer;”

1. References to “Regulation (EU) 2016/679”, “Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)” and “that Regulation” are all replaced by “UK Data Protection Laws”. References to specific Article(s) of “Regulation (EU) 2016/679” are replaced with the equivalent Article or Section of UK Data Protection Laws;
2. References to Regulation (EU) 2018/1725 are removed;
3. References to the “European Union”, “Union”, “EU”, “EU Member State”, “Member State” and “EU or Member State” are all replaced with the “UK”;
4. The reference to “Clause 12(c)(i)” at Clause 10(b)(i) of Module one, is replaced with “Clause 11(c)(i)”;
5. Clause 13(a) and Part C of Annex I are not used;
6. The “competent supervisory authority” and “supervisory authority” are both replaced with the “Information Commissioner”;
7. In Clause 16(e), subsection (i) is replaced with:

“the Secretary of State makes regulations pursuant to Section 17A of the Data Protection Act 2018 that cover the transfer of personal data to which these clauses apply;”;

1. Clause 17 is replaced with:

“These Clauses are governed by the laws of England and Wales.”;

1. Clause 18 is replaced with:

“Any dispute arising from these Clauses shall be resolved by the courts of England and Wales. A data subject may also bring legal proceedings against the data exporter and/or data importer before the courts of any country in the UK. The Parties agree to submit themselves to the jurisdiction of such courts.”; and

1. The footnotes to the Approved EU SCCs do not form part of the Addendum, except for footnotes 8, 9, 10 and 11.

### Amendments to this Addendum

1. The Parties may agree to change Clauses 17 and/or 18 of the Addendum EU SCCs to refer to the laws and/or courts of Scotland or Northern Ireland.
2. If the Parties wish to change the format of the information included in Part 1: Tables of the Approved Addendum, they may do so by agreeing to the change in writing, provided that the change does not reduce the Appropriate Safeguards.
3. From time to time, the ICO may issue a revised Approved Addendum which:
4. makes reasonable and proportionate changes to the Approved Addendum, including correcting errors in the Approved Addendum; and/or
5. reflects changes to UK Data Protection Laws;

The revised Approved Addendum will specify the start date from which the changes to the Approved Addendum are effective and whether the Parties need to review this Addendum including the Appendix Information. This Addendum is automatically amended as set out in the revised Approved Addendum from the start date specified.

1. If the ICO issues a revised Approved Addendum under Section 18, if any Party selected in Table 4 “Ending the Addendum when the Approved Addendum changes”, will as a direct result of the changes in the Approved Addendum have a substantial, disproportionate and demonstrable increase in:
   1. its direct costs of performing its obligations under the Addendum; and/or
   2. its risk under the Addendum,

and in either case it has first taken reasonable steps to reduce those costs or risks so that it is not substantial and disproportionate, then that Party may end this Addendum at the end of a reasonable notice period, by providing written notice for that period to the other Party before the start date of the revised Approved Addendum.

1. The Parties do not need the consent of any third party to make changes to this Addendum, but any changes must be made in accordance with its terms.

## Alternative Part 2 Mandatory Clauses:

|  |  |
| --- | --- |
| 1. **Mandatory Clauses** | 1. Part 2: Mandatory Clauses of the Approved Addendum, being the template Addendum B.1.0 issued by the ICO and laid before Parliament in accordance with s119A of the Data Protection Act 2018 on 2 February 2022, as it is revised under Section ‎18 of those Mandatory Clauses. |

## ANNEX 3: STANDARD CONTRACTUAL CLAUSES FOR EU GDPR COMPLIANT TRANSFERS

Part A: Processor to Controller Standard Contractual Clauses

Standard Contractual Clauses for Personal Data Transfers from an EU Processor to a Controller Established in a Third Country (Processor-to-Controller Transfers)

SECTION I

CLAUSE 1

**Purpose and scope**

* 1. The purpose of these standard contractual clauses is to ensure compliance with the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)[[FN1](#a366210)] for the transfer of personal data to a third country.
  2. The Parties:
     1. the natural or legal person(s), public authority/ies, agency/ies or other body/ies (hereinafter 'entity/ies') transferring the personal data, as listed in Annex I.A (hereinafter each 'data exporter'), and
     2. the entity/ies in a third country receiving the personal data from the data exporter, directly or indirectly via another entity also Party to these Clauses, as listed in Annex I.A (hereinafter each 'data importer')

have agreed to these standard contractual clauses (hereinafter: 'Clauses').

* 1. These Clauses apply with respect to the transfer of personal data as specified in Annex I.B.
  2. The Appendix to these Clauses containing the Annexes referred to therein forms an integral part of these Clauses.

CLAUSE 2

**Effect and invariability of the Clauses**

* 1. These Clauses set out appropriate safeguards, including enforceable data subject rights and effective legal remedies, pursuant to Article 46(1) and Article 46(2)(c) of Regulation (EU) 2016/679 and, with respect to data transfers from controllers to processors and/or processors to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679, provided they are not modified, except to select the appropriate Module(s) or to add or update information in the Appendix. This does not prevent the Parties from including the standard contractual clauses laid down in these Clauses in a wider contract and/or to add other clauses or additional safeguards, provided that they do not contradict, directly or indirectly, these Clauses or prejudice the fundamental rights or freedoms of data subjects.
  2. These Clauses are without prejudice to obligations to which the data exporter is subject by virtue of Regulation (EU) 2016/679.

CLAUSE 3

**Third-party beneficiaries**

* 1. Data subjects may invoke and enforce these Clauses, as third-party beneficiaries, against the data exporter and/or data importer, with the following exceptions:
     1. Clause 1, Clause 2, Clause 3, Clause 6, Clause 7;
     2. Clause 8 – Module One: Clause 8.5 (e) and Clause 8.9(b); Module Two: Clause 8.1(b), 8.9(a), (c), (d) and (e); Module Three: Clause 8.1(a), (c) and (d) and Clause 8.9(a), (c), (d), (e), (f) and (g); Module Four: Clause 8.1 (b) and Clause 8.3(b);
     3. Clause 9 – Module Two: Clause 9(a), (c), (d) and (e); Module Three: Clause 9(a), (c), (d) and (e);
     4. Clause 12 – Module One: Clause 12(a) and (d); Modules Two and Three: Clause 12(a), (d) and (f);
     5. Clause 13;
     6. Clause 15.1(c), (d) and (e);
     7. Clause 16(e);
     8. Clause 18 – Modules One, Two and Three: Clause 18(a) and (b); Module Four: Clause 18.
  2. Paragraph (a) is without prejudice to rights of data subjects under Regulation (EU) 2016/679.

CLAUSE 4

**Interpretation**

* 1. Where these Clauses use terms that are defined in Regulation (EU) 2016/679, those terms shall have the same meaning as in that Regulation.
  2. These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679.
  3. These Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in Regulation (EU) 2016/679.

CLAUSE 5

**Hierarchy**

In the event of a contradiction between these Clauses and the provisions of related agreements between the Parties, existing at the time these Clauses are agreed or entered into thereafter, these Clauses shall prevail.

CLAUSE 6

**Description of the transfer(s)**

The details of the transfer(s), and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred, are specified in Annex I.B.

[CLAUSE 7 - Optional

**Docking clause**

* 1. An entity that is not a Party to these Clauses may, with the agreement of the Parties, accede to these Clauses at any time, either as a data exporter or as a data importer, by completing the Appendix and signing Annex I.A.
  2. Once it has completed the Appendix and signed Annex I.A, the acceding entity shall become a Party to these Clauses and have the rights and obligations of a data exporter or data importer in accordance with its designation in Annex I.A.
  3. The acceding entity shall have no rights or obligations arising under these Clauses from the period prior to becoming a Party.]

SECTION II – OBLIGATIONS OF THE PARTIES

CLAUSE 8

**Data protection safeguards**

The data exporter warrants that it has used reasonable efforts to determine that the data importer is able, through the implementation of appropriate technical and organisational measures, to satisfy its obligations under these Clauses.

**8.1 Instructions**

* 1. The data exporter shall process the personal data only on documented instructions from the data importer acting as its controller.
  2. The data exporter shall immediately inform the data importer if it is unable to follow those instructions, including if such instructions infringe Regulation (EU) 2016/679 or other Union or Member State data protection law.
  3. The data importer shall refrain from any action that would prevent the data exporter from fulfilling its obligations under Regulation (EU) 2016/679, including in the context of sub-processing or as regards cooperation with competent supervisory authorities.
  4. After the end of the provision of the processing services, the data exporter shall, at the choice of the data importer, delete all personal data processed on behalf of the data importer and certify to the data importer that it has done so, or return to the data importer all personal data processed on its behalf and delete existing copies.

**8.2 Security of processing**

* 1. The Parties shall implement appropriate technical and organisational measures to ensure the security of the data, including during transmission, and protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access (hereinafter 'personal data breach'). In assessing the appropriate level of security, they shall take due account of the state of the art, the costs of implementation, the nature of the personal data[[FN7](#a900952)], the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subjects, and in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner.
  2. The data exporter shall assist the data importer in ensuring appropriate security of the data in accordance with paragraph (a). In case of a personal data breach concerning the personal data processed by the data exporter under these Clauses, the data exporter shall notify the data importer without undue delay after becoming aware of it and assist the data importer in addressing the breach.
  3. The data exporter shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

**8.3 Documentation and compliance**

* 1. The Parties shall be able to demonstrate compliance with these Clauses.
  2. The data exporter shall make available to the data importer all information necessary to demonstrate compliance with its obligations under these Clauses and allow for and contribute to audits.

CLAUSE 9

**Use of sub-processors**

N/A

CLAUSE 10

**Data subject rights**

The Parties shall assist each other in responding to enquiries and requests made by data subjects under the local law applicable to the data importer or, for data processing by the data exporter in the EU, under Regulation (EU) 2016/679.

CLAUSE 11

**Redress**

* 1. The data importer shall inform data subjects in a transparent and easily accessible format, through individual notice or on its website, of a contact point authorised to handle complaints. It shall deal promptly with any complaints it receives from a data subject.

[OPTION: The data importer agrees that data subjects may also lodge a complaint with an independent dispute resolution body[[FN11](#a685498)] at no cost to the data subject. It shall inform the data subjects, in the manner set out in paragraph (a), of such redress mechanism and that they are not required to use it, or follow a particular sequence in seeking redress.]

CLAUSE 12

**Liability**

* 1. Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.
  2. Each Party shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages that the Party causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter under Regulation (EU) 2016/679.
  3. Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.
  4. The Parties agree that if one Party is held liable under paragraph (c), it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to its/their responsibility for the damage.
  5. The data importer may not invoke the conduct of a processor or sub-processor to avoid its own liability.

CLAUSE 13

**Supervision**

N/A

SECTION III – LOCAL LAWS AND OBLIGATIONS IN CASE OF ACCESS BY PUBLIC AUTHORITIES

CLAUSE 14

**Local laws and practices affecting compliance with the Clauses** *(where the EU processor combines the personal data received from the third country-controller with personal data collected by the processor in the EU)*

* 1. The Parties warrant that they have no reason to believe that the laws and practices in the third country of destination applicable to the processing of the personal data by the data importer, including any requirements to disclose personal data or measures authorising access by public authorities, prevent the data importer from fulfilling its obligations under these Clauses. This is based on the understanding that laws and practices that respect the essence of the fundamental rights and freedoms and do not exceed what is necessary and proportionate in a democratic society to safeguard one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679, are not in contradiction with these Clauses.
  2. The Parties declare that in providing the warranty in paragraph (a), they have taken due account in particular of the following elements:
     1. the specific circumstances of the transfer, including the length of the processing chain, the number of actors involved and the transmission channels used; intended onward transfers; the type of recipient; the purpose of processing; the categories and format of the transferred personal data; the economic sector in which the transfer occurs; the storage location of the data transferred;
     2. the laws and practices of the third country of destination – including those requiring the disclosure of data to public authorities or authorising access by such authorities – relevant in light of the specific circumstances of the transfer, and the applicable limitations and safeguards[[FN12](#a346614)];
     3. any relevant contractual, technical or organisational safeguards put in place to supplement the safeguards under these Clauses, including measures applied during transmission and to the processing of the personal data in the country of destination.
  3. The data importer warrants that, in carrying out the assessment under paragraph (b), it has made its best efforts to provide the data exporter with relevant information and agrees that it will continue to cooperate with the data exporter in ensuring compliance with these Clauses.
  4. The Parties agree to document the assessment under paragraph (b) and make it available to the competent supervisory authority on request.
  5. The data importer agrees to notify the data exporter promptly if, after having agreed to these Clauses and for the duration of the contract, it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under paragraph (a), including following a change in the laws of the third country or a measure (such as a disclosure request) indicating an application of such laws in practice that is not in line with the requirements in paragraph (a).
  6. Following a notification pursuant to paragraph (e), or if the data exporter otherwise has reason to believe that the data importer can no longer fulfil its obligations under these Clauses, the data exporter shall promptly identify appropriate measures (e.g. technical or organisational measures to ensure security and confidentiality) to be adopted by the data exporter and/or data importer to address the situation. The data exporter shall suspend the data transfer if it considers that no appropriate safeguards for such transfer can be ensured, or if instructed by the competent supervisory authority to do so. In this case, the data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses. If the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise. Where the contract is terminated pursuant to this Clause, Clause 16(d) and (e) shall apply.

CLAUSE 15

**Obligations of the data importer in case of access by public authorities** *(where the EU processor combines the personal data received from the third country-controller with personal data collected by the processor in the EU)*

**15.1 Notification**

* 1. The data importer agrees to notify the data exporter and, where possible, the data subject promptly (if necessary with the help of the data exporter) if it:
     1. receives a legally binding request from a public authority, including judicial authorities, under the laws of the country of destination for the disclosure of personal data transferred pursuant to these Clauses; such notification shall include information about the personal data requested, the requesting authority, the legal basis for the request and the response provided; or
     2. becomes aware of any direct access by public authorities to personal data transferred pursuant to these Clauses in accordance with the laws of the country of destination; such notification shall include all information available to the importer.
  2. If the data importer is prohibited from notifying the data exporter and/or the data subject under the laws of the country of destination, the data importer agrees to use its best efforts to obtain a waiver of the prohibition, with a view to communicating as much information as possible, as soon as possible. The data importer agrees to document its best efforts in order to be able to demonstrate them on request of the data exporter.
  3. Where permissible under the laws of the country of destination, the data importer agrees to provide the data exporter, at regular intervals for the duration of the contract, with as much relevant information as possible on the requests received (in particular, number of requests, type of data requested, requesting authority/ies, whether requests have been challenged and the outcome of such challenges, etc.).
  4. The data importer agrees to preserve the information pursuant to paragraphs (a) to (c) for the duration of the contract and make it available to the competent supervisory authority on request.
  5. Paragraphs (a) to (c) are without prejudice to the obligation of the data importer pursuant to Clause 14(e) and Clause 16 to inform the data exporter promptly where it is unable to comply with these Clauses.

**15.2 Review of legality and data minimisation**

* 1. The data importer agrees to review the legality of the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and to challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the country of destination, applicable obligations under international law and principles of international comity. The data importer shall, under the same conditions, pursue possibilities of appeal. When challenging a request, the data importer shall seek interim measures with a view to suspending the effects of the request until the competent judicial authority has decided on its merits. It shall not disclose the personal data requested until required to do so under the applicable procedural rules. These requirements are without prejudice to the obligations of the data importer under Clause 14(e).
  2. The data importer agrees to document its legal assessment and any challenge to the request for disclosure and, to the extent permissible under the laws of the country of destination, make the documentation available to the data exporter. It shall also make it available to the competent supervisory authority on request.
  3. The data importer agrees to provide the minimum amount of information permissible when responding to a request for disclosure, based on a reasonable interpretation of the request.

SECTION IV – FINAL PROVISIONS

CLAUSE 16

**Non-compliance with the Clauses and termination**

* 1. The data importer shall promptly inform the data exporter if it is unable to comply with these Clauses, for whatever reason.
  2. In the event that the data importer is in breach of these Clauses or unable to comply with these Clauses, the data exporter shall suspend the transfer of personal data to the data importer until compliance is again ensured or the contract is terminated. This is without prejudice to Clause 14(f).
  3. The data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses, where:
     1. the data exporter has suspended the transfer of personal data to the data importer pursuant to paragraph (b) and compliance with these Clauses is not restored within a reasonable time and in any event within one month of suspension;
     2. the data importer is in substantial or persistent breach of these Clauses; or
     3. the data importer fails to comply with a binding decision of a competent court or supervisory authority regarding its obligations under these Clauses.

In these cases, it shall inform the competent supervisory authority of such non-compliance. Where the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise.

* 1. Personal data collected by the data exporter in the EU that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall immediately be deleted in its entirety, including any copy thereof. The data importer shall certify the deletion of the data to the data exporter. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit the return or deletion of the transferred personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process the data to the extent and for as long as required under that local law.
  2. Either Party may revoke its agreement to be bound by these Clauses where (i) the European Commission adopts a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 that covers the transfer of personal data to which these Clauses apply; or (ii) Regulation (EU) 2016/679 becomes part of the legal framework of the country to which the personal data is transferred. This is without prejudice to other obligations applying to the processing in question under Regulation (EU) 2016/679.

CLAUSE 17

**Governing law**

These Clauses shall be governed by the law of a country allowing for third-party beneficiary rights. The Parties agree that this shall be the law of \_\_\_\_\_\_\_ (*specify country*).

CLAUSE 18

**Choice of forum and jurisdiction**

Any dispute arising from these Clauses shall be resolved by the courts of \_\_\_\_\_ (*specify country*).

Official European Commission Footnotes

[FN1](#a677831): Where the data exporter is a processor subject to Regulation (EU) 2016/679 acting on behalf of a Union institution or body as controller, reliance on these Clauses when engaging another processor (sub-processing) not subject to Regulation (EU) 2016/679 also ensures compliance with Article 29(4) of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39), to the extent these Clauses and the data protection obligations as set out in the contract or other legal act between the controller and the processor pursuant to Article 29(3) of Regulation (EU) 2018/1725 are aligned. This will in particular be the case where the controller and processor rely on the standard contractual clauses included in Decision 2021/915.

[FN7](#a909063): This includes whether the transfer and further processing involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions or offences.

[FN11](#a994304): The data importer may offer independent dispute resolution through an arbitration body only if it is established in a country that has ratified the New York Convention on Enforcement of Arbitration Awards.

[FN12](#a526098): As regards the impact of such laws and practices on compliance with these Clauses, different elements may be considered as part of an overall assessment. Such elements may include relevant and documented practical experience with prior instances of requests for disclosure from public authorities, or the absence of such requests, covering a sufficiently representative time-frame. This refers in particular to internal records or other documentation, drawn up on a continuous basis in accordance with due diligence and certified at senior management level, provided that this information can be lawfully shared with third parties. Where this practical experience is relied upon to conclude that the data importer will not be prevented from complying with these Clauses, it needs to be supported by other relevant, objective elements, and it is for the Parties to consider carefully whether these elements together carry sufficient weight, in terms of their reliability and representativeness, to support this conclusion. In particular, the Parties have to take into account whether their practical experience is corroborated and not contradicted by publicly available or otherwise accessible, reliable information on the existence or absence of requests within the same sector and/or the application of the law in practice, such as case law and reports by independent oversight bodies.

APPENDIX

|  |
| --- |
| EXPLANATORY NOTE:  It must be possible to clearly distinguish the information applicable to each transfer or category of transfers and, in this regard, to determine the respective role(s) of the Parties as data exporter(s) and/or data importer(s). This does not necessarily require completing and signing separate appendices for each transfer/category of transfers and/or contractual relationship, where this transparency can achieved through one appendix. However, where necessary to ensure sufficient clarity, separate appendices should be used. |

ANNEX I

**A. LIST OF PARTIES**

**Data exporter(s):** [*Identity and contact details of the data exporter(s) and, where applicable, of its/their data protection officer and/or representative in the European Union*]

1. Name: …

Address: …

Contact person's name, position and contact details: …

Activities relevant to the data transferred under these Clauses: …

Signature and date: …

Role (controller/processor): …

2. …

**Data importer(s):** [*Identity and contact details of the data importer(s), including any contact person with responsibility for data protection*]

1. Name: …

Address: …

Contact person's name, position and contact details: …

Activities relevant to the data transferred under these Clauses: …

Signature and date: …

Role (controller/processor): …

2. …

**B. DESCRIPTION OF TRANSFER**

*Categories of data subjects whose personal data is transferred*

*…*

*Categories of personal data transferred*

*…*

*Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.*

*…*

*The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis).*

*…*

*Nature of the processing*

*…*

*Purpose(s) of the data transfer and further processing*

*…*

*The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period*

*…*

*For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing*

*…*

Part B: Controller to Processor Standard Contractual Clauses

Standard Contractual Clauses for Personal Data Transfers from an EU Controller to a Processor Established in a Third Country (Controller-to-Processor Transfers)

SECTION I

CLAUSE 1

**Purpose and scope**

* 1. The purpose of these standard contractual clauses is to ensure compliance with the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)[[FN1](#a722044)] for the transfer of personal data to a third country.
  2. The Parties:
     1. the natural or legal person(s), public authority/ies, agency/ies or other body/ies (hereinafter 'entity/ies') transferring the personal data, as listed in Annex I.A (hereinafter each 'data exporter'), and
     2. the entity/ies in a third country receiving the personal data from the data exporter, directly or indirectly via another entity also Party to these Clauses, as listed in Annex I.A (hereinafter each 'data importer')

have agreed to these standard contractual clauses (hereinafter: 'Clauses').

* 1. These Clauses apply with respect to the transfer of personal data as specified in Annex I.B.
  2. The Appendix to these Clauses containing the Annexes referred to therein forms an integral part of these Clauses.

CLAUSE 2

**Effect and invariability of the Clauses**

* 1. These Clauses set out appropriate safeguards, including enforceable data subject rights and effective legal remedies, pursuant to Article 46(1) and Article 46(2)(c) of Regulation (EU) 2016/679 and, with respect to data transfers from controllers to processors and/or processors to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679, provided they are not modified, except to select the appropriate Module(s) or to add or update information in the Appendix. This does not prevent the Parties from including the standard contractual clauses laid down in these Clauses in a wider contract and/or to add other clauses or additional safeguards, provided that they do not contradict, directly or indirectly, these Clauses or prejudice the fundamental rights or freedoms of data subjects.
  2. These Clauses are without prejudice to obligations to which the data exporter is subject by virtue of Regulation (EU) 2016/679.

CLAUSE 3

**Third-party beneficiaries**

* 1. Data subjects may invoke and enforce these Clauses, as third-party beneficiaries, against the data exporter and/or data importer, with the following exceptions:
     1. Clause 1, Clause 2, Clause 3, Clause 6, Clause 7;
     2. Clause 8 – Module One: Clause 8.5 (e) and Clause 8.9(b); Module Two: Clause 8.1(b), 8.9(a), (c), (d) and (e); Module Three: Clause 8.1(a), (c) and (d) and Clause 8.9(a), (c), (d), (e), (f) and (g); Module Four: Clause 8.1 (b) and Clause 8.3(b);
     3. Clause 9 – Module Two: Clause 9(a), (c), (d) and (e); Module Three: Clause 9(a), (c), (d) and (e);
     4. Clause 12 – Module One: Clause 12(a) and (d); Modules Two and Three: Clause 12(a), (d) and (f);
     5. Clause 13;
     6. Clause 15.1(c), (d) and (e);
     7. Clause 16(e);
     8. Clause 18 – Modules One, Two and Three: Clause 18(a) and (b); Module Four: Clause 18.
  2. Paragraph (a) is without prejudice to rights of data subjects under Regulation (EU) 2016/679.

CLAUSE 4

**Interpretation**

* 1. Where these Clauses use terms that are defined in Regulation (EU) 2016/679, those terms shall have the same meaning as in that Regulation.
  2. These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679.
  3. These Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in Regulation (EU) 2016/679.

CLAUSE 5

**Hierarchy**

In the event of a contradiction between these Clauses and the provisions of related agreements between the Parties, existing at the time these Clauses are agreed or entered into thereafter, these Clauses shall prevail.

CLAUSE 6

**Description of the transfer(s)**

The details of the transfer(s), and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred, are specified in Annex I.B.

[CLAUSE 7 - Optional

**Docking clause**

* 1. An entity that is not a Party to these Clauses may, with the agreement of the Parties, accede to these Clauses at any time, either as a data exporter or as a data importer, by completing the Appendix and signing Annex I.A.
  2. Once it has completed the Appendix and signed Annex I.A, the acceding entity shall become a Party to these Clauses and have the rights and obligations of a data exporter or data importer in accordance with its designation in Annex I.A.
  3. The acceding entity shall have no rights or obligations arising under these Clauses from the period prior to becoming a Party.]

SECTION II – OBLIGATIONS OF THE PARTIES

CLAUSE 8

**Data protection safeguards**

The data exporter warrants that it has used reasonable efforts to determine that the data importer is able, through the implementation of appropriate technical and organisational measures, to satisfy its obligations under these Clauses.

**8.1 Instructions**

* 1. The data importer shall process the personal data only on documented instructions from the data exporter. The data exporter may give such instructions throughout the duration of the contract.
  2. The data importer shall immediately inform the data exporter if it is unable to follow those instructions.

**8.2 Purpose limitation**

The data importer shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex I.B, unless on further instructions from the data exporter.

**8.3 Transparency**

On request, the data exporter shall make a copy of these Clauses, including the Appendix as completed by the Parties, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential information, including the measures described in Annex II and personal data, the data exporter may redact part of the text of the Appendix to these Clauses prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand the its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information. This Clause is without prejudice to the obligations of the data exporter under Articles 13 and 14 of Regulation (EU) 2016/679.

**8.4 Accuracy**

If the data importer becomes aware that the personal data it has received is inaccurate, or has become outdated, it shall inform the data exporter without undue delay. In this case, the data importer shall cooperate with the data exporter to erase or rectify the data.

**8.5 Duration of processing and erasure or return of data**

Processing by the data importer shall only take place for the duration specified in Annex I.B. After the end of the provision of the processing services, the data importer shall, at the choice of the data exporter, delete all personal data processed on behalf of the data exporter and certify to the data exporter that it has done so, or return to the data exporter all personal data processed on its behalf and delete existing copies. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit return or deletion of the personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process it to the extent and for as long as required under that local law. This is without prejudice to Clause 14, in particular the requirement for the data importer under Clause 14(e) to notify the data exporter throughout the duration of the contract if it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under Clause 14(a).

**8.6 Security of processing**

* 1. The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to that data (hereinafter 'personal data breach'). In assessing the appropriate level of security, the Parties shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subjects. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner. In case of pseudonymisation, the additional information for attributing the personal data to a specific data subject shall, where possible, remain under the exclusive control of the data exporter. In complying with its obligations under this paragraph, the data importer shall at least implement the technical and organisational measures specified in Annex II. The data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.
  2. The data importer shall grant access to the personal data to members of its personnel only to the extent strictly necessary for the implementation, management and monitoring of the contract. It shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
  3. In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the breach, including measures to mitigate its adverse effects. The data importer shall also notify the data exporter without undue delay after having become aware of the breach. Such notification shall contain the details of a contact point where more information can be obtained, a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), its likely consequences and the measures taken or proposed to address the breach including, where appropriate, measures to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.
  4. The data importer shall cooperate with and assist the data exporter to enable the data exporter to comply with its obligations under Regulation (EU) 2016/679, in particular to notify the competent supervisory authority and the affected data subjects, taking into account the nature of processing and the information available to the data importer.

**8.7 Sensitive data**

Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions and offences (hereinafter 'sensitive data'), the data importer shall apply the specific restrictions and/or additional safeguards described in Annex I.B.

**8.8 Onward transfers**

The data importer shall only disclose the personal data to a third party on documented instructions from the data exporter. In addition, the data may only be disclosed to a third party located outside the European Union[[FN4](#a719976)] (in the same country as the data importer or in another third country, hereinafter 'onward transfer') if the third party is or agrees to be bound by these Clauses, under the appropriate Module, or if:

* + 1. the onward transfer is to a country benefitting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;
    2. the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 Regulation of (EU) 2016/679 with respect to the processing in question;
    3. the onward transfer is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or
    4. the onward transfer is necessary in order to protect the vital interests of the data subject or of another natural person.

Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

**8.9 Documentation and compliance**

* 1. The data importer shall promptly and adequately deal with enquiries from the data exporter that relate to the processing under these Clauses.
  2. The Parties shall be able to demonstrate compliance with these Clauses. In particular, the data importer shall keep appropriate documentation on the processing activities carried out on behalf of the data exporter.
  3. The data importer shall make available to the data exporter all information necessary to demonstrate compliance with the obligations set out in these Clauses and at the data exporter's request, allow for and contribute to audits of the processing activities covered by these Clauses, at reasonable intervals or if there are indications of non-compliance. In deciding on a review or audit, the data exporter may take into account relevant certifications held by the data importer.
  4. The data exporter may choose to conduct the audit by itself or mandate an independent auditor. Audits may include inspections at the premises or physical facilities of the data importer and shall, where appropriate, be carried out with reasonable notice.
  5. The Parties shall make the information referred to in paragraphs (b) and (c), including the results of any audits, available to the competent supervisory authority on request.

CLAUSE 9

**Use of sub-processors**

* 1. OPTION 1: SPECIFIC PRIOR AUTHORISATION The data importer shall not sub-contract any of its processing activities performed on behalf of the data exporter under these Clauses to a sub-processor without the data exporter's prior specific written authorisation. The data importer shall submit the request for specific authorisation at least [*Specify time period*] prior to the engagement of the sub-processor, together with the information necessary to enable the data exporter to decide on the authorisation. The list of sub-processors already authorised by the data exporter can be found in Annex III. The Parties shall keep Annex III up to date.

OPTION 2: GENERAL WRITTEN AUTHORISATION The data importer has the data exporter's general authorisation for the engagement of sub-processor(s) from an agreed list. The data importer shall specifically inform the data exporter in writing of any intended changes to that list through the addition or replacement of sub-processors at least [*Specify time period*] in advance, thereby giving the data exporter sufficient time to be able to object to such changes prior to the engagement of the sub-processor(s). The data importer shall provide the data exporter with the information necessary to enable the data exporter to exercise its right to object.

* 1. Where the data importer engages a sub-processor to carry out specific processing activities (on behalf of the data exporter), it shall do so by way of a written contract that provides for, in substance, the same data protection obligations as those binding the data importer under these Clauses, including in terms of third-party beneficiary rights for data subjects. [[FN8](#a166875)] The Parties agree that, by complying with this Clause, the data importer fulfils its obligations under Clause 8.8. The data importer shall ensure that the sub-processor complies with the obligations to which the data importer is subject pursuant to these Clauses.
  2. The data importer shall provide, at the data exporter's request, a copy of such a sub-processor agreement and any subsequent amendments to the data exporter. To the extent necessary to protect business secrets or other confidential information, including personal data, the data importer may redact the text of the agreement prior to sharing a copy.
  3. The data importer shall remain fully responsible to the data exporter for the performance of the sub-processor's obligations under its contract with the data importer. The data importer shall notify the data exporter of any failure by the sub-processor to fulfil its obligations under that contract.
  4. The data importer shall agree a third-party beneficiary clause with the sub-processor whereby – in the event the data importer has factually disappeared, ceased to exist in law or has become insolvent – the data exporter shall have the right to terminate the sub-processor contract and to instruct the sub-processor to erase or return the personal data.

CLAUSE 10

**Data subject rights**

* 1. The data importer shall promptly notify the data exporter of any request it has received from a data subject. It shall not respond to that request itself unless it has been authorised to do so by the data exporter.
  2. The data importer shall assist the data exporter in fulfilling its obligations to respond to data subjects' requests for the exercise of their rights under Regulation (EU) 2016/679. In this regard, the Parties shall set out in Annex II the appropriate technical and organisational measures, taking into account the nature of the processing, by which the assistance shall be provided, as well as the scope and the extent of the assistance required.
  3. In fulfilling its obligations under paragraphs (a) and (b), the data importer shall comply with the instructions from the data exporter.

CLAUSE 11

**Redress**

* 1. The data importer shall inform data subjects in a transparent and easily accessible format, through individual notice or on its website, of a contact point authorised to handle complaints. It shall deal promptly with any complaints it receives from a data subject.

[OPTION: The data importer agrees that data subjects may also lodge a complaint with an independent dispute resolution body[[FN11](#a651862)] at no cost to the data subject. It shall inform the data subjects, in the manner set out in paragraph (a), of such redress mechanism and that they are not required to use it, or follow a particular sequence in seeking redress.]

* 1. In case of a dispute between a data subject and one of the Parties as regards compliance with these Clauses, that Party shall use its best efforts to resolve the issue amicably in a timely fashion. The Parties shall keep each other informed about such disputes and, where appropriate, cooperate in resolving them.
  2. Where the data subject invokes a third-party beneficiary right pursuant to Clause 3, the data importer shall accept the decision of the data subject to:
     1. lodge a complaint with the supervisory authority in the Member State of his/her habitual residence or place of work, or the competent supervisory authority pursuant to Clause 13;
     2. refer the dispute to the competent courts within the meaning of Clause 18.
  3. The Parties accept that the data subject may be represented by a not-for-profit body, organisation or association under the conditions set out in Article 80(1) of Regulation (EU) 2016/679.
  4. The data importer shall abide by a decision that is binding under the applicable EU or Member State law.
  5. The data importer agrees that the choice made by the data subject will not prejudice his/her substantive and procedural rights to seek remedies in accordance with applicable laws.

CLAUSE 12

**Liability**

* 1. Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.
  2. The data importer shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data importer or its sub-processor causes the data subject by breaching the third-party beneficiary rights under these Clauses.
  3. Notwithstanding paragraph (b), the data exporter shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data exporter or the data importer (or its sub-processor) causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter and, where the data exporter is a processor acting on behalf of a controller, to the liability of the controller under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable.
  4. The Parties agree that if the data exporter is held liable under paragraph (c) for damages caused by the data importer (or its sub-processor), it shall be entitled to claim back from the data importer that part of the compensation corresponding to the data importer's responsibility for the damage.
  5. Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.
  6. The Parties agree that if one Party is held liable under paragraph (e), it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to its/their responsibility for the damage.
  7. The data importer may not invoke the conduct of a sub-processor to avoid its own liability.

CLAUSE 13

**Supervision**

* 1. [Where the data exporter is established in an EU Member State:] The supervisory authority with responsibility for ensuring compliance by the data exporter with Regulation (EU) 2016/679 as regards the data transfer, as indicated in Annex I.C, shall act as competent supervisory authority.

[Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) and has appointed a representative pursuant to Article 27(1) of Regulation (EU) 2016/679:] The supervisory authority of the Member State in which the representative within the meaning of Article 27(1) of Regulation (EU) 2016/679 is established, as indicated in Annex I.C, shall act as competent supervisory authority.

[Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) without however having to appoint a representative pursuant to Article 27(2) of Regulation (EU) 2016/679:] The supervisory authority of one of the Member States in which the data subjects whose personal data is transferred under these Clauses in relation to the offering of goods or services to them, or whose behaviour is monitored, are located, as indicated in Annex I.C, shall act as competent supervisory authority.

* 1. The data importer agrees to submit itself to the jurisdiction of and cooperate with the competent supervisory authority in any procedures aimed at ensuring compliance with these Clauses. In particular, the data importer agrees to respond to enquiries, submit to audits and comply with the measures adopted by the supervisory authority, including remedial and compensatory measures. It shall provide the supervisory authority with written confirmation that the necessary actions have been taken.

SECTION III – LOCAL LAWS AND OBLIGATIONS IN CASE OF ACCESS BY PUBLIC AUTHORITIES

CLAUSE 14

**Local laws and practices affecting compliance with the Clauses**

* 1. The Parties warrant that they have no reason to believe that the laws and practices in the third country of destination applicable to the processing of the personal data by the data importer, including any requirements to disclose personal data or measures authorising access by public authorities, prevent the data importer from fulfilling its obligations under these Clauses. This is based on the understanding that laws and practices that respect the essence of the fundamental rights and freedoms and do not exceed what is necessary and proportionate in a democratic society to safeguard one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679, are not in contradiction with these Clauses.
  2. The Parties declare that in providing the warranty in paragraph (a), they have taken due account in particular of the following elements:
     1. the specific circumstances of the transfer, including the length of the processing chain, the number of actors involved and the transmission channels used; intended onward transfers; the type of recipient; the purpose of processing; the categories and format of the transferred personal data; the economic sector in which the transfer occurs; the storage location of the data transferred;
     2. the laws and practices of the third country of destination – including those requiring the disclosure of data to public authorities or authorising access by such authorities – relevant in light of the specific circumstances of the transfer, and the applicable limitations and safeguards[[FN12](#a395151)];
     3. any relevant contractual, technical or organisational safeguards put in place to supplement the safeguards under these Clauses, including measures applied during transmission and to the processing of the personal data in the country of destination.
  3. The data importer warrants that, in carrying out the assessment under paragraph (b), it has made its best efforts to provide the data exporter with relevant information and agrees that it will continue to cooperate with the data exporter in ensuring compliance with these Clauses.
  4. The Parties agree to document the assessment under paragraph (b) and make it available to the competent supervisory authority on request.
  5. The data importer agrees to notify the data exporter promptly if, after having agreed to these Clauses and for the duration of the contract, it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under paragraph (a), including following a change in the laws of the third country or a measure (such as a disclosure request) indicating an application of such laws in practice that is not in line with the requirements in paragraph (a).
  6. Following a notification pursuant to paragraph (e), or if the data exporter otherwise has reason to believe that the data importer can no longer fulfil its obligations under these Clauses, the data exporter shall promptly identify appropriate measures (e.g. technical or organisational measures to ensure security and confidentiality) to be adopted by the data exporter and/or data importer to address the situation. The data exporter shall suspend the data transfer if it considers that no appropriate safeguards for such transfer can be ensured, or if instructed by the competent supervisory authority to do so. In this case, the data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses. If the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise. Where the contract is terminated pursuant to this Clause, Clause 16(d) and (e) shall apply.

CLAUSE 15

**Obligations of the data importer in case of access by public authorities**

**15.1 Notification**

* 1. The data importer agrees to notify the data exporter and, where possible, the data subject promptly (if necessary with the help of the data exporter) if it:
     1. receives a legally binding request from a public authority, including judicial authorities, under the laws of the country of destination for the disclosure of personal data transferred pursuant to these Clauses; such notification shall include information about the personal data requested, the requesting authority, the legal basis for the request and the response provided; or
     2. becomes aware of any direct access by public authorities to personal data transferred pursuant to these Clauses in accordance with the laws of the country of destination; such notification shall include all information available to the importer.
  2. If the data importer is prohibited from notifying the data exporter and/or the data subject under the laws of the country of destination, the data importer agrees to use its best efforts to obtain a waiver of the prohibition, with a view to communicating as much information as possible, as soon as possible. The data importer agrees to document its best efforts in order to be able to demonstrate them on request of the data exporter.
  3. Where permissible under the laws of the country of destination, the data importer agrees to provide the data exporter, at regular intervals for the duration of the contract, with as much relevant information as possible on the requests received (in particular, number of requests, type of data requested, requesting authority/ies, whether requests have been challenged and the outcome of such challenges, etc.).
  4. The data importer agrees to preserve the information pursuant to paragraphs (a) to (c) for the duration of the contract and make it available to the competent supervisory authority on request.
  5. Paragraphs (a) to (c) are without prejudice to the obligation of the data importer pursuant to Clause 14(e) and Clause 16 to inform the data exporter promptly where it is unable to comply with these Clauses.

**15.2 Review of legality and data minimisation**

* 1. The data importer agrees to review the legality of the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and to challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the country of destination, applicable obligations under international law and principles of international comity. The data importer shall, under the same conditions, pursue possibilities of appeal. When challenging a request, the data importer shall seek interim measures with a view to suspending the effects of the request until the competent judicial authority has decided on its merits. It shall not disclose the personal data requested until required to do so under the applicable procedural rules. These requirements are without prejudice to the obligations of the data importer under Clause 14(e).
  2. The data importer agrees to document its legal assessment and any challenge to the request for disclosure and, to the extent permissible under the laws of the country of destination, make the documentation available to the data exporter. It shall also make it available to the competent supervisory authority on request.
  3. The data importer agrees to provide the minimum amount of information permissible when responding to a request for disclosure, based on a reasonable interpretation of the request.

SECTION IV – FINAL PROVISIONS

CLAUSE 16

**Non-compliance with the Clauses and termination**

* 1. The data importer shall promptly inform the data exporter if it is unable to comply with these Clauses, for whatever reason.
  2. In the event that the data importer is in breach of these Clauses or unable to comply with these Clauses, the data exporter shall suspend the transfer of personal data to the data importer until compliance is again ensured or the contract is terminated. This is without prejudice to Clause 14(f).
  3. The data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses, where:
     1. the data exporter has suspended the transfer of personal data to the data importer pursuant to paragraph (b) and compliance with these Clauses is not restored within a reasonable time and in any event within one month of suspension;
     2. the data importer is in substantial or persistent breach of these Clauses; or
     3. the data importer fails to comply with a binding decision of a competent court or supervisory authority regarding its obligations under these Clauses.

In these cases, it shall inform the competent supervisory authority of such non-compliance. Where the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise.

* 1. Personal data that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall at the choice of the data exporter immediately be returned to the data exporter or deleted in its entirety. The same shall apply to any copies of the data. The data importer shall certify the deletion of the data to the data exporter. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit the return or deletion of the transferred personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process the data to the extent and for as long as required under that local law.
  2. Either Party may revoke its agreement to be bound by these Clauses where (i) the European Commission adopts a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 that covers the transfer of personal data to which these Clauses apply; or (ii) Regulation (EU) 2016/679 becomes part of the legal framework of the country to which the personal data is transferred. This is without prejudice to other obligations applying to the processing in question under Regulation (EU) 2016/679.

CLAUSE 17

**Governing law**

[OPTION 1: These Clauses shall be governed by the law of one of the EU Member States, provided such law allows for third-party beneficiary rights. The Parties agree that this shall be the law of \_\_\_\_\_\_\_ (*specify Member State*).]

[OPTION 2: These Clauses shall be governed by the law of the EU Member State in which the data exporter is established. Where such law does not allow for third-party beneficiary rights, they shall be governed by the law of another EU Member State that does allow for third-party beneficiary rights. The Parties agree that this shall be the law of \_\_\_\_\_\_\_ (*specify Member State*).]

CLAUSE 18

**Choice of forum and jurisdiction**

* 1. Any dispute arising from these Clauses shall be resolved by the courts of an EU Member State.
  2. The Parties agree that those shall be the courts of \_\_\_\_\_ *(specify Member State)*.
  3. A data subject may also bring legal proceedings against the data exporter and/or data importer before the courts of the Member State in which he/she has his/her habitual residence.
  4. The Parties agree to submit themselves to the jurisdiction of such courts.

Official European Commission Footnotes

[FN1](#a677831): Where the data exporter is a processor subject to Regulation (EU) 2016/679 acting on behalf of a Union institution or body as controller, reliance on these Clauses when engaging another processor (sub-processing) not subject to Regulation (EU) 2016/679 also ensures compliance with Article 29(4) of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39), to the extent these Clauses and the data protection obligations as set out in the contract or other legal act between the controller and the processor pursuant to Article 29(3) of Regulation (EU) 2018/1725 are aligned. This will in particular be the case where the controller and processor rely on the standard contractual clauses included in Decision 2021/915.

[FN4](#a612373): The Agreement on the European Economic Area (EEA Agreement) provides for the extension of the European Union’s internal market to the three EEA States Iceland, Liechtenstein and Norway. The Union data protection legislation, including Regulation (EU) 2016/679, is covered by the EEA Agreement and has been incorporated into Annex XI thereto. Therefore, any disclosure by the data importer to a third party located in the EEA does not qualify as an onward transfer for the purpose of these Clauses.

[FN8](#a182153): This requirement may be satisfied by the sub-processor acceding to these Clauses under the appropriate Module, in accordance with Clause 7.

[FN11](#a451275): The data importer may offer independent dispute resolution through an arbitration body only if it is established in a country that has ratified the New York Convention on Enforcement of Arbitration Awards.

[FN12](#a501093): As regards the impact of such laws and practices on compliance with these Clauses, different elements may be considered as part of an overall assessment. Such elements may include relevant and documented practical experience with prior instances of requests for disclosure from public authorities, or the absence of such requests, covering a sufficiently representative time-frame. This refers in particular to internal records or other documentation, drawn up on a continuous basis in accordance with due diligence and certified at senior management level, provided that this information can be lawfully shared with third parties. Where this practical experience is relied upon to conclude that the data importer will not be prevented from complying with these Clauses, it needs to be supported by other relevant, objective elements, and it is for the Parties to consider carefully whether these elements together carry sufficient weight, in terms of their reliability and representativeness, to support this conclusion. In particular, the Parties have to take into account whether their practical experience is corroborated and not contradicted by publicly available or otherwise accessible, reliable information on the existence or absence of requests within the same sector and/or the application of the law in practice, such as case law and reports by independent oversight bodies.

APPENDIX

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| --- |
| EXPLANATORY NOTE:  It must be possible to clearly distinguish the information applicable to each transfer or category of transfers and, in this regard, to determine the respective role(s) of the Parties as data exporter(s) and/or data importer(s). This does not necessarily require completing and signing separate appendices for each transfer/category of transfers and/or contractual relationship, where this transparency can achieved through one appendix. However, where necessary to ensure sufficient clarity, separate appendices should be used. |

ANNEX I

**A. LIST OF PARTIES**

**Data exporter(s):** [*Identity and contact details of the data exporter(s) and, where applicable, of its/their data protection officer and/or representative in the European Union*]

1. Name: …

Address: …

Contact person's name, position and contact details: …

Activities relevant to the data transferred under these Clauses: …

Signature and date: …

Role (controller/processor): …

2. …

**Data importer(s):** [*Identity and contact details of the data importer(s), including any contact person with responsibility for data protection*]

1. Name: …

Address: …

Contact person's name, position and contact details: …

Activities relevant to the data transferred under these Clauses: …

Signature and date: …

Role (controller/processor): …

2. …

**B. DESCRIPTION OF TRANSFER**

*Categories of data subjects whose personal data is transferred*

*…*

*Categories of personal data transferred*

*…*

*Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.*

*…*

*The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis).*

*…*

*Nature of the processing*

*…*

*Purpose(s) of the data transfer and further processing*

*…*

*The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period*

*…*

*For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing*

*…*

**C. COMPETENT SUPERVISORY AUTHORITY**

*Identify the competent supervisory authority/ies in accordance with Clause 13*

ANNEX II

**TECHNICAL AND ORGANISATIONAL MEASURES INCLUDING TECHNICAL AND ORGANISATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA**

|  |
| --- |
| EXPLANATORY NOTE:  The technical and organisational measures must be described in specific (and not generic) terms. See also the general comment on the first page of the Appendix, in particular on the need to clearly indicate which measures apply to each transfer/set of transfers. |

*Description of the technical and organisational measures implemented by the data importer(s) (including any relevant certifications) to ensure an appropriate level of security, taking into account the nature, scope, context and purpose of the processing, and the risks for the rights and freedoms of natural persons.*

*[Examples of possible measures:*

*Measures of pseudonymisation and encryption of personal data*

*Measures for ensuring ongoing confidentiality, integrity, availability and resilience of processing systems and services*

*Measures for ensuring the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident*

*Processes for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures in order to ensure the security of the processing*

*Measures for user identification and authorisation*

*Measures for the protection of data during transmission*

*Measures for the protection of data during storage*

*Measures for ensuring physical security of locations at which personal data are processed*

*Measures for ensuring events logging*

*Measures for ensuring system configuration, including default configuration*

*Measures for internal IT and IT security governance and management*

*Measures for certification/assurance of processes and products*

*Measures for ensuring data minimisation*

*Measures for ensuring data quality*

*Measures for ensuring limited data retention*

*Measures for ensuring accountability*

*Measures for allowing data portability and ensuring erasure]*

*For transfers to (sub-) processors, also describe the specific technical and organisational measures to be taken by the (sub-) processor to be able to provide assistance to the* *controller and, for transfers from a processor to a sub-processor, to the data exporter*

ANNEX III

**LIST OF SUB-PROCESSORS**

|  |
| --- |
| EXPLANATORY NOTE:  This Annex must be completed in case of the specific authorization of sub-processors (Clause 9(a), Option 1). |

The controller has authorised the use of the following sub-processors:

1. Name: …

Address: …

Contact person's name, position and contact details: …

Description of processing (including a clear delimitation of responsibilities in case several sub-processors are authorised): …

2. …

Part C: Processor to Processor Standard Contractual Clauses

Standard Contractual Clauses for Personal Data Transfers from an EU Processor to a Processor Established in a Third Country (Processor-to-Processor Transfers)

SECTION I

CLAUSE 1

**Purpose and scope**

* 1. The purpose of these standard contractual clauses is to ensure compliance with the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)[[FN1](#a580728)] for the transfer of personal data to a third country.
  2. The Parties:
     1. the natural or legal person(s), public authority/ies, agency/ies or other body/ies (hereinafter 'entity/ies') transferring the personal data, as listed in Annex I.A (hereinafter each 'data exporter'), and
     2. the entity/ies in a third country receiving the personal data from the data exporter, directly or indirectly via another entity also Party to these Clauses, as listed in Annex I.A (hereinafter each 'data importer')

have agreed to these standard contractual clauses (hereinafter: 'Clauses').

* 1. These Clauses apply with respect to the transfer of personal data as specified in Annex I.B.
  2. The Appendix to these Clauses containing the Annexes referred to therein forms an integral part of these Clauses.

CLAUSE 2

**Effect and invariability of the Clauses**

* 1. These Clauses set out appropriate safeguards, including enforceable data subject rights and effective legal remedies, pursuant to Article 46(1) and Article 46(2)(c) of Regulation (EU) 2016/679 and, with respect to data transfers from controllers to processors and/or processors to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679, provided they are not modified, except to select the appropriate Module(s) or to add or update information in the Appendix. This does not prevent the Parties from including the standard contractual clauses laid down in these Clauses in a wider contract and/or to add other clauses or additional safeguards, provided that they do not contradict, directly or indirectly, these Clauses or prejudice the fundamental rights or freedoms of data subjects.
  2. These Clauses are without prejudice to obligations to which the data exporter is subject by virtue of Regulation (EU) 2016/679.

CLAUSE 3

**Third-party beneficiaries**

* 1. Data subjects may invoke and enforce these Clauses, as third-party beneficiaries, against the data exporter and/or data importer, with the following exceptions:
     1. Clause 1, Clause 2, Clause 3, Clause 6, Clause 7;
     2. Clause 8 – Module One: Clause 8.5 (e) and Clause 8.9(b); Module Two: Clause 8.1(b), 8.9(a), (c), (d) and (e); Module Three: Clause 8.1(a), (c) and (d) and Clause 8.9(a), (c), (d), (e), (f) and (g); Module Four: Clause 8.1 (b) and Clause 8.3(b);
     3. Clause 9 – Module Two: Clause 9(a), (c), (d) and (e); Module Three: Clause 9(a), (c), (d) and (e);
     4. Clause 12 – Module One: Clause 12(a) and (d); Modules Two and Three: Clause 12(a), (d) and (f);
     5. Clause 13;
     6. Clause 15.1(c), (d) and (e);
     7. Clause 16(e);
     8. Clause 18 – Modules One, Two and Three: Clause 18(a) and (b); Module Four: Clause 18.
  2. Paragraph (a) is without prejudice to rights of data subjects under Regulation (EU) 2016/679.

CLAUSE 4

**Interpretation**

* 1. Where these Clauses use terms that are defined in Regulation (EU) 2016/679, those terms shall have the same meaning as in that Regulation.
  2. These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679.
  3. These Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in Regulation (EU) 2016/679.

CLAUSE 5

**Hierarchy**

In the event of a contradiction between these Clauses and the provisions of related agreements between the Parties, existing at the time these Clauses are agreed or entered into thereafter, these Clauses shall prevail.

CLAUSE 6

**Description of the transfer(s)**

The details of the transfer(s), and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred, are specified in Annex I.B.

[CLAUSE 7 - Optional

**Docking clause**

* 1. An entity that is not a Party to these Clauses may, with the agreement of the Parties, accede to these Clauses at any time, either as a data exporter or as a data importer, by completing the Appendix and signing Annex I.A.
  2. Once it has completed the Appendix and signed Annex I.A, the acceding entity shall become a Party to these Clauses and have the rights and obligations of a data exporter or data importer in accordance with its designation in Annex I.A.
  3. The acceding entity shall have no rights or obligations arising under these Clauses from the period prior to becoming a Party.]

SECTION II - OBLIGATIONS OF THE PARTIES

CLAUSE 8

**Data protection safeguards**

The data exporter warrants that it has used reasonable efforts to determine that the data importer is able, through the implementation of appropriate technical and organisational measures, to satisfy its obligations under these Clauses.

**8.1 Instructions**

* 1. The data exporter has informed the data importer that it acts as processor under the instructions of its controller(s), which the data exporter shall make available to the data importer prior to processing.
  2. The data importer shall process the personal data only on documented instructions from the controller, as communicated to the data importer by the data exporter, and any additional documented instructions from the data exporter. Such additional instructions shall not conflict with the instructions from the controller. The controller or data exporter may give further documented instructions regarding the data processing throughout the duration of the contract.
  3. The data importer shall immediately inform the data exporter if it is unable to follow those instructions. Where the data importer is unable to follow the instructions from the controller, the data exporter shall immediately notify the controller.
  4. The data exporter warrants that it has imposed the same data protection obligations on the data importer as set out in the contract or other legal act under Union or Member State law between the controller and the data exporter[[FN5](#a833550)].

**8.2 Purpose limitation**

The data importer shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex I.B, unless on further instructions from the controller, as communicated to the data importer by the data exporter, or from the data exporter.

**8.3 Transparency**

On request, the data exporter shall make a copy of these Clauses, including the Appendix as completed by the Parties, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential information, including personal data, the data exporter may redact part of the text of the Appendix prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information.

**8.4 Accuracy**

If the data importer becomes aware that the personal data it has received is inaccurate, or has become outdated, it shall inform the data exporter without undue delay. In this case, the data importer shall cooperate with the data exporter to rectify or erase the data.

**8.5 Duration of processing and erasure or return of data**

Processing by the data importer shall only take place for the duration specified in Annex I.B. After the end of the provision of the processing services, the data importer shall, at the choice of the data exporter, delete all personal data processed on behalf of the controller and certify to the data exporter that it has done so, or return to the data exporter all personal data processed on its behalf and delete existing copies. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit return or deletion of the personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process it to the extent and for as long as required under that local law. This is without prejudice to Clause 14, in particular the requirement for the data importer under Clause 14(e) to notify the data exporter throughout the duration of the contract if it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under Clause 14(a).

**8.6 Security of processing**

* 1. The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to that data (hereinafter 'personal data breach'). In assessing the appropriate level of security, they shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subject. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner. In case of pseudonymisation, the additional information for attributing the personal data to a specific data subject shall, where possible, remain under the exclusive control of the data exporter or the controller. In complying with its obligations under this paragraph, the data importer shall at least implement the technical and organisational measures specified in Annex II. The data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.
  2. The data importer shall grant access to the data to members of its personnel only to the extent strictly necessary for the implementation, management and monitoring of the contract. It shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
  3. In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the breach, including measures to mitigate its adverse effects. The data importer shall also notify, without undue delay, the data exporter and, where appropriate and feasible, the controller after having become aware of the breach. Such notification shall contain the details of a contact point where more information can be obtained, a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), its likely consequences and the measures taken or proposed to address the data breach, including measures to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.
  4. The data importer shall cooperate with and assist the data exporter to enable the data exporter to comply with its obligations under Regulation (EU) 2016/679, in particular to notify its controller so that the latter may in turn notify the competent supervisory authority and the affected data subjects, taking into account the nature of processing and the information available to the data importer.

**8.7 Sensitive data**

Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions and offences (hereinafter 'sensitive data'), the data importer shall apply the specific restrictions and/or additional safeguards set out in Annex I.B.

**8.8 Onward transfers**

The data importer shall only disclose the personal data to a third party on documented instructions from the controller, as communicated to the data importer by the data exporter. In addition, the data may only be disclosed to a third party located outside the European Union[[FN6](#a343800)] (in the same country as the data importer or in another third country, hereinafter 'onward transfer') if the third party is or agrees to be bound by these Clauses, under the appropriate Module, or if:

* + 1. the onward transfer is to a country benefitting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;
    2. the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 of Regulation (EU) 2016/679;
    3. the onward transfer is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or
    4. the onward transfer is necessary in order to protect the vital interests of the data subject or of another natural person.

Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

**8.9 Documentation and compliance**

* 1. The data importer shall promptly and adequately deal with enquiries from the data exporter or the controller that relate to the processing under these Clauses.
  2. The Parties shall be able to demonstrate compliance with these Clauses. In particular, the data importer shall keep appropriate documentation on the processing activities carried out on behalf of the controller.
  3. The data importer shall make all information necessary to demonstrate compliance with the obligations set out in these Clauses available to the data exporter, which shall provide it to the controller.
  4. The data importer shall allow for and contribute to audits by the data exporter of the processing activities covered by these Clauses, at reasonable intervals or if there are indications of non-compliance. The same shall apply where the data exporter requests an audit on instructions of the controller. In deciding on an audit, the data exporter may take into account relevant certifications held by the data importer.
  5. Where the audit is carried out on the instructions of the controller, the data exporter shall make the results available to the controller.
  6. The data exporter may choose to conduct the audit by itself or mandate an independent auditor. Audits may include inspections at the premises or physical facilities of the data importer and shall, where appropriate, be carried out with reasonable notice.
  7. The Parties shall make the information referred to in paragraphs (b) and (c), including the results of any audits, available to the competent supervisory authority on request.

CLAUSE 9

**Use of sub-processors**

* 1. OPTION 1: SPECIFIC PRIOR AUTHORISATION The data importer shall not sub-contract any of its processing activities performed on behalf of the data exporter under these Clauses to a sub-processor without the prior specific written authorisation of the controller. The data importer shall submit the request for specific authorisation at least [*Specify time period*] prior to the engagement of the sub-processor, together with the information necessary to enable the controller to decide on the authorisation. It shall inform the data exporter of such engagement. The list of sub-processors already authorised by the controller can be found in Annex III. The Parties shall keep Annex III up to date.

OPTION 2: GENERAL WRITTEN AUTHORISATION The data importer has the controller's general authorisation for the engagement of sub-processor(s) from an agreed list. The data importer shall specifically inform the controller in writing of any intended changes to that list through the addition or replacement of sub-processors at least [*Specify time period*] in advance, thereby giving the controller sufficient time to be able to object to such changes prior to the engagement of the sub-processor(s). The data importer shall provide the controller with the information necessary to enable the controller to exercise its right to object. The data importer shall inform the data exporter of the engagement of the sub-processor(s).

* 1. Where the data importer engages a sub-processor to carry out specific processing activities (on behalf of the controller), it shall do so by way of a written contract that provides for, in substance, the same data protection obligations as those binding the data importer under these Clauses, including in terms of third-party beneficiary rights for data subjects. [[FN9](#a680300)] The Parties agree that, by complying with this Clause, the data importer fulfils its obligations under Clause 8.8. The data importer shall ensure that the sub-processor complies with the obligations to which the data importer is subject pursuant to these Clauses.
  2. The data importer shall provide, at the data exporter's or controller's request, a copy of such a sub-processor agreement and any subsequent amendments. To the extent necessary to protect business secrets or other confidential information, including personal data, the data importer may redact the text of the agreement prior to sharing a copy.
  3. The data importer shall remain fully responsible to the data exporter for the performance of the sub-processor's obligations under its contract with the data importer. The data importer shall notify the data exporter of any failure by the sub-processor to fulfil its obligations under that contract.
  4. The data importer shall agree a third-party beneficiary clause with the sub-processor whereby – in the event the data importer has factually disappeared, ceased to exist in law or has become insolvent – the data exporter shall have the right to terminate the sub-processor contract and to instruct the sub-processor to erase or return the personal data.

CLAUSE 10

**Data subject rights**

* 1. The data importer shall promptly notify the data exporter and, where appropriate, the controller of any request it has received from a data subject, without responding to that request unless it has been authorised to do so by the controller.
  2. The data importer shall assist, where appropriate in cooperation with the data exporter, the controller in fulfilling its obligations to respond to data subjects' requests for the exercise of their rights under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable. In this regard, the Parties shall set out in Annex II the appropriate technical and organisational measures, taking into account the nature of the processing, by which the assistance shall be provided, as well as the scope and the extent of the assistance required.
  3. In fulfilling its obligations under paragraphs (a) and (b), the data importer shall comply with the instructions from the controller, as communicated by the data exporter.

CLAUSE 11

**Redress**

* 1. The data importer shall inform data subjects in a transparent and easily accessible format, through individual notice or on its website, of a contact point authorised to handle complaints. It shall deal promptly with any complaints it receives from a data subject.

[OPTION: The data importer agrees that data subjects may also lodge a complaint with an independent dispute resolution body[[FN11](#a434221)] at no cost to the data subject. It shall inform the data subjects, in the manner set out in paragraph (a), of such redress mechanism and that they are not required to use it, or follow a particular sequence in seeking redress.]

* 1. In case of a dispute between a data subject and one of the Parties as regards compliance with these Clauses, that Party shall use its best efforts to resolve the issue amicably in a timely fashion. The Parties shall keep each other informed about such disputes and, where appropriate, cooperate in resolving them.
  2. Where the data subject invokes a third-party beneficiary right pursuant to Clause 3, the data importer shall accept the decision of the data subject to:
     1. lodge a complaint with the supervisory authority in the Member State of his/her habitual residence or place of work, or the competent supervisory authority pursuant to Clause 13;
     2. refer the dispute to the competent courts within the meaning of Clause 18.
  3. The Parties accept that the data subject may be represented by a not-for-profit body, organisation or association under the conditions set out in Article 80(1) of Regulation (EU) 2016/679.
  4. The data importer shall abide by a decision that is binding under the applicable EU or Member State law.
  5. The data importer agrees that the choice made by the data subject will not prejudice his/her substantive and procedural rights to seek remedies in accordance with applicable laws.

CLAUSE 12

**Liability**

* 1. Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.
  2. The data importer shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data importer or its sub-processor causes the data subject by breaching the third-party beneficiary rights under these Clauses.
  3. Notwithstanding paragraph (b), the data exporter shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data exporter or the data importer (or its sub-processor) causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter and, where the data exporter is a processor acting on behalf of a controller, to the liability of the controller under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable.
  4. The Parties agree that if the data exporter is held liable under paragraph (c) for damages caused by the data importer (or its sub-processor), it shall be entitled to claim back from the data importer that part of the compensation corresponding to the data importer's responsibility for the damage.
  5. Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.
  6. The Parties agree that if one Party is held liable under paragraph (e), it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to its/their responsibility for the damage.
  7. The data importer may not invoke the conduct of a sub-processor to avoid its own liability.

CLAUSE 13

**Supervision**

* 1. [Where the data exporter is established in an EU Member State:] The supervisory authority with responsibility for ensuring compliance by the data exporter with Regulation (EU) 2016/679 as regards the data transfer, as indicated in Annex I.C, shall act as competent supervisory authority.

[Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) and has appointed a representative pursuant to Article 27(1) of Regulation (EU) 2016/679:] The supervisory authority of the Member State in which the representative within the meaning of Article 27(1) of Regulation (EU) 2016/679 is established, as indicated in Annex I.C, shall act as competent supervisory authority.

[Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) without however having to appoint a representative pursuant to Article 27(2) of Regulation (EU) 2016/679:] The supervisory authority of one of the Member States in which the data subjects whose personal data is transferred under these Clauses in relation to the offering of goods or services to them, or whose behaviour is monitored, are located, as indicated in Annex I.C, shall act as competent supervisory authority.

* 1. The data importer agrees to submit itself to the jurisdiction of and cooperate with the competent supervisory authority in any procedures aimed at ensuring compliance with these Clauses. In particular, the data importer agrees to respond to enquiries, submit to audits and comply with the measures adopted by the supervisory authority, including remedial and compensatory measures. It shall provide the supervisory authority with written confirmation that the necessary actions have been taken.

SECTION III – LOCAL LAWS AND OBLIGATIONS IN CASE OF ACCESS BY PUBLIC AUTHORITIES

CLAUSE 14

**Local laws and practices affecting compliance with the Clauses**

* 1. The Parties warrant that they have no reason to believe that the laws and practices in the third country of destination applicable to the processing of the personal data by the data importer, including any requirements to disclose personal data or measures authorising access by public authorities, prevent the data importer from fulfilling its obligations under these Clauses. This is based on the understanding that laws and practices that respect the essence of the fundamental rights and freedoms and do not exceed what is necessary and proportionate in a democratic society to safeguard one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679, are not in contradiction with these Clauses.
  2. The Parties declare that in providing the warranty in paragraph (a), they have taken due account in particular of the following elements:
     1. the specific circumstances of the transfer, including the length of the processing chain, the number of actors involved and the transmission channels used; intended onward transfers; the type of recipient; the purpose of processing; the categories and format of the transferred personal data; the economic sector in which the transfer occurs; the storage location of the data transferred;
     2. the laws and practices of the third country of destination – including those requiring the disclosure of data to public authorities or authorising access by such authorities – relevant in light of the specific circumstances of the transfer, and the applicable limitations and safeguards[[FN12](#a527535)];
     3. any relevant contractual, technical or organisational safeguards put in place to supplement the safeguards under these Clauses, including measures applied during transmission and to the processing of the personal data in the country of destination.
  3. The data importer warrants that, in carrying out the assessment under paragraph (b), it has made its best efforts to provide the data exporter with relevant information and agrees that it will continue to cooperate with the data exporter in ensuring compliance with these Clauses.
  4. The Parties agree to document the assessment under paragraph (b) and make it available to the competent supervisory authority on request.
  5. The data importer agrees to notify the data exporter promptly if, after having agreed to these Clauses and for the duration of the contract, it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under paragraph (a), including following a change in the laws of the third country or a measure (such as a disclosure request) indicating an application of such laws in practice that is not in line with the requirements in paragraph (a). The data exporter shall forward the notification to the controller.
  6. Following a notification pursuant to paragraph (e), or if the data exporter otherwise has reason to believe that the data importer can no longer fulfil its obligations under these Clauses, the data exporter shall promptly identify appropriate measures (e.g. technical or organisational measures to ensure security and confidentiality) to be adopted by the data exporter and/or data importer to address the situation, if appropriate in consultation with the controller. The data exporter shall suspend the data transfer if it considers that no appropriate safeguards for such transfer can be ensured, or if instructed by the controller or the competent supervisory authority to do so. In this case, the data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses. If the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise. Where the contract is terminated pursuant to this Clause, Clause 16(d) and (e) shall apply.

CLAUSE 15

**Obligations of the data importer in case of access by public authorities**

**15.1 Notification**

* 1. The data importer agrees to notify the data exporter and, where possible, the data subject promptly (if necessary with the help of the data exporter) if it:
     1. receives a legally binding request from a public authority, including judicial authorities, under the laws of the country of destination for the disclosure of personal data transferred pursuant to these Clauses; such notification shall include information about the personal data requested, the requesting authority, the legal basis for the request and the response provided; or
     2. becomes aware of any direct access by public authorities to personal data transferred pursuant to these Clauses in accordance with the laws of the country of destination; such notification shall include all information available to the importer.

The data exporter shall forward the notification to the controller.

* 1. If the data importer is prohibited from notifying the data exporter and/or the data subject under the laws of the country of destination, the data importer agrees to use its best efforts to obtain a waiver of the prohibition, with a view to communicating as much information as possible, as soon as possible. The data importer agrees to document its best efforts in order to be able to demonstrate them on request of the data exporter.
  2. Where permissible under the laws of the country of destination, the data importer agrees to provide the data exporter, at regular intervals for the duration of the contract, with as much relevant information as possible on the requests received (in particular, number of requests, type of data requested, requesting authority/ies, whether requests have been challenged and the outcome of such challenges, etc.). The data exporter shall forward the information to the controller.
  3. The data importer agrees to preserve the information pursuant to paragraphs (a) to (c) for the duration of the contract and make it available to the competent supervisory authority on request.
  4. Paragraphs (a) to (c) are without prejudice to the obligation of the data importer pursuant to Clause 14(e) and Clause 16 to inform the data exporter promptly where it is unable to comply with these Clauses.

**15.2 Review of legality and data minimisation**

* 1. The data importer agrees to review the legality of the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and to challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the country of destination, applicable obligations under international law and principles of international comity. The data importer shall, under the same conditions, pursue possibilities of appeal. When challenging a request, the data importer shall seek interim measures with a view to suspending the effects of the request until the competent judicial authority has decided on its merits. It shall not disclose the personal data requested until required to do so under the applicable procedural rules. These requirements are without prejudice to the obligations of the data importer under Clause 14(e).
  2. The data importer agrees to document its legal assessment and any challenge to the request for disclosure and, to the extent permissible under the laws of the country of destination, make the documentation available to the data exporter. It shall also make it available to the competent supervisory authority on request. The data exporter shall make the assessment available to the controller.
  3. The data importer agrees to provide the minimum amount of information permissible when responding to a request for disclosure, based on a reasonable interpretation of the request.

SECTION IV – FINAL PROVISIONS

CLAUSE 16

**Non-compliance with the Clauses and termination**

* 1. The data importer shall promptly inform the data exporter if it is unable to comply with these Clauses, for whatever reason.
  2. In the event that the data importer is in breach of these Clauses or unable to comply with these Clauses, the data exporter shall suspend the transfer of personal data to the data importer until compliance is again ensured or the contract is terminated. This is without prejudice to Clause 14(f).
  3. The data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses, where:
     1. the data exporter has suspended the transfer of personal data to the data importer pursuant to paragraph (b) and compliance with these Clauses is not restored within a reasonable time and in any event within one month of suspension;
     2. the data importer is in substantial or persistent breach of these Clauses; or
     3. the data importer fails to comply with a binding decision of a competent court or supervisory authority regarding its obligations under these Clauses.

In these cases, it shall inform the competent supervisory authority and the controller of such non-compliance. Where the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise.

* 1. Personal data that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall at the choice of the data exporter immediately be returned to the data exporter or deleted in its entirety. The same shall apply to any copies of the data. The data importer shall certify the deletion of the data to the data exporter. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit the return or deletion of the transferred personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process the data to the extent and for as long as required under that local law.
  2. Either Party may revoke its agreement to be bound by these Clauses where (i) the European Commission adopts a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 that covers the transfer of personal data to which these Clauses apply; or (ii) Regulation (EU) 2016/679 becomes part of the legal framework of the country to which the personal data is transferred. This is without prejudice to other obligations applying to the processing in question under Regulation (EU) 2016/679.

CLAUSE 17

Governing law

[OPTION 1: These Clauses shall be governed by the law of one of the EU Member States, provided such law allows for third-party beneficiary rights. The Parties agree that this shall be the law of \_\_\_\_\_\_\_ (*specify Member State*).]

[OPTION 2: These Clauses shall be governed by the law of the EU Member State in which the data exporter is established. Where such law does not allow for third-party beneficiary rights, they shall be governed by the law of another EU Member State that does allow for third-party beneficiary rights. The Parties agree that this shall be the law of \_\_\_\_\_\_\_ (*specify Member State*).]

CLAUSE 18

Choice of forum and jurisdiction

* 1. Any dispute arising from these Clauses shall be resolved by the courts of an EU Member State.
  2. The Parties agree that those shall be the courts of \_\_\_\_\_ *(specify Member State)*.
  3. A data subject may also bring legal proceedings against the data exporter and/or data importer before the courts of the Member State in which he/she has his/her habitual residence.
  4. The Parties agree to submit themselves to the jurisdiction of such courts.

Official European Commission Footnotes

[FN1](#a677831): Where the data exporter is a processor subject to Regulation (EU) 2016/679 acting on behalf of a Union institution or body as controller, reliance on these Clauses when engaging another processor (sub-processing) not subject to Regulation (EU) 2016/679 also ensures compliance with Article 29(4) of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39), to the extent these Clauses and the data protection obligations as set out in the contract or other legal act between the controller and the processor pursuant to Article 29(3) of Regulation (EU) 2018/1725 are aligned. This will in particular be the case where the controller and processor rely on the standard contractual clauses included in Decision 2021/915.

[FN5](#a533858): See Article 28(4) of Regulation (EU) 2016/679 and, where the controller is an EU institution or body, Article 29(4) of Regulation (EU) 2018/1725.

[FN6](#a155880): The Agreement on the European Economic Area (EEA Agreement) provides for the extension of the European Union's internal market to the three EEA States Iceland, Liechtenstein and Norway. The Union data protection legislation, including Regulation (EU) 2016/679, is covered by the EEA Agreement and has been incorporated into Annex XI thereto. Therefore, any disclosure by the data importer to a third party located in the EEA does not qualify as an onward transfer for the purposes of these Clauses.

[FN9](#a257461): This requirement may be satisfied by the sub-processor acceding to these Clauses under the appropriate Module, in accordance with Clause 7.

[FN11](#a257461): The data importer may offer independent dispute resolution through an arbitration body only if it is established in a country that has ratified the New York Convention on Enforcement of Arbitration Awards.

[FN12](#a770125): As regards the impact of such laws and practices on compliance with these Clauses, different elements may be considered as part of an overall assessment. Such elements may include relevant and documented practical experience with prior instances of requests for disclosure from public authorities, or the absence of such requests, covering a sufficiently representative time-frame. This refers in particular to internal records or other documentation, drawn up on a continuous basis in accordance with due diligence and certified at senior management level, provided that this information can be lawfully shared with third parties. Where this practical experience is relied upon to conclude that the data importer will not be prevented from complying with these Clauses, it needs to be supported by other relevant, objective elements, and it is for the Parties to consider carefully whether these elements together carry sufficient weight, in terms of their reliability and representativeness, to support this conclusion. In particular, the Parties have to take into account whether their practical experience is corroborated and not contradicted by publicly available or otherwise accessible, reliable information on the existence or absence of requests within the same sector and/or the application of the law in practice, such as case law and reports by independent oversight bodies.

APPENDIX

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| EXPLANATORY NOTE:  It must be possible to clearly distinguish the information applicable to each transfer or category of transfers and, in this regard, to determine the respective role(s) of the Parties as data exporter(s) and/or data importer(s). This does not necessarily require completing and signing separate appendices for each transfer/category of transfers and/or contractual relationship, where this transparency can achieved through one appendix. However, where necessary to ensure sufficient clarity, separate appendices should be used. |

ANNEX I

**A. LIST OF PARTIES**

**Data exporter(s):** [*Identity and contact details of the data exporter(s) and, where applicable, of its/their data protection officer and/or representative in the European Union*]

1. Name: …

Address: …

Contact person's name, position and contact details: …

Activities relevant to the data transferred under these Clauses: …

Signature and date: …

Role (controller/processor): …

2. …

**Data importer(s):** [*Identity and contact details of the data importer(s), including any contact person with responsibility for data protection*]

1. Name: …

Address: …

Contact person's name, position and contact details: …

Activities relevant to the data transferred under these Clauses: …

Signature and date: …

Role (controller/processor): …

2. …

**B. DESCRIPTION OF TRANSFER**

*Categories of data subjects whose personal data is transferred*

*…*

*Categories of personal data transferred*

*…*

*Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.*

*…*

*The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis).*

*…*

*Nature of the processing*

*…*

*Purpose(s) of the data transfer and further processing*

*…*

*The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period*

*…*

*For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing*

*…*

**C. COMPETENT SUPERVISORY AUTHORITY**

*Identify the competent supervisory authority/ies in accordance with Clause 13*

ANNEX II

**TECHNICAL AND ORGANISATIONAL MEASURES INCLUDING TECHNICAL AND ORGANISATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA**

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| EXPLANATORY NOTE:  The technical and organisational measures must be described in specific (and not generic) terms. See also the general comment on the first page of the Appendix, in particular on the need to clearly indicate which measures apply to each transfer/set of transfers. |

*Description of the technical and organisational measures implemented by the data importer(s) (including any relevant certifications) to ensure an appropriate level of security, taking into account the nature, scope, context and purpose of the processing, and the risks for the rights and freedoms of natural persons.*

*[Examples of possible measures:*

*Measures of pseudonymisation and encryption of personal data*

*Measures for ensuring ongoing confidentiality, integrity, availability and resilience of processing systems and services*

*Measures for ensuring the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident*

*Processes for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures in order to ensure the security of the processing*

*Measures for user identification and authorisation*

*Measures for the protection of data during transmission*

*Measures for the protection of data during storage*

*Measures for ensuring physical security of locations at which personal data are processed*

*Measures for ensuring events logging*

*Measures for ensuring system configuration, including default configuration*

*Measures for internal IT and IT security governance and management*

*Measures for certification/assurance of processes and products*

*Measures for ensuring data minimisation*

*Measures for ensuring data quality*

*Measures for ensuring limited data retention*

*Measures for ensuring accountability*

*Measures for allowing data portability and ensuring erasure]*

*For transfers to (sub-) processors, also describe the specific technical and organisational measures to be taken by the (sub-) processor to be able to provide assistance to the* *controller and, for transfers from a processor to a sub-processor, to the data exporter*

ANNEX III

|  |
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| EXPLANATORY NOTE:  This Annex must be completed in case of the specific authorization of sub-processors (Clause 9(a), Option 1). |

The controller has authorised the use of the following sub-processors:

Name: …

Address: …

Contact person's name, position and contact details: …

Description of processing (including a clear delimitation of responsibilities in case several sub-processors are authorised): …

**Schedule 32**

**Intellectual property rights**

# **Schedule 32 (*Intellectual Property Rights*)**

***[Guidance note: this Schedule on Intellectual Property Rights (IPRs) can be amended depending on how you need to arrange ownership and licencing of all Specially Written Software and Project Specific IPRs created for or pursuant to the contract. There are now 5 suggested options available.***

***Option 1: Authority owns all Specially Written Software and Project Specific IPRs with limited Supplier rights to all Specially Written Software and Project Specific IPRs in order to deliver the Contract was the option available under the previous version of the Model Services Contract.***

***The new options are:***

* ***Option 2: Authority ownership of all Specially Written Software and Project Specific IPRs with non-exclusive Supplier rights;***
* ***Option 3: Supplier ownership of all Specially Written Software and Project Specific IPRs with Authority rights for the current contract only;***
* ***Option 4: Supplier ownership of Specially Written Software and Project Specific IPRs with Authority rights for the current contract and broader public sector functions;***
* ***Option 5: Options 2, 3, or 4, plus Authority rights to a gain/profit share***

***Option 2 should be considered for use in situations where the Authority should retain ownership of any Specially Written Software and Project Specific IPRs but where the Supplier should be able to use any Specially Written Software and Project Specific IPRs developed, subject to Authority approval. In this situation, the Authority will not look to publish the Specially Written Software and Project Specific IPRs under Open Licence.***

***Option 3 should be considered for use where (a) there is no clear benefit in the Authority owning the Specially Written Software and Project Specific IPRs, or (b) where any Specially Written Software and Project Specific IPRs created cannot easily be separated from the Supplier’s Existing IPR (e.g. Software As A Service (SAAS)), but where a licence is only needed for the current contracted service (and future replacement of that service) and the IPR in question will not be needed for other services.***

***Option 4 is similar to Option 3, except it should be used where the licence to the Authority for the IPR in question should extend to cover other contracts and services, which may include contracts and services not yet awarded, and broader public sector functions.***

***Option 5 should be considered if an Authority has invested significant resource or funding in the development of the project and intends to seek a return on that investment. Includes a right for the Authority to request ownership of unexploited IPR after 3 years.]***

***[Guidance note: for Option 1: Authority owns all Specially Written Software and Project Specific IPRs, with limited Supplier rights to Specially Written Software and Project Specific IPRs in order to deliver the Contract, please include the following drafting:]***

1. INTELLECTUAL PROPERTY RIGHTS
   1. Except as expressly set out in this Contract:
      * 1. the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
           1. the Supplier Software;
           2. the Third Party Software;
           3. the Third Party IPRs; and
           4. the Supplier Background IPRs;
        2. the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:
           1. the Authority Software;
           2. the Authority Data; and
           3. the Authority Background IPRs;
        3. Specially Written Software and Project Specific IPRs (except for any Know-How, trade secrets or Confidential Information contained therein) shall be the property of the Authority.
   2. Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Paragraph 1.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
   3. Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.
   4. Unless the Authority otherwise agrees in advance in writing:
      * 1. all Specially Written Software and any software element of Project Specific IPRs shall be created in a format, or able to be converted into a format, which is suitable for publication by the Authority as open source software; and
        2. where the Specially Written Software and any software element of Project Specific IPRs are written in a format that requires conversion before publication as open source software, the Supplier shall also provide the converted format to the Authority.
   5. Where the Authority agrees that any Specially Written Software and/or any software element of Project Specific IPRs should be excluded from Open Source publication, the Supplier shall as soon as reasonably practicable provide written details of the impact that such exclusion will have on the Authority’s ability to publish other Open Source software under Paragraph 4 (*Open Source Publication*).
   6. Unless otherwise agreed in writing, the Parties shall record all Specially Written Software and Project Specific IPRs in Annex 1 to this Schedule 32 (*Intellectual Property Rights*) and shall keep Annex 1 updated during the Term.
2. TRANSFER AND LICENCES GRANTED BY THE SUPPLIER

Specially Written Software and Project Specific IPRs

* 1. Subject to Paragraph 2.17 (*Patents*) the Supplier hereby agrees to transfer to the Authority, or shall procure the transfer to the Authority of, all rights (subject to Paragraph 1.1(a) (*Intellectual Property Rights*)) in the Specially Written Software and the Project Specific IPRs including (without limitation):
     + 1. the Documentation, Source Code and the Object Code of the Specially Written Software; and
       2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the “Software Supporting Materials”);

but not including any Know-How, trade secrets or Confidential Information.

* 1. The Supplier:
     + 1. shall:
          1. inform the Authority of all Specially Written Software and any element of Project Specific IPRs that constitutes a modification or enhancement to Supplier Software or Third Party Software; and
          2. deliver to the Authority the Specially Written Software and the software element of Project Specific IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of completion of the relevant Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Authority; and
          3. without prejudice to Paragraph 2.11 (*Third Party Software and Third Party IPRs*), provide full details to the Authority of any Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any element of Project Specific IPRs;
       2. acknowledges and agrees that the ownership of the media referred to in Paragraph 2.2(a)(ii) shall vest in the Authority upon their receipt by the Authority; and
       3. shall execute all such assignments as are required to ensure that any rights in the Specially Written Software and Project Specific IPRs are properly transferred to the Authority.

Supplier Software and Supplier Background IPRs

* 1. The Supplier shall not use any Supplier Non-COTS Software or Supplier Non-COTS Background IPR in the provision of the Services unless approval is granted by the Authority to do so.
  2. The Supplier hereby grants to the Authority:
     + 1. subject to the provisions of Paragraph 2.17 (*Patents*) and Clause 2.17 (*Consequences of expiry or termination*), perpetual, royalty-free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):
          1. the Supplier Non-COTS Software for which the Supplier delivers a copy to the Authority for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority’s (or any other Central Government Body’s) business or function; and
          2. the Supplier Non-COTS Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority’s (or any other Central Government Body’s) business or function;
       2. a licence to use the Supplier COTS Software provided always that the Authority shall remain entitled to sub-license and to assign and novate the Supplier COTS Software and Supplier COTS Background IPRs on equivalent terms to those set out in Paragraphs 2.7 (*Authority’s right to sub-licence*) and 2.8 (*Authority’s right to assign/novate sub-licences*) in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs; and
       3. a perpetual royalty-free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained within the Specially Written Software or the Project Specific IPRs.
  3. At any time during the Term or following termination or expiry of this Contract, the Supplier may terminate the licence granted in respect of the Supplier Non-COTS Software under Paragraph 2.4(a)(i) or in respect of the Supplier Non-COTS Background IPRs under Paragraph 2.4(a)(ii) by giving thirty (30) days’ notice in writing (or such other period as agreed by the Parties) if the Authority or any person to whom the Authority grants a sub-licence pursuant to Paragraph 2.7 (*Authority’s right to sub-license*) commits any material breach of the terms of Paragraph 2.4(a)(i) or 2.4(a)(ii) or 2.7(a)(ii) (as the case may be) which, if the breach is capable of remedy, is not remedied within 20 Working Days after the Supplier gives the Authority written notice specifying the breach and requiring its remedy.
  4. In the event the licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs is terminated pursuant to Paragraph 2.5, the Authority shall:
     + 1. immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);
       2. at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs, provided that if the Supplier has not made an election within 6 months of the termination of the licence, the Authority may destroy the documents and other tangible materials that contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs (as the case may be); and
       3. ensure, so far as reasonably practicable, that any Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs.

Authority’s right to sub-license

* 1. Subject to Paragraph 2.17 (*Patents*) the Authority may sub-license:
     + 1. the rights granted under Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
          1. the sub-licence is on terms no broader than those granted to the Authority;
          2. the sub-licence authorises the third party to use the rights licensed in Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority’s (or any other Central Government Body’s) business or function; and
          3. the sub-licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in equivalent terms to those set out in Clause 19 (*Confidentiality*); and
       2. the rights granted under Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software and/or the Project Specific IPRs provided that:
          1. the sub-licence is on terms no broader than those granted to the Authority; and
          2. the Supplier has received a confidentiality undertaking in its favour in equivalent terms to those set out in Clause 19 (*Confidentiality*) duly executed by the Approved Sub‑Licensee.

Authority’s right to assign/novate licences

* 1. The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) to:
     + 1. A Central Government Body; or
       2. to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.
  2. Any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Paragraph 2.4 (*Supplier Software and Supplier Background IPRs*). If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licence granted in Paragraph 2.4 (*Supplier Software and Supplier Background IPRs*).
  3. If a licence granted in Paragraph 2.4 (*Supplier Software and Supplier Background IPRs*) is novated under Paragraph 2.8 (*Authority’s right to assign/novate licences*) or there is a change of the Authority’s status pursuant to Paragraph 2.9, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.

Third Party Software and Third Party IPRs

* 1. The Supplier shall not use in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless approval is granted by the Authority and has in each case either:
     + 1. first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Authority on a royalty-free basis to the Authority and on terms no less favourable to the Authority than those set out in Paragraphs 2.4(a) and 2.5 (*Supplier Software and Supplier Background IPRs*) and Paragraph 2.8 (*Authority’s right to assign/novate licences*); or
       2. complied with the provisions of Paragraph 2.12.
  2. If the Supplier cannot obtain for the Authority a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Paragraph 2.11(a), the Supplier shall:
     + 1. notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
       2. use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Authority has first approved in writing either:
          1. the terms of the licence from the relevant third party; or
          2. use without a licence, with reference to the acts authorised and the specific IPR involved. In spite of any other provisions of the Contract and for the avoidance of doubt, award of this Contract by the Authority and the ordering of any Deliverable under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 Section 12 of the Registered Designs Act 1949 or Sections 240 – 243 of the Copyright, Designs and Patents Act 1988.
  3. The Supplier shall:
     + 1. notify the Authority in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and
       2. unless instructed otherwise in writing by the Authority in any case within 20 Working Days of notification pursuant to Paragraph 2.12(a), use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Authority on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.
  4. Should the Supplier become aware at any time, including after termination, that the Specially Written Software and/or the Project Specific IPRs contain any Intellectual Property Rights for which the Authority does not have a suitable licence, then the Supplier must notify the Authority within ten (10) days of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in.

Termination and Replacement Suppliers

* 1. For the avoidance of doubt, the termination or expiry of this Contract shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Paragraph 2.
  2. The Supplier shall, if requested by the Authority in accordance with Schedule 25 (*Exit Management*) and at the Supplier’s cost:
     + 1. grant (or procure the grant) to any Replacement Supplier of:
          1. a licence to use any Supplier Non-COTS Software, Supplier Non-COTS Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty-free basis to the Replacement Supplier and on terms no less favourable than those granted to the Authority in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Paragraph 2 subject to receipt by the Supplier of a confidentiality undertaking in its favour in or substantially in equivalent terms to those set out in Clause 19 (*Confidentiality*) duly executed by the Replacement Supplier;
          2. a licence to use any Supplier COTS Software and/or Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Supplier; and/or
       2. use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

Patents

* 1. Where a patent owned by the Supplier is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs by the Authority or any Replacement Supplier, the Supplier hereby grants to the Authority and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Contract.

1. LICENCES GRANTED BY THE AUTHORITY
   1. The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Software, the Authority Background IPRs, the Specially Written Software, the Project Specific IPRs and the Authority Data solely to the extent necessary for performing the Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:
      * 1. any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause (m) (*Confidentiality*); and
        2. the Supplier shall not, without the Authority’s prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.
   2. In the event of the termination or expiry of this Contract, the licence granted pursuant to Paragraph 3.1 and any sub-licence granted by the Supplier in accordance with Paragraph 3.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:
      * 1. immediately cease all use of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be);
        2. at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data, provided that if the Authority has not made an election within 6 months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be); and
        3. ensure, so far as reasonably practicable, that any Authority Software, Authority Background IPRs and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Authority Software, Authority Background IPRs and/or Authority Data.
2. OPEN SOURCE PUBLICATION
   1. The Supplier agrees that the Authority may at its sole discretion publish as Open Source Software all or part of the Specially Written Software and any software element of the Project Specific IPRs after the Start Date.
   2. The Supplier hereby warrants that the Specially Written Software and any software element of the Project Specific IPRs:
      * 1. are suitable for release as Open Source and the Supplier has used reasonable endeavours when developing the same to ensure that publication by the Buyer will not allow a third party to use the Open Source software to in any way compromise the operation, running or security of the Specially Written Software, the Project Specific IPRs or the Authority System;
        2. have been developed using reasonable endeavours to ensure that their publication by the Buyer shall not cause any harm or damage to any party using anything published as Open Source and that the Specially Written Software and the Project Specific IPRs;
           1. do not contain any Malicious Software;
           2. do not contain any material which would bring the Authority into disrepute upon publication as Open Source;
           3. can be published as Open Source without breaching the rights of any third party; and
           4. will be supplied in a format suitable for publication as Open Source (“the Open Source Publication Material”) no later than the Start Date.
   3. The Supplier shall ensure that the Open Source Publication Material provided to the Authority does not include any Supplier Software or Supplier Background IPRs save that which the Supplier is willing to allow to be included in any Open Source publication. In such a case, the Supplier hereby acknowledges that any such Supplier Software or Supplier Background IPRs will become Open Source and will be licensed and treated as such following publication by the Authority and any third party that uses the Open Source Publication Materials on the terms of the Open Source licence used by the Authority when publishing as Open Source.
   4. The Supplier may within 15 days of the Start Date request in writing that the Authority excludes all or part of:
      * 1. the Project Specific IPR; or
        2. Supplier Existing IPR or Third Party IPR that would otherwise be included in the Open Source Publication Material supplied to the Buyer pursuant to Paragraph 4.2(b)(iv)4.2,

from Open Licence publication.

* 1. Any decision to Approve any such request from the Supplier pursuant to Paragraph 4.4 shall be at the Authority’s sole discretion, not to be unreasonably withheld, delayed or conditioned.
  2. The Supplier hereby indemnifies the Authority against all claims in which the Authority is, or is threatened to be, a party for any alleged infringement of any IPR owned or claimed to be owned by any third party which is found, or alleged to be found, in the Specially Written Software and the Project Specific IPRs arising from publication of the Specially Written Software and any software element of the Project Specific IPRs as Open Source under Paragraph 4.1.

## ANNEX 1: SPECIALLY WRITTEN SOFTWARE AND PROJECT SPECIFIC IPRS

|  |  |
| --- | --- |
| **Name of Specially Written Software and Project Specific IPRs** | **Details** |
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