WAN Equipment and Services Contract and Guidance notes

for the enFrame CIC ICT Framework

FTS no: TBC

Signed between

Contracting\_Authority

&

Supplier\_Name

Date

--- Important ---

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Drafting Notes:

Important: Please delete all drafting notes before signing.

1. This agreement is for use when procuring wide area network (WAN) arrangements, including accompanying equipment, hardware and software systems and services for connectivity between devices, systems, apps etc. both internally or to a wider area network, including internet connectivity. This agreement seeks to be technology agnostic given the various possibilities for varying WAN models (e.g. configurations of Multi-protocol Label Switching (MPLS) and Cloud-based , or newer WAN business and technology models).

2. This agreement assumes the sale and purchase of WAN equipment and goods by the Customer necessary for WAN (e.g. routers, switches, cards, connectors, cabling etc). If those goods are to be included in a list of equipment to be managed and maintained by the supplier, once purchased, under this agreement, then those goods will need to be referred to in the schedules of this agreement accordingly.

3. This agreement also addresses basic initial set-up, integration, testing, operation and the on-going management and maintenance, plus remote security and monitoring services required to establish and maintain the WAN. Whilst most support and maintenance will be delivered virtually, some limited support and maintenance may need to be carried out on site.

4. This agreement also assumes the supply of (broad-band) internet services will be made available as part of the package of services.

5. The parties should ensure the contents of the schedules are comprehensive, detailed, include any required availability measures, timings and performance dates and are completed to address all elements of the Service Requirements and Service Specification. They should be joined-up and crossed referenced where applicable e.g. where an SLA relates to a KPI and/or any service credits regime, as applicable.

6. The provision for Supplementary Terms is intended to provide for additional, supplementary, project-or technology-specific or process requirements, and to be valid must only be included in line with public procurement regulations and should not represent material changes to the framework's standard terms. The parties should consider taking legal advice where necessary to ensure any such Supplementary Terms to be included are in line with public procurement regulations.

7. This agreement is not designed for use to govern substantive, regulated construction activities (e.g. CDM, planning and building control regulated tasks such as structural renovations, substantive physical infrastructure fit-outs, walls removal and built environment construction related tasks.)

8. Key requirements should be added into the schedules to the extent known (e.g. key requirements of any set-up services, SLA, and key security requirements of a supplier).

9. It is intended that set-up and implementation tasks will be relatively minimal, however this agreement gives you the opportunity and mechanism to agree further project details for implementation and roll-out which could cover more onerous set-up and implementation (see Schedule 3 - Set-up Services and Project Plan) by way of a Project Plan, and such a plan may be agreed after the Services Specification has been confirmed. The Project Plan may be a refined version of the Services Specification and Service Requirements (detailing how the specification will be implemented, covering any milestones, timeframes, including scope of work etc.). The Project Plan may also cover deployment and or minor migration for example, which should have already been addressed in the Services Requirements and Specification. The Project Plan is not included as a final detailed schedule at this stage, for this reason, as it will be agreed subsequently after signing. However please note, proper formalities should be followed when signing off on the Project Plan and the Services Specification, by ensuring that only authorised representatives of the parties provide such confirmation and made in in writing, this is necessary to ensure the plans and specifications are properly incorporated under the agreement.

10. As highlighted during initial discussions, procurement law prohibits subsequent material changes to procurement contracts. Such material changes could be deemed unlawful. Please have regard to this risk in relation to any proposed changes in service scope and when / if adding any Supplementary Terms via Schedule 9. If you have any concerns in this area regarding what constitutes a material change we strongly recommend seeking further advice before making any changes to the contract.

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WAN Equipment and Services Agreement

This agreement is dated: date

Parties

1. Supplier\_Name [incorporated and registered in England and Wales with company number: Supplier\_Company\_Number whose registered office is at Supplier\_Registered\_Office\_Address (Supplier).
2. Contracting\_Authority\_Name (incorporated and registered in England and Wales with company number: Contracting\_Authority\_Company\_Number whose registered office is at Contracting\_Authority\_Registered\_Office\_Address (Customer).

Background

1. This agreement is called-off under a Framework Agreement entered into on Date and shall be subject to the applicable processes, requirements and restrictions specified in the Framework Agreement.
2. The Supplier is in the business of providing specialist information communications technology goods and services relating to wide area networks (**WAN**).
3. The Customer wishes to engage the Supplier by this agreement under the Framework Agreement.
4. The Supplier has agreed to provide, and the Customer has agreed to take and pay for, the goods and/or services (as defined below), subject to the terms and conditions of this agreement.

Agreed terms

1. Interpretation
   1. The definitions and rules of interpretation in this clause 1 apply in this agreement.

|  |  |
| --- | --- |
| 1. Acceptance Date: | has the meaning given in clause 3.8. |
| 1. **Affiliates**: | means in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party from time to time. |
| 1. Assumed Contracts: | any contracts that the Supplier identifies during the Set-up Services, that are to be transferred to the Supplier in accordance with Schedule 3, Part 1. |
| 1. Business Day: | a day, other than a Saturday, Sunday or public holiday in England when banks in London are open for business. |
| 1. Change Control Procedure: | the procedures set out in clause 21. |
| 1. Confidential Information: | all information (however recorded or preserved) made accessible to or disclosed by a party or its Representatives to the other party or that party's Representatives in connection with this agreement which information is either labelled as such or should reasonably be considered as confidential or commercially sensitive because of its nature and the manner of its disclosure. |
| 1. Contract Year: | means a 12-month period commencing with the Effective Date of the agreement (or any anniversary of it). |
| 1. CSRs: | has the meaning given in paragraph 3.1 of Schedule 5. |
| 1. Customer Account Team: | the individuals appointed by the Customer from time to time who shall serve as the Supplier's primary contacts for the Supplier's activities under this agreement. The initial members of the Customer Account Team are listed in Schedule 2. |
| 1. Customer Data: | any Customer (or its licensor's) information and data that is made accessible by or provided by (or on behalf of) the Customer to the Supplier as part of the Customer's access to and use of the Services, including any information and data developed or derived from such information and data. |
| 1. Customer Policies: | those policies further set out in Schedule 7. |
| 1. Customer Site(s): | any premises occupied by the Customer at which it receives the Services. |
| 1. Customer-site Equipment: | any Supplier's own equipment located or to be located on a Customer Site but controlled by the Supplier as part of the Services. |
| 1. Customer’s Operating Environment: | the Customer’s computing environment (consisting of hardware, Customer Software and telecommunications networks) that is to be used by the Customer in connection with its use of the Services and which interfaces with the Supplier’s System in order for the Customer to receive the Services, but excluding the Customer-site Equipment. |
| 1. Customer's Project/Contract Manager: | the member of the Customer Account Team appointed in accordance with clause 7.1.3. The Customer's Project/Contract Manager at the Effective Date is named in Schedule 2. |
| 1. Customer Software: | has the meaning given to that term in the definition of Software. |
| 1. Designated Representative: | has the meaning given in clause 26.2.1. |
| 1. Disaster Recovery Plan: | the plans and preparations maintained by the Supplier containing the actions to be taken, the resources to be used and the procedures to be followed to support recovery and business continuity in the event of a disaster affecting the Services, as included at Schedule 10. |
| 1. Dispute: | has the meaning given in clause 26.1. |
| 1. Dispute Notice: | has the meaning given in clause 26.1. |
| 1. Dispute Resolution Procedure: | the procedure described in clause 26. |
| 1. Effective Date: | the date of this agreement. |
| 1. EIR: | the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations. |
| 1. Equipment: | the WAN-related goods procured by the Customer from the Supplier under this agreement, and (as applicable) which may be delivered, unboxed, installed/commissioned by the Supplier at the Customer Site(s) in accordance with the terms of this agreement and in particular in accordance with Schedule 3 and Schedule 4. |
| 1. Error: | has the meaning given in clause 3.4. |
| 1. Exit Plan: | has the meaning given in clause 8.1, as such exit plan is updated and amended by the parties from time to time in writing. |
| 1. Extended Term: | has the meaning given in clause 18.1. |
| 1. Fees: | the fees payable to the Supplier for the Services, as described in Schedule 1. |
| 1. **FOIA:** | the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation. |
| 1. Force Majeure Event: | means an event which is beyond the reasonable control of the party seeking to rely on such event (except to the extent such party could reasonably have avoided such event or its consequences by implementing such business continuity and/or disaster recovery measures and otherwise exercising such level of care in each case as could reasonably be expected of a party in its position), including:   * 1. riot, civil unrest, military action, terrorism or war (whether declared or not) or threat of or preparation for war;   2. imposition of sanctions, embargo, blockade, or breaking off of diplomatic relations;   3. epidemic (including any Public Health Emergency of International Concern or pandemic declared by the World Health Organization) or pandemic;   4. any failure or refusal of any government or public authority to grant any necessary licence, permit or consent;   5. interruption or failure of a utility service or telecommunications network (other than one provided pursuant to this agreement) and/or breakdown of plant or machinery;   6. severe delays or disruptions to the use of railways, shipping, aircraft, motor transport or other means of public or private transport;   7. any change in applicable law which materially impacts a party’s ability to perform any obligation under this agreement;   8. earthquake, storm, fire, flood, landslide, or other natural disaster; and   9. industrial action, strikes or lockouts by employees of third parties (excluding sub-contractors and suppliers of the party seeking to rely on such event unless no substitute is reasonably available) |
| 1. Framework Agreement: | the enFrame framework agreement entered into on Date. |
| 1. Generally Accepted Accounting Principles: | all generally accepted accounting principles including generally accepted UK accounting principles comprising the Financial Reporting Standards issued by the UK Financial Reporting Council (and to the extent applicable, Statements of Standard Accounting Practice (SSAPs) issued by predecessors to the UK Financial Reporting Council). |
| 1. Good Industry Practice: | the standards that fall within the upper quartile for the provision of business-critical services substantially similar to the Services, having regard to factors such as the nature and size of the parties, the Service Level Agreement, the term, the pricing structure, Project Plan and any other relevant factors. |
| 1. Incident: | any Vulnerability, Virus or security incident which:   * 1. may affect the Supplier's System; or   2. may affect the Customer's Operating Environment; or   3. is reported to the Supplier by the Customer. |
| 1. Information: | has the meaning given under section 84 of FOIA. |
| 1. Initial Term: | the period of three years commencing on the Effective Date. |
| 1. Intellectual Property Rights: | patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all existing and future rights capable of present assignment, applications for and renewals or extensions of and rights to claim priority from such rights, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world. |
| 1. Known Vulnerability: | any Vulnerability that has either:   * 1. been assigned a Common Vulnerabilities and Exposures (CVE) number;   2. been disclosed on the National Vulnerability Database available at the website operated by the US National Institute of Standards and Technology (NIST) from to time to time; or   3. been disclosed on the internet, or any open public database, such that it would be revealed by reasonable searches conducted in accordance with Good Industry Practice. |
| 1. Latent Vulnerability: | any instances of typical classes of Vulnerability. For example, buffer overflows, cross-site scripting (XSS) and Structure Query Language (SQL) injection. |
| 1. Maintenance: | any hardware and software maintenance, Equipment maintenance including component fixes or replacements, patches, error corrections, updates, and upgrades that the Supplier may provide or perform with respect to the Services, as well as any other support, maintenance and training services to be provided to the Customer under this agreement, as described in the Services Specification and Services Requirements and as otherwise detailed Schedule 5. |
| 1. Maintenance Events: | has the meaning given in paragraph 2 of Schedule 5. |
| 1. Mitigate: | the taking of such reasonable steps that would be taken by a prudent supplier in accordance with Good Industry Practice to mitigate against the Incident in question, which may include (in the case of a Vulnerability) coding changes, but could also include specification changes (for example, removal of affected protocols or functionality in their entirety), provided these are approved by the Customer in writing in advance, and the terms Mitigated and Mitigation shall be construed accordingly. |
| 1. Monthly Meetings: | has the meaning given in clause 15.1. |
| 1. Normal Business Hours: | [7.30] am to [5.30] pm local UK time on Business Days. |
| 1. Permitted Purpose: | has the meaning given in clause 19.2.1. |
| 1. Pre-Existing IPR: | has the meaning given in clause 16.1. |
| 1. Priority 1, Priority 2, Priority 3 and Priority 4: | have the meanings given in paragraph 3.3 of Schedule 5. |
| 1. Project Plan: | the Project and Services specific plan to be developed or as developed (as applicable) by the parties in the planning stage of the Set-up Services. The Project Plan shall not be applicable until both parties have agreed to it, in its final form, by their authorised representatives in writing. |
| 1. Regulatory Requirement: | has the meaning given in clause 18.8. |
| 1. Relevant Terms: | has the meaning given in clause 24.3. |
| 1. Replacement Supplier: | the Customer or any entity with which the Customer contracts (or proposes to contract) to provide services similar to all or any of the Services, Maintenance and Transition Services upon the expiry or termination of all or any part of this agreement for any reason. |
| 1. Representatives: | in relation to a party, its employees, consultants, officers, agents, contractors, subcontractors, representatives and/or advisors involved in provision or receipt of the Services. |
| 1. Request for Information: | a request for information or an apparent request under FOIA or EIR. |
| 1. Review Meeting: | has the meaning given in clause 15.3. |
| 1. Service Credit: | any credits agreed to be payable to the Customer in accordance with the Service Level Agreement. |
| 1. Service Delivery Failure: | has the meaning given in paragraph 2.1 of Schedule 6. |
| 1. Service Level Agreement: | the service level arrangements set out in Schedule 6. |
| 1. Services: | the suite of services to be provided pursuant to this agreement as described in the Services Requirements and Services Specification, and (as the context requires) as are necessary to assess, plan, prepare, set up,monitor and maintain the WAN procured under this agreement including the delivery, unboxing, installation and commissioning of purchased Equipment, including any warranty management services, and the Set-up Services, the Maintenance and the Transition Services. |
| 1. Services Specification: | the Services scope and specification (including functionality, performance, and formally accepted specification related clarifications) as detailed by the Supplier and described in Schedule 4, and which shall cover (as a minimum) all Customer's Service Requirements and the Equipment to be provided by the Supplier to the Customer. |
| 1. Service Requirements: | the Customer's requirements for the Services, as set out in the Customer request for proposal document(s), or as otherwise detailed by the Customer as a Service requirement/specification which shall cover (as a minimum) availability, capacity, connectivity, system security, resilience and scalability. |
| 1. Set-up Services: | the due diligence, planning, preparation, systems inter-operation analysis, security checks, systems update and refresh assessments, development of the Project Plan, configuration and any related set-up and preparatory testing and implementation work, as referred to in Schedule 3, to be performed by the Supplier as required in order to assess, plan for, set up and implement the Services. |
| 1. Software: | any software used or required to be used by the Supplier (or any of its sub-contractors) to provide the Services to the Customer, whether owned by a third-party (being Third Party Software), by the Customer (being Customer Software) or by the Supplier (being Supplier Software). |
| 1. Supplementary Terms: | those supplementary terms specified in Schedule 9 agreed by the parties to apply to this agreement to the extent strictly necessary to address specific Software (including Third Party Software supplementary and end user terms) or Services provision. |
| 1. Supplier Account Team: | the individuals appointed by the Supplier from time to time who shall serve as the Customer's primary contacts for the Customer's activities under this agreement. The initial members of the Supplier Account Team are listed in Schedule 2. |
| 1. Supplier Facility: | has the meaning given in paragraph 3 of Schedule 4. |
| 1. Supplier's Project/Contract Manager: | the member of the Supplier's Account Team appointed in accordance with clause 3.2. The Supplier's Project/Contract Manager at the Effective Date is named in Schedule 2. |
| 1. Supplier Software: | has the meaning given to that term in the definition of Software. |
| 1. Supplier's System: | the Supplier's information and communications technology system to be used by the Supplier (or any of its sub-contractors) in performing the Services, including any equipment and hardware, applicable Supplier Software, the Customer-site Equipment and communications links. |
| 1. Third Party Software: | has the meaning given to that term in the definition of Software. |
| 1. Transferring Contracts: | the third-party contracts (including user terms and licences to Third-Party Software) that the Supplier (in consultation and agreement with the Customer) reasonably considers necessary to enable the transition of the Services to any Replacement Supplier on expiry or termination of all or any part of this agreement for any reason. |
| 1. Transition Services: | the services to be provided by the Supplier to implement the Exit Plan, including the implementation of the Transferring Contracts arrangements. |
| 1. Uptime Service Level: | has the meaning given in paragraph 1.1 of Schedule 6. |
| 1. Virus: | includes any malicious code, Trojan, worm and virus, lock, authorisation key or similar device that impairs or could impair the operation of the Software or the Services. |
| 1. Vulnerability: | a weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly. |
| 1. Work Product: | all deliverables and all other reports, documents, materials, techniques, ideas, concepts, trademarks, know-how, algorithms, software, computer code, routines or sub-routines, specifications, plans, notes, drawings, designs, pictures, images, text, audio-visual works, inventions, data, information and other items, expressions, works of authorship or work product of any kind that are authored, produced, created, output, conceived, collected, developed, discovered or made by the Supplier (or any of its sub-contractors) in connection with the provision of the Services by the Supplier or which result from any work performed by the Supplier (or any of its sub-contractors) for the Customer, including any and all Intellectual Property Rights therein. |

* 1. Unless the context otherwise requires, words in the singular shall include the plural and words in the plural shall include the singular.
  2. A reference to a statute or statutory provision is a reference to it as amended, extended, consolidated, replaced, superseded, re-enacted, or otherwise converted, modified or incorporated into law from time to time.
  3. A reference to writing or written includes faxes, and emails received from the Supplier and Customer’s registered domains.
  4. Any phrase introduced by the words including, includes, in particular or for example, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.
  5. This agreement expressly excludes Supplier’s terms and conditions of sale however these are purported by the Supplier to apply, unless limited, specific, select terms are agreed by both parties to be included as Supplementary Terms, or as part of the Supplier's Service Level Agreement or maintenance and support Services, but always subject to the order of priority set out in clause 1.7).
  6. The Schedules and any included appendices and attachments form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules and included appendices and attachments and the background section. If there is an inconsistency or conflict between any of the provisions in the main body of this agreement and the Schedules and accompanying appendices and attachments, the order of priority shall be (in descending order or priority):
     1. The terms and conditions in the main body of this call-off agreement shall take priority; then
     2. Applicable terms of the Framework Agreement as set out in clause 1.8; then
     3. Schedule 13 (Data Protection); then
     4. Schedule 12 Safeguarding; then
     5. Schedule 7 Customer policies; then
     6. Schedule 3 Set-up Services and Project Plan (once agreed); then
     7. Schedule 4 Services Specification; then
     8. Schedule 9 (Supplementary terms); then
     9. Schedule 6 Service Level Agreement (SLA); then
     10. Schedule 5 Maintenance and support services; then
     11. Appendices/attachments[.] [; then]
     12. The remaining schedules.

**Drafting note**: Customer to amend if necessary.

* 1. The following provisions of the Framework Agreement shall be expressly applicable to this call-off agreement: clause 4.1 (warranties and representations); clause 5.11 and 5.12 (Fraud); clauses 5.13 - 5.17 (consequences of suspension, ending and expiry of the Framework Agreement); clauses 7.32 - 7.36 (transfer and sub-contracting); clauses 7.55/56 (IPR); clause 7.78 – 7.86 (Confidentiality).

1. Service requirements
   1. The Supplier warrants and represents that:
      1. when producing and/or refining the Services Specification it has taken account of and effectively incorporated all elements of the Customer's Service Requirements; and
      2. it is able to and shall provide all of the Equipment and Services as described in the Services Specification in accordance with all applicable descriptions, as further set out and described in the Service Requirements and otherwise as described in this agreement,

and the Supplier acknowledges that the Customer is entering into this agreement in reliance on the warranties and representations provided by the Supplier in this agreement.

* 1. The Supplier acknowledges and agrees that, prior to the Effective Date:
     1. it has had an opportunity to carry out a thorough due diligence exercise in relation to the Service Requirements and has asked the Customer all the questions and clarifications it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement; and
     2. it has received all information it needs to enable it to determine whether it is able to provide the Equipment and Services in accordance with the terms of this agreement.

1. Delivery of Equipment and Set-up Services
   1. The Supplier Account Team shall consist of the personnel listed in Schedule 2.
   2. The Supplier shall appoint the Supplier's Project/Contract Manager, who shall have the authority to contractually bind the Supplier on all matters relating to this agreement. Notwithstanding clause 3.1, the Supplier shall use reasonable endeavours to ensure continuity of the Supplier's Project/Contract Manager, but has the right, in its absolute discretion, to replace them from time to time where reasonably necessary in the interests of the Supplier's business.
   3. The Supplier shall use all reasonable endeavours to (as applicable):
      1. supply and (as applicable) deliver, unbox, install and commission the Equipment at the Customer Site(s) or provide comprehensive installation guides to enable the Customer to carry out installation if agreed;
      2. inspect and test the Equipment (under the supervision of the Customer where requested) following delivery, and comply with clauses 3.6 and 3.7, to ensure the Equipment is new, undamaged and complies with the terms of this agreement and any manufacturer specifications and warranties; and
      3. provide the Customer with such information and training on the operation of the Equipment as the Customer considers reasonable or as is specified in the Services;

in accordance with the terms of this agreement and any particular instructions that may be set out in Schedule 3 and Schedule 4.

* 1. Unless required as part of services to be undertaken by the Supplier, the Customer shall prepare the Customer Site(s) in readiness for reception of the Equipment and for the provision of all necessary supervision, access, utilities and facilities reasonably required to take delivery of the Equipment.
  2. The Supplier shall use reasonable endeavours to perform the Set-up Services in accordance with the timetable set out in Part 1 of Schedule 3 and to meet the performance dates set out in Schedule 3, but any such timetable and dates shall be estimates only, and time shall not be of the essence in this agreement, unless specific dates are agreed to be of the essence by the parties.
  3. When the Supplier considers that the Equipment and Services are ready for full activation or provision it shall so notify the Customer. Within ten Business Days of such notification the Customer shall review the set-up and operation of the Services, including any test (by reference to test criteria) and delivery reports and results, to confirm that they are in place, to a standard and functioning in material conformance with the Services Specification and Services Requirements. If the Equipment or Services are not in place or otherwise ready, or fail in any material respect to conform with the Services Specification and Services Requirements, the Customer shall give the Supplier a detailed description of any such non-conformance (Error(s)) in writing, within such ten Business Day review period.
  4. The Supplier shall use all reasonable endeavours to correct any Error(s) within a reasonable time and, on completion, notify the Customer that the Equipment and Services are ready for activation or provision. The provisions of clause 3.6 and this clause 3.7 shall then apply again, up to three additional times. If the Supplier is unable to correct the Error(s) after four attempts, the Customer may terminate this agreement with immediate effect by giving written notice to the Supplier, without further liability.
  5. If Services are found to materially conform with the Services Specification and Services Requirements at that stage, or if the Customer does not provide any notification of Errors within the review period described in Clause 3.6 and 3.7, the applicable Services shall be deemed accepted by the Customer as from the date of the notification that the Services conform, or expiry of such review period without notification of any Errors, in each case the Acceptance Date.
  6. The Supplier shall apply Good Industry Practice at all times in performing the Set-up Services and developing and delivering the Project Plan.

1. Title and risk
   1. Where Equipment is to be purchased by this agreement, the Supplier agrees to provide (or procure), and the Customer agrees to take and pay for, the Equipment, where the Customer accepts the Equipment.
   2. Title and risk in the Equipment shall pass to the Customer following the Customer's payment for such Equipment.
   3. This clause 4 shall survive termination of the agreement, howsoever arising.
2. Service provision
   1. The Supplier shall provide the Services from the Effective Date, or the applicable Acceptance Date as relevant, until expiry or termination of this agreement for any reason.
   2. The Customer shall not provide the Services to third parties, unless agreed in writing by the parties. **Drafting Note**: Parties to consider/agree/refine if Services need to cover Affiliates, as necessary.
   3. The Supplier reserves the right, in its absolute discretion, to:
      1. modify the Supplier's System, its network, system configurations or routing configuration; or
      2. modify or replace any Software in its network or in equipment used to deliver any Service over its network,

provided and to the extent that this has no adverse effect on the Supplier's ability to perform its obligations under this agreement and its provision of the Services or the Service Level Agreement.

* 1. The Supplier shall provide Maintenance and all support Services in accordance with the terms and timings of this agreement and as described in Schedule 5. The Supplier shall apply Good Industry Practice at all times in performing its Maintenance obligations under the agreement.
  2. The Supplier shall comply with the Customer Policies at all times when providing the Services.

1. Supplier's obligations
   1. The Supplier undertakes that the provision of the Equipment and Services will be performed with all reasonable skill and care and at all times in accordance with Good Industry Practice and the provisions of this agreement, and that all Equipment and Services will be provided substantially in accordance with the Service Requirements and Services Specification (and Project Plan, once agreed).
   2. The undertaking in clause 6.1 shall not apply to the extent of any non-conformance that is caused by use of the Equipment and Services contrary to the Supplier's instructions, including as set out in this agreement.
   3. If the Equipment and Services do not conform with the undertaking in clause 6.1, the Supplier shall, at its expense, use all reasonable endeavours to correct (or procure the correction of) any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance.
   4. The Supplier shall use all reasonable endeavours to register and transfer (or procure the transfer) to the Customer the benefit of any third-party manufacturer guarantees and/or warranties which apply to the Equipment and Services. Any benefit so transferred shall apply to the Customer to the maximum extent permitted (and at least for the duration as the period during which the Supplier would have received the same benefit) (the **Warranty Period**). If the Customer requires to claim the benefit of any such guarantee or warranty during the Warranty Period in respect of any Equipment and Services, the Supplier shall provide the Customer, on request, with reasonable assistance in enforcing the benefit against any applicable third party / manufacturer or supplier of the Equipment and Services, and managing any such guarantee or warranty claim(s) at no additional expense to the Customer, unless any such management Services are expressly agreed by the Customer to be subject to management Fees.
   5. Notwithstanding the foregoing, the Supplier does not warrant that the Customer's use of the Services shall be uninterrupted or error-free.
   6. This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services that are similar to those provided under this agreement.
2. Customer's obligations
   1. The Customer shall:
      1. provide the Supplier with:
         1. all necessary co-operation in relation to this agreement (including the preparation of the Customer Site(s) as described in clause 3.4); and
         2. all necessary access to such information as may be reasonably required by the Supplier,

in order to provide the Equipment and Services, including Customer Data, security access information, and (subject to providing any confidentiality undertakings reasonably required by the Customer) software and communications interfaces to the Customer's other business applications;

* + 1. provide such personnel assistance, including the Customer Account Team and other Customer personnel, as may be reasonably requested by the Supplier from time to time. The Customer Account Team shall initially consist of the personnel listed in Schedule 2;
    2. appoint the Customer's Project/Contract Manager, who shall have the authority to contractually bind the Customer on all matters relating to this agreement. The Customer shall use reasonable endeavours to ensure continuity of the Customer's Project/Contract Manager, but has the right, in its absolute discretion, to replace them from time to time where reasonably necessary in the interests of the Customer’s business;
    3. comply with all applicable and regulations with respect to its activities under this agreement, including those set out in clause 24; and
    4. carry out all other Customer responsibilities and obligations set out in this agreement (including the Project Plan) or in any of the Schedules in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance and cooperation as agreed by the parties or performance of the Customer's responsibilities and obligations, the Supplier shall be entitled to an equitable adjustment to the date or dates in any delivery time schedule.

1. Exit assistance
   1. The Customer may, at any time before expiry or termination of all or any part of this agreement for any reason request the Supplier to provide the Transition Services, or otherwise to offer reasonable assistance in transitioning the Services to a Replacement Supplier. The Supplier shall, in consideration of the fee set out in Schedule 1, provide such Transition Services for a maximum period of four months, or until expiry or termination of all or any part of this agreement for any reason in accordance with clause 18, whichever is later.
   2. On expiry or termination of all or any part of this agreement for any reason the Supplier shall promptly produce a list of the Customer-site Equipment and any Transferring Contracts. On written agreement of the parties, the Supplier shall sell, and the Customer shall buy any requisite Customer-site Equipment for [net book value, calculated in accordance with Supplier's reasonable then-current depreciation policy. Title to such Customer-site Equipment shall pass to the Customer on the Supplier's receipt of payment for the same].

**Drafting** **Note**: Parties to consider/agree/refine, as necessary.

* 1. The Supplier and Customer shall consult and co-operate to procure the novation or assignment to the Replacement Supplier of any Transferring Contracts.
  2. Where agreed, the Customer shall:
     1. accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract (as applicable); and
     2. once a Transferring Contract is novated or assigned to 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 any third-party Replacement Supplier does the same.

1. Data protection
   1. The parties agree to comply with the data protection provisions specified in Schedule 13 (data protection), which shall apply to this agreement.
2. Security
   1. The Supplier shall ensure at all times that appropriate safety and security systems, policies and procedures are maintained and enforced to prevent unauthorised access or damage to, and to ensure the security and business continuity of, any and all Services, the Supplier's System and related networks or resources and the Customer Data, in accordance with Good Industry Practice.
   2. The Supplier shall act in accordance with the processes and requirements set out in the network and information systems security arrangements at Schedule 8.
   3. The Supplier shall ensure that the Supplier's System is designed, maintained, and upgraded at all times so as to Mitigate against Incidents. The parties agree that if Incidents are detected or discovered, each of them shall co-operate with the other to Mitigate the Incident, and in the scenario where the Customer could take action to assist with such Mitigation the Supplier shall promptly notify the Customer of such action together with reasonable supporting details.
   4. The Supplier shall comply with and shall procure that each of the sub-contractors complies with, the Customer's procedures for vetting personnel in respect of all of Supplier's personnel employed or engaged in the provision of the Services.
   5. The Supplier shall:
      1. notify the Customer immediately it becomes aware of any Incident and respond without delay to all queries and requests for information from the Customer about any Incident, whether discovered by the Supplier or the Customer, in particular bearing in mind the extent of any reporting obligations the Customer may have under applicable data protection or cybersecurity legislation and that the Customer may be required to comply with statutory or other regulatory timescales;
      2. promptly cooperate with any request for information made in respect of:
         1. any Incident;
         2. any of the information provided in Schedule 8 or any policies referred to in clause 10.1; or
         3. any requests for information, or inspection, made by a regulator with competent jurisdiction over the Customer (including in connection with any applicable data protection or cybersecurity legislation).
   6. The Supplier shall strictly follow its monitoring, archiving and security procedures in respect of Customer Data, including those set out in this clause 10, and as described in Schedule 4.
   7. The Supplier shall promptly notify the Customer in writing of any actual or suspected loss or damage to any Customer Data.
   8. [In the event of any loss or damage to Customer Data, the Supplier shall use reasonable endeavours to restore the lost or damaged Customer Data from the latest backup of such Customer Data to be maintained by the Supplier in accordance with the archiving procedure described in Schedule 4]. **Drafting** **Note**: Parties to consider/agree/refine, as relevant.
3. Employment/TUPE
   1. The parties agree to comply with the employment provisions specified in Schedule 11 (Employment/TUPE), which shall apply to this agreement.
4. Safeguarding
   1. The parties agree to comply with the safeguarding provisions specified in Schedule 12 (safeguarding), which shall apply to this agreement.
5. Warranties
   1. The Customer warrants and represents that:
      1. it has the full capacity and authority to enter into and perform this agreement and that this agreement is executed by a duly authorised representative of the Customer;
      2. it has the authority to grant any rights to be granted to the Supplier under this agreement, including the right to provide applicable Software and any applicable hardware to the Supplier as indicated in this agreement and for the same to be used in the provision of the Services and otherwise in connection with this agreement; and
      3. it owns or has obtained valid licences, consents, permissions, and rights to use and where necessary to license to the Supplier, any materials or information reasonably necessary for the fulfilment of all its obligations under this agreement, including in respect of any third-party licences and consents.
   2. The Customer warrants that:
      1. it shall comply with and use the Equipment and Services in accordance with the terms of this agreement and all applicable laws, and shall not do any act that shall infringe the rights of any third party including the publishing or transmission of any materials contrary to relevant laws;
      2. it shall comply with all laws and regulations applicable to the Customer in performing its obligations under this agreement; and
      3. the Supplier's possession and use in accordance with this agreement of any materials (including third-party materials) supplied by the Customer to the Supplier, shall not cause the Supplier to infringe the rights, including any Intellectual Property Rights, of any third party.
   3. The Supplier warrants and represents that:
      1. it has the full capacity and authority to enter into and perform this agreement and that this agreement is executed by a duly authorised representative of the Supplier;
      2. it owns, or has obtained valid licences, consents, permissions and rights to enable the Supplier to comply with this agreement and to use any of the Intellectual Property Rights necessary for the fulfilment of all its obligations under this agreement including for the Customer's use and receipt of the Equipment and Services, and the Supplier shall not breach the provisions of any such necessary licences, consents, permissions and rights or cause the same to be invalidated or breached;
   4. The Supplier warrants that:
      1. the Services, including in the provision of Equipment and any component or replacement parts, provided or procured by the Supplier under this agreement, shall be free from defective workmanship and materials and will materially conform to the Customer's Service Requirements and the Services Specification;
      2. all Equipment (including any component parts) shall be new and shall not be second hand;
      3. it will, if it receives written notice from the Customer of any breach of the above warranties at clauses 13.3 to 13.4.2, subject to clause 6.4 (in respect of the registration and management of third-party manufacturer warranties), at its own expense, and within a reasonable time after receiving such notice, investigate and rectify (or procure to rectify) any such failure or defect in relation to the breach and any relevant Equipment or Services.
      4. it shall use all reasonable skill and care in providing the Equipment and Services;
      5. the Services will be provided in a professional and competent manner;
      6. it shall comply with all laws and regulations applicable to the Supplier in performing or procuring the performance of its obligations under this agreement;
      7. it is and shall remain throughout the term of this agreement compliant (and certified by an independent, reputable and competent certification body to be compliant) with, and shall provide the Equipment and Services in line with, a then-current version of: International Standards Organisation (ISO) / International Electrotechnical Commission (IEC) 27001, and Information Technology Infrastructure Library (ITIL);
      8. the Customer's possession and use in accordance with this agreement of any documents, data and materials (including third-party materials and proprietary material) supplied by the Supplier to the Customer shall not cause the Customer to infringe the rights, including any Intellectual Property Rights, of any third party;
      9. any applicable Software, configuration information and firmware, system or telecommunications technology provided by or on behalf of the Supplier shall be tested for Viruses and Latent Vulnerabilities and Known Vulnerabilities, and any of the same that are identified shall be Mitigated against before the date of delivery or use of such Software, systems or telecommunications technology by the Supplier in connection with this agreement;
      10. all personnel and sub-contractors used by the Supplier in the performance of this agreement are adequately skilled and experienced and vetted for the activities they are required to perform; and
      11. it will not introduce, or permit the introduction of, any Viruses or Known Vulnerabilities or Latent Vulnerabilities into Customer's Operating Environment, or the Customer's other network and information systems, while providing and installing the Equipment and performing the Services.
6. Charges and payment
   1. The Customer shall pay the Fees for the Equipment and Services, as set out in Schedule 1.
   2. All amounts and Fees stated or referred to in this agreement are [exclusive OR inclusive] of value added tax (**VAT**) which shall be added to the Supplier's invoice(s) at the appropriate rate.
   3. The Supplier shall invoice the Customer in the manner and timing as set out at Schedule 1. If any Service Credits are relevant and claimed and due then they shall be shown as a deduction from the invoice.
   4. If the Customer fails to make any undisputed payment due to the Supplier under this agreement by the due date for payment, then, without limiting the Supplier's remedies under clause 18, the Customer shall pay interest on the overdue amount at the rate of three (3)% per annum above [HSBC's base rate] from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
   5. On expiry or termination of this agreement for any reason, any unpaid Service Credits claimed, and accruing shall represent a debt due from the Supplier to the Customer.
7. Service review and governance
   1. The Customer and the Supplier shall review the Service Level Arrangement at each Review Meeting and shall, in accordance with clause 21, agree modifications to reflect changes in the Customer's requirements for the Services.
8. Proprietary rights
   1. Nothing in this agreement affects either party's rights in pre-existing Intellectual Property Rights (including pre-existing Intellectual Property Rights of either party contained in or relating to Confidential Information) (Pre-Existing IPR). All Pre-Existing IPR shall remain owned by each party (and its licensors).
   2. The Supplier expressly acknowledges and agrees that the Customer owns and retains all rights, title and interest in and to the Customer Data. Save to the extent necessary for the provision of the Services and performance of its obligations under this agreement, the Supplier shall have no rights to access, use, share or modify the Customer Data unless it has the prior written consent of the Customer.
   3. [Subject to clause 16.1 (ownership of Pre-Existing IPR), and clause 16.2 (ownership of Customer Data), the Customer acknowledges and agrees that, as between the parties the Supplier and/or its licensors own all Intellectual Property Rights in the Work Product, and in all other materials developed or produced in connection with this agreement by the Supplier, its officers, employees, sub-contractors or agents. The Supplier grants to the Customer a perpetual (for the term of this agreement and thereafter), irrevocable, sub-licensable, [non-]transferable, non-exclusive, royalty-free, worldwide licence to use, exploit, sell, copy, reproduce, manufacture, distribute, export, publicly display, publicly perform, sub-license, modify, improve, enhance and make derivative works of all of the Supplier's Intellectual Property Rights solely to the extent and as incorporated by the Supplier into the Work Product solely in connection with the Customer's (and its permitted sub-licensees,' including Affiliates') use of the Work Product in accordance with this agreement].

**OR** - **Drafting** **Note:** This is the preferred approach, but the parties may discuss/agree and refine which option is fit for purpose based on the nature of and precise Services and Work Products to be procured:]

[Subject to clause 16.1 (ownership of Pre-Existing IPR), the parties acknowledge and agree that the Customer shall own and retain all rights, title, and interest in and to the Work Product. The Customer shall be deemed to be the author of all Work Product, and the Supplier waives and shall procure that any relevant employee, agent or sub-contractor and their respective personnel waive any and all moral rights (including any rights of attribution) in and to the Work Product. To the extent that any Intellectual Property Rights in the Work Product do not automatically vest in the Customer, the Supplier (by way of present assignment of future rights where appropriate) assigns absolutely and irrevocably (and shall procure that any relevant employee, agent or sub-contractor assigns absolutely and irrevocably) to the Customer with full title guarantee all rights, title and interest that the Supplier (and any of its employees, agents or sub-contractors) may have or may in future acquire in all Work Product, including all Intellectual Property Rights in any Work Product, for the full term of such rights throughout the world. At its own cost and expense, the Supplier shall execute all documents and take all actions necessary or reasonably requested by the Customer to document, obtain, renew, maintain, perfect, or assign the Customer's rights to the Work Product. At its own cost and expense, the Supplier shall also cause its employees, agents, and sub-contractors to execute such documents and take such actions as described in this clause. The Supplier shall not challenge (and shall procure that its employees, agents, and sub-contractors shall not challenge) the validity of the Supplier's (or any of its employees', agents' or sub-contractors') assignment of rights in the Work Product to the Customer. All such Work Product shall be deemed to be the confidential, proprietary information of the Customer. The Customer grants to the Supplier a revocable, sub-licensable, non-transferable, non-exclusive, royalty-free, worldwide limited licence for the term of this agreement to use, exploit, copy, reproduce, manufacture, sub-license, modify, improve, enhance, and make derivative works of the Customer's Intellectual Property Rights in and the physical Work Product, solely to the extent necessary to enable the Supplier to comply and procure compliance with its obligations under this agreement].

* 1. The Supplier shall not disclose to the Customer or use in its work any trade secrets or confidential information of a third party which the Supplier is not lawfully entitled to disclose or use in such manner. The Supplier shall not use any equipment (including the Equipment), supplies, facilities, computer code, work product, inventions, or materials of any other third party (Third-Party Materials) in any Work Product, or in the Supplier's performance under this agreement, unless:
     1. the Supplier has the full right and authority to do so without violating any rights of any third party;
     2. the Supplier has obtained all necessary rights to enable it to perform its obligations under this agreement and grant the rights granted pursuant to this agreement, and to permit the Customer to utilise the Third-Party Materials as contemplated under this agreement, in each case at no additional cost or expense to the Customer unless otherwise specifically agreed by the Customer in writing;
     3. the Customer's use of such Third-Party Materials will not restrict or impair in any manner its use of the Work Product; and
     4. such Third-Party Materials are specifically identified to the Customer in writing in advance of any use and the Customer has agreed in writing to such use.
  2. [The Supplier grants to (or shall procure the grant to) the Customer a perpetual (for the term of this agreement and thereafter), irrevocable, sub-licensable, [non]-transferrable, non-exclusive, royalty-free, worldwide licence to use, exploit, sell, copy, reproduce, manufacture, distribute, export, publicly display, publicly perform, sub-license, modify, improve, enhance and make derivative works of such Third-Party Materials solely to the extent and as are incorporated in the Work Product solely in connection with the Customer's (and its permitted sub-licensees,' including Affiliates') use of the Work Product in accordance with this agreement, subject to any Supplementary Terms that may be agreed to apply.] **Drafting** **Note:** The parties may refine this to align with the nature of and scope of Services and specific Work Product.
  3. Each party reserves all rights not expressly granted or transferred in or pursuant to this agreement.

1. Limitation of liability and Indemnities
   1. This clause 17 prevails over all other clauses and sets out the entire financial liability of the parties (including any liability for the acts or omissions of their employees, agents and sub-contractors) in respect of any breach of this agreement, the Equipment and Services provision, and any representation, misrepresentation (whether innocent or negligent), statement, or tortious act or omission (including negligence) arising under or in connection with this agreement.
   2. Nothing in this agreement shall exclude or limit the liability of the parties:
      1. for death or personal injury caused by a party's negligence;
      2. for fraud or fraudulent misrepresentation;
      3. for any liability arising under or in connection with clause 17.5 (third party IPR infringement claims); or
      4. any liability which cannot be excluded or limited by applicable law.
   3. Subject to clause 17.2, neither party shall be liable for any:
      1. indirect or consequential losses, damages, costs or expenses;
      2. loss of actual or anticipated profits;
      3. loss of goodwill;
      4. loss of business;
      5. loss of contracts; and
      6. lost opportunity;

whether or not such losses were reasonably foreseeable or the party in default or its agents had been advised of the possibility of the other incurring such losses.

* 1. Subject to clauses 17.2 and 17.3, the total aggregate liability of each party to the other for all causes of action, loss and damage arising in each Contract Year:
     1. arising under or in connection with clause 9 and Schedule 13 (Data Protection) shall be limited to the greater of:
        1. 50% (fifty percent) of the total sums paid and total other sums payable, in aggregate, by the Customer to the Supplier under this agreement;
        2. 200% (four hundred percent) of the total sums paid and total other sums payable, in aggregate, by the Customer to the Supplier under this agreement in the preceding Contract Year; or
        3. 200% (four hundred percent) of the total sums paid and total other sums payable, in aggregate, by the Customer to the Supplier under this agreement in that Contract Year;
     2. for all other causes of action, loss and damage, shall be limited to the greater of:
        1. one third of the total sums paid and total other sums payable, in aggregate, by the Customer to the Supplier under this agreement;
        2. 100% (two hundred percent) of the total sums paid and total other sums payable, in aggregate, by the Customer to the Supplier under this agreement, in the preceding Contract Year; or
        3. 100% (two hundred percent) of the total sums paid and total other sums payable, in aggregate, by the Customer to the Supplier under this agreement, in that Contract Year.
  2. The Supplier agrees to indemnify the Customer and keep it indemnified at all times against all or any costs, claims, losses, damages or expenses incurred by the Customer, or for which the Customer may become liable, arising in respect of any third party Intellectual Property Rights infringement claim(s) relating to the Customer's proper use of the Equipment and Services supplied by the Supplier to the Customer, except that this indemnity shall not apply to the extent any such claims arise or relate to the Customer's failure to comply with the terms of this agreement (including any Supplementary Terms).
  3. The limitation of liability under clause 17.4 has effect in relation both to any liability expressly provided for under this agreement, and to any liability arising by reason of the invalidity or unenforceability of any term of this agreement.
  4. This section 17 shall survive termination or expiry of the agreement, howsoever arising.

1. Term and termination
   1. This agreement shall commence on the Effective Date. Unless terminated earlier in accordance with this clause 18, this agreement shall continue in force for the Initial Term and shall automatically extend on a rolling basis for successive 12 month periods (Extended Term) at the end of the Initial Term, and at the end of each Extended Term, provided that the agreement may only auto renew for a maximum of six Extended Terms, and therefore if the six Extended Term is reached the agreement would automatically expire at the end of that sixth Extended Term. Either party may give written notice to the other party, not later than 90 days before the end of the Initial Term or the relevant Extended Term, to terminate this agreement at the end of the then current Initial Term, or the relevant Extended Term, as the case may be.
   2. Without prejudice to any other right or remedy available to it, and subject to clause 8, either party may terminate this agreement (in whole or in part) with immediate effect by giving written notice to the other party if:
      1. the other party commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
      2. the other party commits a series of breaches of this agreement (including in respect of the Service Level Agreement) which are each individually not material, but which occur sufficiently often within a sufficiently short period to have, in aggregate, the effect of being a material breach;
      3. the other party breaches any of the terms of Clause 19;
      4. there is a substantial modification to the agreement, or the Supplier seeks to do business on any terms other than those that have been specifically agreed with the Customer, where such modification represents a risk in the reasonable opinion of the Customer that there may be a breach of applicable public procurement rules and in particular the prohibition on material changes to procurement contracts;
      5. the other party 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 is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
      6. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
      7. a petition is filed, a notice is given, a resolution is passed, or an order is made for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
      8. an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given, or an administrator is appointed, over the other party;
      9. the holder of a qualifying floating charge over any of the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
      10. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
      11. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 18.2.5 to clause 18.2.10 (inclusive);
      12. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
      13. there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).
   3. The party not affected by a continuing Force Majeure Event may terminate this agreement in accordance with clause 22.1.
   4. The Customer may terminate this agreement in accordance with clause 3.7.
   5. Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after expiry or termination of this agreement shall remain in full force and effect.
   6. Expiry or termination of this agreement for any reason shall not affect the accrued rights, remedies, obligations, or liabilities of the parties existing at expiry or termination.
   7. On expiry or termination of this agreement for any reason:
      1. the Supplier shall immediately cease provision of the Set-Up Services, Services and Maintenance Services but shall provide Transition Services, as requested, for a further period in accordance with clause 8.2;
      2. (subject to clause 18.7.3) each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party; and
      3. **Drafting** **Note**: parties to consider/agree/refine any other specific consequences of termination, including as may be relevant to the specific WAN model/technology used, as necessary.
   8. If a party is required by any law, regulation, or government or regulatory body (Regulatory Requirement) to retain any documents or materials which it would otherwise be obliged to return or destroy, it shall notify the other party in writing of such retention, giving details of the documents or materials that it must retain. Clause 19 shall continue to apply to any such retained documents and materials for as long as any such requirement continues in force, subject to any disclosure mandated by any Regulatory Requirement.
   9. The Supplier shall be considered to have satisfied its obligation to "expunge" or "destroy" or "dispose" of any electronic data, for the purposes of clause 18.8, where it puts such electronic data beyond use.
2. Confidentiality
   1. The provisions of this clause 19 shall not apply to any Confidential Information that:
      1. is or becomes generally freely available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause 19);
      2. was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
      3. was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
      4. was known to the receiving party before the information was disclosed to it by the disclosing party;
      5. the parties agree in writing is not confidential or may be disclosed; or
      6. is developed by or for the receiving party independently of the information disclosed by the disclosing party.
   2. Each party shall keep the other party's Confidential Information secure and confidential, and shall not:
      1. use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this agreement (**Permitted Purpose**); or
      2. disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this agreement.
   3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its Representatives in violation of the terms of this agreement.
   4. Each party acknowledges and agrees that the other party’s Data is the Confidential Information of that party (and its licensors).
   5. A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
      1. it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
      2. at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause 19.
   6. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority (including any relevant securities exchange) or by a court, arbitral or administrative tribunal or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 19.7, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
   7. The provisions of this clause 19 shall continue to apply after expiry or termination of this agreement for any reason.
3. Freedom of information
   1. The Supplier acknowledges that the Customer is subject to the requirements of FOIA and EIR. The Supplier shall:
      1. provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under FOIA and EIR;
      2. transfer to the Customer all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
      3. provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
      4. not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
   2. The Supplier acknowledges that the Customer may be required under FOIA and EIR to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Customer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with FOIA and/or EIR.
4. Change control
   1. If either party wishes to change the scope of the Services (including Customer requests for additional Equipment or varied Services), it shall submit details of the requested change to the other party in writing using the template change request form included at Schedule 14.
   2. If either party requests a change to the scope or execution of the Equipment and Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
      1. the likely time required to implement the change;
      2. any variations to the Fees arising from the change;
      3. the likely effect of the change on the Project Plan; and
      4. any other impact of the change on the terms of this agreement.
   3. If either party wishes the other party to proceed with the relevant change referred to in clause 21.2, the Supplier has no obligation to do so unless and until the parties have agreed in writing the necessary variations to its charges, the Project Plan, and any other relevant terms of this agreement to take account of the change.
   4. Both parties shall maintain a change log to record all changes agreed between them. All changes shall be in writing and signed by the authorised representatives of the parties.
5. Force majeure
   1. Neither party shall have any liability to the other under this agreement if it is prevented from, or delayed in, performing its obligations under this agreement, arising from any Force Majeure Event, provided that:
      1. the other party is promptly notified of such an event and its expected duration; and
      2. it uses all reasonable endeavours to mitigate, overcome or minimise the effects of the Force Majeure Event concerned,

and that if the period of delay or non-performance continues for 6 weeks or more, the party not affected may terminate this agreement by giving not less than 21 days' written notice to the other party.

* 1. If the Force Majeure Event results in the suspension of provision of all or any part of the Equipment or Services, then the Customer shall not be obliged to pay the relevant Fees until such time as the Force Majeure Event shall have ceased to have effect and the provision of Equipment and Services recommence and are delivered in accordance with this agreement.
  2. The Supplier shall have in place an appropriate Disaster Recovery Plan to ensure that it is able to comply with its obligations under this agreement and shall maintain, update and test (and apply as necessary) such Disaster Recovery Plan and notify full details of its then current Disaster Recovery Plan to the Customer within xx months of the commencement of services, and updated annually or as agreed by both parties. If such Disaster Recovery Plan is invoked, the cost and expense of invoking and executing such Disaster Recovery Plan shall be borne by the Supplier.

1. Audit
   1. For the term of this agreement, and for a period of seven years from expiry or termination of this agreement for any reason, the Supplier shall maintain full and accurate records in accordance with Generally Accepted Accounting Principles, in an agreed form, of all charges, prices, costs and expenses associated with and invoiced in respect of the Equipment and Services and its performance against the Service Level Agreement.
   2. The Supplier shall, on reasonable advance written notice:
      1. allow any designated auditors of, or other advisers to, the Customer, and any regulators of the Customer to access any of the Supplier's (and any of the Supplier's sub-contractors') personnel, relevant records and systems used by the Supplier (or any of its sub-contractors) in the provision of the Equipment and Services (including the Supplier's System and its (or any of its sub-contractors') data processing facilities) as may be reasonably required to verify that the Equipment and Services are being provided in accordance with this agreement and the adequacy of the Supplier's (and any of the Supplier's sub-contractors') financial standing; and
      2. provide to the Customer and the auditors of the Customer the report of the applicable auditor of the Supplier (and any relevant sub-contractor).
   3. The Customer shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier (or any of its sub-contractors) or delay the provision of any of the Equipment and Services by the Supplier.
   4. Subject to the Customer's obligations of confidentiality, the Supplier shall provide (and procure that its sub-contractors provide) the Customer (and its auditors and other advisers) with all reasonable co-operation, prompt access, and assistance in relation to each audit.
   5. The parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this clause.
2. Compliance and policies
   1. The Supplier shall:
      1. comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, including the Bribery Act 2010 (Relevant Requirements);
      2. comply with the Customer Policies included with this agreement at Schedule 7 in each case as the Customer (or the relevant industry body) may update them from time to time;
      3. have and maintain in place throughout the term of this agreement its own relevant business and operational policies and procedures, including adequate procedures under the Bribery Act 2010, including to ensure compliance with the Relevant Requirements and clause 24.1.2, and shall enforce them where appropriate;
   2. In performing its obligations under this agreement, and when at the Customer Site, the Supplier shall comply (or procure compliance with) with the Customer's reasonable security, health & safety and safeguarding requirements and policies.
   3. The Supplier shall ensure that any person engaged by or associated with the Supplier or who is otherwise performing or delivering Services under and in connection with this agreement for the Supplier, including any representatives, agents or sub-contractors and consultants of the Supplier, does so only on the basis of a written contract that imposes on, to the extent relevant, and secures from each such person terms substantively equivalent to those imposed on the Supplier by this agreement (Relevant Terms). The Supplier shall at all times be responsible and liable for the activity of any such persons in relation to this agreement and the observance and performance by such persons of the Relevant Terms, and the Supplier shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms, and Supplier shall at all times monitor, manage and supervise such persons and procure that any such person is compliant with and acts in accordance with the scope, terms and purposes of this agreement.
   4. Breach of this clause 24 shall be deemed a material breach under clause 18.2.1.
3. Notices
   1. Any notice or other formal communication required to be given to a party under or in connection with this agreement shall be in writing and shall be:
      1. delivered by hand or by pre-paid first class post or other next Business Day delivery service at its registered office;
      2. sent by fax to the other party's main fax number; or
      3. sent by email to Contracting\_Authority\_Email\_Address in the case of the Customer and Supplier\_Email\_Address in the case of the Supplier or such other email as may be notified to the other party from time to time.
   2. Any notice or communication shall be deemed to have been received:
      1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
      2. if sent by pre-paid first class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting, or at the time recorded by the delivery service;
      3. if sent by email, at 9.00 am on the next Business Day after transmission provided that a failed transmission notification is not received and provided that the recipient of the email notice has replied to the sender acknowledging receipt of the notice within [3] Business Days of initial transmission.

**Drafting Note**: To refine the particular notice that is acceptable to the parties at the contracting phase i.e. whether Fax is relevant (if there is no monitored fax machine for example it should be removed). Also to note that current email provisions require a return 'acknowledgment email', so to stop the recipient effectively rejecting notice by not acknowledging, the email should also be followed up with notice in writing for example.

* 1. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

1. Dispute resolution
   1. If a dispute arises under or in connection with this agreement (Dispute), including any Dispute arising out of any amount due to a party, then before bringing any legal proceedings or commencing any other alternative dispute resolution procedure (such as mediation by CEDR Model Mediation Procedure) in connection with such Dispute, a party must first give written notice (**Dispute Notice**) of the Dispute to the other party describing the Dispute and requesting that it is resolved under the dispute resolution procedure described in this clause 26.
   2. If the parties are unable to resolve the Dispute within 30 days of delivery of the Dispute Notice, each party shall promptly (and in any event within five Business Days):
      1. appoint a senior representative who has authority to settle the Dispute and is at a higher management level than the person with direct responsibility for the administration of this agreement (Designated Representative); and
      2. notify the other party of the name and contact information of its Designated Representative.
   3. Acting reasonably and in good faith the Designated Representatives shall discuss and negotiate to resolve the Dispute, including agreeing the format and frequency for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one party to the other party shall be complied with as soon as reasonably practicable).
   4. If the parties are unable to resolve the Dispute within 30 days after the appointment of both Designated Representatives, either party may proceed with any other available remedy.
   5. Notwithstanding any other provision of this agreement, a party may seek interim or other equitable relief necessary (including an injunction) where damages would be an inadequate remedy.
2. Insurance

During this agreement and for a period of three years afterwards the Supplier shall maintain in force the following insurance policies with reputable insurance companies:

* + 1. public liability insurance with a limit of at least £5 million a claim;
    2. product liability insurance with a limit of at least £5 million for claims arising from a single event or series of related events in a single calendar year;
    3. professional indemnity insurance with a limit of at least £2 million for claims arising from a single event or series of related events in a single calendar year; and
    4. employer's liability insurance with a limit of at least £5 million for claims arising from a single event or series of related events in a single calendar year.

1. General terms
   1. **No waiver.** No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
   2. **Severance.** If any provision or part-provision of this agreement is found by any court or other authority of competent jurisdiction to be invalid, illegal, or unenforceable, that provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this agreement is deemed deleted under this clause 28.2 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
   3. **Entire agreement.** This agreement constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings, and agreements between them relating to its subject matter.
   4. **No reliance.**  Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
   5. **Variation.** No variation of this agreement shall be effective unless it is in writing and signed by the parties by their authorised representatives.
   6. **Supplier assignment.** The Supplier may not assign, transfer, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under this agreement without providing the customer with written notice at least 30 calendar days before Supplier Assignment. On Customer's request the Supplier shall provide all details and background reasonably required by Customer of any Supplier sub-contractor that is to provide substantive services and resources in the delivery of the Services under and in connection with this agreement.
   7. **Customer assignment.** The Customer may not assign, transfer, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with any of its rights or obligations under this agreement without providing the Supplier with written notice at least 30 calendar days before Customer Assignment.
   8. **No partnership or agency.** Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, or (except as expressly provided in clause 16 or pursuant to clause 4.2 or as otherwise specified in the agreement) constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
   9. **Third party rights.** Except as expressly provided elsewhere in this agreement, no one other than a party to this agreement, its successors and permitted assignees, shall have any right to enforce any of its terms.
   10. **Publicity.** Neither party shall refer to the other party in any marketing materials or communications with third parties without the other party's prior written consent.
   11. **Rights and remedies.** Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
   12. **Governing law.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
   13. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

1. Fees

Drafting Note: In respect of fixed/variable/estimates etc. Where fees are to be fixed/capped/'all-in', it should be expressly and specifically clear where this is the case (including by reference to what is in/out of scope to those fixed/capped fees - such as for example specific WAN set-up tasks, third party licensed software, additional warranty cover costs etc.

The parties should make expressly clear if fees include all updates and upgrades/new versions of core software used over the course of the agreement (including the work to security-check and implement any such updates and upgrades and where applicable, likely timings for any such updates/upgrades and the security-check timings should be specified).

* + - 1. [Set-up Services Fees]
      2. [[Monthly] Services Fee(s)] etc.
      3. [Equipment Fees if separate]

1. Personnel
   * + 1. Supplier
          1. Supplier Account Team:

|  |  |
| --- | --- |
| Account manager | Name |
| Account representative | Name |
| Account representative | Name |

* + - * 1. Supplier's Project/Contract Manager: Name.
      1. Customer
         1. Customer Account Team:

|  |  |
| --- | --- |
| Executive sponsor | Name |
| Project representative | Name |
| Project representative | Name |

* + - * 1. Customer's Project/Contract Manager: Name.
        2. Customer support representatives: Names of staff who can request support.

Drafting Note: You may want to specify minimum levels of seniority/experience per role.

1. Set-up Services and Project Plan
   * 1. Outline

**Drafting note**: Complete or replace as applicable.

* + - 1. Timetable

|  |  |  |
| --- | --- | --- |
| Stage | Timetable | |
|  | Estimated start date | Estimated completion date |
| Planning and Due Diligence: |  |  |
| Implementation: |  |  |
| Roll-out: |  |  |

* + - 1. Project Planning and Due Diligence
         1. The Supplier shall conduct a due diligence exercise to examine all relevant Customer Sites, the Customer site equipment and Customer's Operating Environment, and the Customer's contracts with third parties (as relevant), and all other hardware and software and communications systems and services aspects addressed by the Service Requirements and Services Specification, and the Supplier shall prepare the Project Plan (in consultation and co-operation with the Customer).
         2. As part of the planning process the Project Plan shall identify and include reference to any Assumed Contracts required to be transferred to the Supplier. Where the parties agree it is necessary in order for the Supplier to perform this agreement, the Customer shall use reasonable endeavours to assign, novate or transfer any Assumed Contract to the Supplier with effect from the applicable Acceptance Date. If any consent of any third party is required for the assignment, novation or transfer of an Assumed Contract and has not been obtained at, or before, the relevant Acceptance Date, the Customer and the Supplier shall each use all reasonable endeavours to obtain that consent as soon as possible after the Acceptance Date. Unless or until any Assumed Contract is assigned, novated, or transferred, or any necessary consent is obtained, the parties shall work together, in good faith, to agree an alternative solution or management process, which may include the Supplier finding an alternative source of supply and/or the Customer holding the benefit of the relevant Assumed Contract as agent for the Supplier.
      2. Implementation and set-up
         1. The Supplier and the Customer shall co-operate in planning, setting-up and implementing the Equipment and Services in accordance with the implementation provisions of this agreement and the Project Plan.

**Drafting** **Note**: Parties to agree if any test environments / test criteria and protocols need to be established as part of set-up/implementation.

* + - 1. Roll-out
         1. The Supplier and the Customer shall co-operate in rolling out the Equipment and Services in accordance with the roll-out provisions of the Project Plan.

1. Services Specification

**Description of the WAN Services**

**Drafting Note:** Add/edit below, as required/relevant to the WAN managed services being covered.

* + - 1. [Installation and configuration
         1. The Supplier shall procure, install, and configure [Equipment and systems] for use to provide the Equipment and Services. [This includes the mounting or connection of any cables, routers, switches and related equipment, installation or interconnection of systems and data or software components, configuration of clustering and cross-connects, installation or connection to (including by API) the Software and loading of or connection to initial Customer Data.]
      2. [Internet connectivity
         1. The Supplier shall provide or procure / manage internet connectivity to the Customer in connection with the WAN network. The connectivity shall include [multiple, diversely routed high-speed connections, a firewall for security, and a load balancer for traffic management and speed optimisation].
         2. The Supplier shall supply [burstable bandwidth connectivity services. The connectivity shall include multiple connections and a network operations centre that monitors servers, the network platform and internet access. ]
      3. [Security and Safeguarding services
         1. The Supplier shall provide / manage security services as follows:

access to a dedicated hosting and central communications facility (Supplier Facility) shall be limited to the authorised Supplier (and contracted third-party personnel);

the Supplier Facility shall be monitored 24 hours a day, seven days a week, and shall require identification for access; and

data access security shall be provided through managed firewall services and private network paths for secure administration and monitoring]

* + - 1. [Monitoring services
         1. The Supplier shall provide, 24 hours a day and seven days a week, monitoring of the computing, operating, and networking infrastructure to detect and correct abnormalities, failures, attacks etc. This includes environmental monitoring, network monitoring, load-balancing monitoring, web server and database monitoring, firewall monitoring and intrusion detection.]
      2. [Release management and change control
         1. The Supplier shall provide release management and change control services to ensure that versions of servers, network devices, storage, operating system software and utility and application software are audited and logged, and that any new releases, patch releases and other new versions are implemented as deemed necessary by the Supplier to maintain the Equipment and Services.]

**All other relevant managed WAN / internet services / systems required to be provided, as specific to the WAN model and technology used.**

1. Maintenance and support services

**Drafting Note**: Add/edit below, as required/relevant to all one-off and on-going managed services being covered to address the support and maintenance (and training) commitments, including those conducted remotely and in person/on-site.

* + - 1. [Training
         1. The Supplier shall provide training to such number of employees of the Customer as is specified in, and is otherwise in accordance with, the Project Plan.]
      2. [Maintenance Events
         1. Maintenance work that may require interruption of the Services (Maintenance Events) shall not [normally] be performed during Normal Business Hours. The Supplier may interrupt the Services outside Normal Business Hours for maintenance provided that it has given the Customer at least [three] days' advance written notice.
         2. Any Maintenance Events that occur during Normal Business Hours, or that occur with less notice than required by paragraph 2.1, and which were not requested by the Customer, shall be considered downtime for the purpose of service availability measurement. The Supplier shall at all times endeavour to keep any service interruptions to a minimum.]
      3. [Technical support services
         1. Should the Customer determine that the Equipment and Services include a defect, failure(s) or error(s) the Customer support representatives in paragraph 2.3 of Schedule 2 (CSRs) may file failure or error reports or support requests. The Supplier shall provide technical support services only to CSRs.
         2. The Supplier shall accept voicemail, email, and web form-based incident submittal from CSRs 24 hours a day, seven days a week. The Supplier shall accept telephone calls for English language telephone support [during Normal Business Hours]. The Supplier shall use reasonable endeavours to process support requests, issue trouble ticket tracking numbers, if necessary, determine the source of the problem and respond to the Customer. The Supplier shall use reasonable endeavours to respond to and resolve all support requests from CSRs within the time periods specified below, according to priority.
         3. The Supplier shall determine the priority of any incident in accordance with the following table.

**Drafting Note:** To amend as relevant All relevant responses times and details to be included in detail and in line with the Service Requirements, including any diagnostic times and escalation timings (including any levels of technical expertise.

|  |  |  |  |
| --- | --- | --- | --- |
| **Priority** | **Description** | **Response time** | **Target resolution time** |
| Priority 1 | The Equipment or entire managed Services are completely inaccessible or failing. Priority 1 incidents shall be reported by telephone only. | Within two Normal Business Hours. | Four Normal Business Hours. Continuous effort after initial response and with Customer co-operation. |
| Priority 2 | Operation of the Services is severely degraded, or major components of the Equipment and Services are not operational, and work cannot reasonably continue. Priority 2 incidents shall be reported by telephone only. | Within four Normal Business Hours. | Within two Business Days after initial response. |
| Priority 3 | Certain non-essential features of the Equipment and Services are impaired while most major components of the Equipment and Services remain functional. | Within 12 Normal Business Hours. | Within seven Business Days after initial response. |
| Priority 4 | Errors that are non-disabling or cosmetic and clearly have little or no impact on the normal operation of the Equipment and Services. | Within 24 Normal Business Hours. | When reasonably possible. |

* + - * 1. If a Priority 1 or Priority 2 incident has not been resolved within the target resolution time, the incident shall be escalated to Level of management. If the incident is not resolved, then after each successive increment of the target resolution time the incident shall be escalated to the Level of management, followed by Level of management, followed by the Managing Director or CEO.
        2. The Supplier shall provide monitoring of its Services as described in paragraph 4 of Schedule 4, 24 hours a day seven days a week.
        3. The Customer shall provide front-line support to Services users who are not the designated CSRs. The Customer's designated CSRs may contact Supplier technical support in order to report problems that the Customer's designated CSRs cannot resolve themselves after they have performed a reasonable level of diagnosis.]

1. Service Level Agreement (SLA)

**Drafting Note**: Add/edit below, as required/relevant. This may relate to a KPI regime if included/required.

* + - 1. [Service availability
         1. The Supplier shall provide at least a 99.5% uptime service availability level (Uptime Service Level).
         2. The Equipment and Services shall be considered as unavailable only:

during periods of Priority 1 or Priority 2 incidents; and

during periods of unplanned Maintenance.

* + - * 1. For the avoidance of doubt, the Equipment and Services shall not be considered as "unavailable" during Maintenance Events, Customer-caused outages or disruptions, or outages or disruptions attributable in whole or in part to Force Majeure Events.]
      1. [Service Credits if relevant
         1. If availability falls below the Uptime Service Level in a given calendar month (Service Delivery Failure), the Supplier shall credit the Customer's account by an amount calculated as: [the product of the total cumulative downtime (expressed as a proportion of the total possible uptime minutes in the month concerned) and the total monthly Fees owed for that month.]
         2. [A Service Credit shall not be payable unless the Customer requests it within 40 Business Days of the end of the calendar month in respect of which the Uptime Service Level was not met.] [The maximum Service Credit allowable in respect of a given month is limited to 20% of the total monthly Fee payable for that month.]
         3. The Customer acknowledges and agrees that the terms of this Schedule relating to Service Credits do not operate by way of penalty and are proportionate when considering the Customer's legitimate interest to avoid any delay in provision of the Services.]

1. Customer policies

**Drafting Note:** Insert Customer Policies. Examples may include:

* + - 1. Safeguarding
      2. Acceptable Use
      3. Data Protection
      4. CSR
      5. Low Carbon / Net Zero commitments policies
      6. Specific health and safety on-site and access/security policies
      7. Publicity and brand usage guidelines

1. Supplier's network and information systems security

**Drafting Notes**: Add/edit below, as required/relevant.

* + - 1. [Security of systems and facilities
* A description or mapping of the Supplier's information system insofar as it relates to the Customer and any policies the Supplier has in place for managing information security, including risk analysis, human resources, security of operations, security architecture, secure data and system life cycle management and, where applicable, encryption and its management.
* Its measures to protect the security of its network and information systems from damage using an all-hazards risk-based approach, addressing for instance system failure, human error, malicious action or natural phenomena.
* Any measures to ensure that the physical and logical access to network and information systems, including administrative security of network and WAN/information systems, is authorised and restricted based on business and security requirements.]
  + - 1. [Incident handling
* Its detection processes and procedures for ensuring timely and adequate awareness of anomalous events and details of the ways in which it maintains and tests these processes, updates test criteria and procedures.
* Its processes and policies on reporting incidents and identifying weaknesses and vulnerabilities in its information systems.
* Its procedures for assessing the severity of a security incident, documenting knowledge from incident analysis which may serve as evidence and support a continuous improvement process.]
  + - 1. [Business continuity management
* Its contingency procedures for ensuring business continuity for the Services and details of the ways in which it regularly assesses and tests (including by reference to test criteria) these.
  + - 1. [Monitoring, auditing, and testing (including by reference to test criteria)

Its policies and the maintenance of such policies on:

* Conducting planned sequences of observations or measurements to assess whether network and information systems are operating as intended.
* Inspection and verification to check whether a standard or set of guidelines is being followed, records are accurate, and efficiency and effectiveness targets are being met.]
* A process (including technical processes and personnel involved in the operation flow) intended to reveal flaws in the security mechanisms of a network and information system that protect data and maintain functionality as intended.
  + - 1. [International standards

Any information or policies on compliance with international standards.]

1. Supplementary Terms

**Drafting Note**: These supplemental terms (if any) should not include material changes to the agreement, and especially should not materially alter the risk profile of the agreement. They should be included only to the extent necessary to provide supplemental detail, third party/manufacturer product/software and technology specific provisions and practical or process provisions to the extent additional detail may be needed. Please note that the terms in the main body of the contract shall take priority over any Supplementary Terms.

1. Disaster Recovery Plan

**Drafting Note:** To be included at agreed time, but not necessarily by contract signing, possibly within 3 months of commencement of service. Should cover data back-up and restoration, fail-over, resilience and emergency responses measures etc.

1. Employment/TUPE

Does not apply.

**Important:** It is very unlikely that TUPE will apply. If TUPE does apply, Contracting Authority should read the TUPE schedule and insert the correct option into this schedule. TUPE schedule can be requested by emailing info@enframe.org.uk.

1. Safeguarding
   * + 1. The Supplier undertakes to comply with the Customer's Child Protection Policy; Keeping Children Safe in Education; and other related safeguarding policies and procedures as notified to the Supplier from time to time.
       2. It is a condition of this agreement that the Supplier shall provide the Customer with written confirmation that the following checks have been completed on each of the Supplier Personnel before they can provide the Services unsupervised at the Client's Premises:
          1. verification of identity against an official document containing a photograph of the individual;
          2. that a satisfactory enhanced disclosure from the Disclosure and Barring Service (DBS) has been obtained;
          3. that a check of the Children's Barred List has been completed and that the individual is not barred from working with children; and
          4. such other checks as are specified by the Customer from time to time in order for the Customer to comply with its statutory or regulatory obligations.
       3. The Supplier agrees to provide the Customer with written confirmation that the checks specified in paragraph 2 have been completed on each of the Supplier Personnel before they can commence work at the Customer's Premises unsupervised.
       4. The Supplier shall procure that the Customer shall be able to see a copy of each DBS Certificate for each Supplier Personnel before they can commence work at the Customer's Premises unsupervised, so that the Customer may reasonably determine whether the person to whom the DBS Certificate relates is appropriately identified and suitable to work at the Customer's Premises, and in order that the Customer can update the Single Central Record.
       5. The Supplier undertakes to allow a person authorised by the Customer to inspect the records it retains in respect of each of the Supplier Personnel on reasonable notice for the purposes of confirming that all of the checks in paragraph 2 have been properly completed.
       6. A person authorised by the Customer will check the identity of all members of the Supplier Personnel on or before the first day they attend at the Customer's Premises unsupervised. It is a condition of this agreement that all Supplier Personnel provide acceptable evidence of their identity and address to the Customer. Acceptable evidence is deemed to be a current passport or photo card driving licence and a utility bill that is no more than three months old as of the day work they are due to attend at the Customer's Premises unsupervised for the first time. For the avoidance of doubt, no Supplier Personnel will be permitted to work at the Customer's Premises without such evidence being provided unless they are supervised by a Customer Staff Member.
       7. Where the DBS Certificate applied for in respect of any Supplier Personnel has not been received by the Supplier or provided to the Customer by the date they are due to attend the Customer's Premises unsupervised, the Customer may at its complete discretion agree to the person commencing work if:
          1. all of the other checks set out at paragraph 2 of this agreement have been completed to the satisfaction of the Customer;
          2. it has completed a risk assessment and is satisfied that it is appropriate for work to commence; and
          3. it has been able to implement appropriate supervision for the person until such time as the DBS Certificate is received and determined to be suitable by the Customer.
       8. Where any Supplier Personnel carry out work at the Customer's Premises prior to the Customer receiving the DBS Certificate they must always be with their agreed Customer Supervisor (the Staff Member who has been appointed to them) and should not be left unattended at any stage.
       9. The Supplier undertakes to immediately notify the Customer upon becoming aware (or when the Supplier should have become aware) that:
          1. any of the Supplier Personnel are or become barred from working with children or adults;
          2. any of the Supplier Personnel are the subject of a referral to the DBS or any successor body;
          3. any of the Supplier Personnel are arrested, charged or convicted of any criminal offence the circumstances of which could have an impact on the welfare of children or adults;
          4. any of the Supplier Personnel receive a police caution, reprimand or warning the circumstances of which could have an impact on the welfare of children or adults;
          5. there is a formal child protection investigation of any of the Supplier Personnel or any member of their household under section 47 of the Children Act 1989, as amended;
          6. it becomes aware of any circumstances relating to any of the Supplier Personnel that may reasonably be considered to pose a safeguarding risk to children; or
          7. there is any change in the circumstances of any of the Supplier Personnel that affects their right to work in the UK.
       10. If the Supplier provides a notification to the Customer under paragraph 9, the Supplier agrees to provide the Customer with all information relevant to the notification so that the Customer may determine whether the person who is the subject of the notification remains suitable to attend the Customer's Premises unsupervised.
       11. The Supplier undertakes and agrees to take such further steps as the Customer reasonably requires to enable the Customer to comply with its statutory or regulatory obligations to safeguard and promote the welfare of children and, upon request, will provide the Customer with such evidence as the Customer requires in order to demonstrate that such steps have been taken.
       12. The Supplier warrants that at all times for the purposes of this agreement it has no reason to believe that any of the Supplier Personnel are barred from working with children under the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
       13. The Supplier shall take all steps reasonably required of it by the Customer in order to assist the Customer with making any referral to the DBS that the Customer is required to make due to the removal of Supplier Personnel from regulated activity in circumstances which trigger the duty to make a referral under the Safeguarding Vulnerable Groups Act 2006 as amended from time to time.
       14. Where any provision of this requires the Supplier to make any Personal Data available to the Customer, the Supplier shall take such steps as are necessary to ensure that it has a lawful basis for sharing that Personal Data with the Customer. Subject to the Supplier having taken such steps, the Customer agrees that the obligation of the Supplier to provide such Personal Data to the Customer shall be subject to the Supplier being permitted to do so in accordance with Data Protection Law.
       15. The Customer shall ensure the that the Supplier Personnel are trained in and operate within the Customer's Child Protection Policy and related safeguarding policies and procedures as in force and notified to the Supplier from time to time. The Supplier shall procure that the Supplier Personnel shall attend safeguarding training provided by the Customer if requested by the Customer.
       16. The Customer reserves the right, acting reasonably, to refuse any of the Supplier Personnel access to the Customer's Premises.
       17. The Supplier agrees that any breach by the Supplier of the provisions of this Schedule (Safeguarding) shall constitute an irremediable material breach of the agreement giving rise to a right of the Customer to terminate this agreement in accordance with clause 18.2 (termination for material breach) of the agreement.
       18. The Supplier agrees to provide an annual declaration in writing that their staff have read and understood Part One of Keeping Children Safe in Education.
2. Data Protection
3. Introduction and interpretation
   1. This Schedule sets out the parties’ rights and obligations in relation to Data Protection Law.
   2. The definitions and rules of interpretation in this paragraph apply in this Schedule.

|  |  |
| --- | --- |
| 1. Appendix: | The appendix to this Schedule. |
| 1. Controller: | Any person, agency or other body who falls under the definition of "Controller" or "controller" under Data Protection Law. |
| 1. Customer Data Subject: | An individual who is the subject of Customer Personal Data. |
| 1. Customer Personal Data: | Any Personal Data relating to any former, current, or prospective pupil, parent, member of staff of the Customer or former, current, or prospective member of the Customer's school community; any Personal Data held in the Customer Operating Environment any Personal Data made available by or on behalf of the Customer to the Supplier in connection with the Services or this agreement. |
| 1. Data Breach: | Any breach of Data Protection Law, any Personal Data Breach and anything that is both a breach of Data Protection Law and a Personal Data Breach. |
| 1. Data Protection Law: | The Data Protection Act 2018, the GDPR (to the extent applicable), the UK GDPR, any other applicable law concerning data protection, privacy, or confidentiality and any subordinate or related legislation. |
| 1. Data Subject: | An individual who falls under the definition of data subject under Data Protection Law. |
| 1. GDPR: | Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016, otherwise known as the General Data Protection Regulation. |
| 1. Joint Controller: | As described under Data Protection Law. |
| 1. **Relevant Occurrence**: | Any of the following: (a) any communication from the Information Commissioner's Office (or any other relevant data protection supervisory authority) concerning any Processing of Customer Personal Data; (b) any exercise, or purported exercise, by a Customer Data Subject of their rights in their Personal Data; (c) any complaint, enquiry or other communication from a Customer Data Subject relating to data protection compliance or relating to compliance with Data Protection Law; or (d) any actual or suspected Data Breach concerning Customer Personal Data. |
| 1. Personal Data: | Any information which falls under the definition of "personal data" under Data Protection Law. |
| 1. Personal Data Breach: | As defined in the UK GDPR. |
| 1. Processing**, Processed and Process**: | As described under Data Protection Law. |
| 1. Processor: | Any person, agency or other body who falls under the definition of "Processor" or "processor" under Data Protection Law. |
| 1. Sub**-Processor**: | As defined in paragraph 5.8. |
| 1. Relevant Occurrence: | Any of the following:   * 1. any communication from the Information Commissioner's Office (or any other relevant data protection supervisory authority) concerning any Processing by the Supplier of Personal Data or concerning any Processing of Customer Personal Data;   2. any exercise, or purported exercise, by a Customer Data Subject of their rights in their Personal Data;   3. any complaint, enquiry or other communication from a Customer Data Subject; or   4. any actual or suspected Data Breach concerning Customer Personal Data. |
| 1. Special Category Personal Data: | Those categories of Personal Data described in Article 9 paragraph 1 of the UK GDPR and Personal Data relating to criminal convictions and offences. |
| 1. Special Conditions: | Any additional terms and conditions described as such in the Appendix. |
| 1. **UK GDPR:** | The UK GDPR as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018. |

* 1. Any term defined in the main body of this agreement shall have the same meaning in this Schedule.
  2. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
  3. The Appendix forms part of this Schedule and shall have effect as if set out in full in the main body of this Schedule. Any reference to this Schedule includes the Appendix.
  4. To the extent of any inconsistency between any of the provisions of this Schedule, the provision that places the greater obligation on the Supplier shall prevail.
  5. Unless stated otherwise, a reference to a paragraph number in this Schedule is a reference to a numbered paragraph in the main body of this Schedule.

1. Relationship between the parties
   1. The Customer is a Controller of Customer Personal Data. The Supplier is a Controller, a Processor, or both a Controller and a Processor of Customer Personal Data as described in the Appendix.
   2. Each party acknowledges that it will Process Personal Data relating to the other party's staff in connection with the administration and management of this agreement. Each party is a Controller in respect of such Processing.
   3. The Supplier's obligations in this Schedule shall apply regardless of whether the Supplier is a Controller or Processor of Customer Personal Data save that:
      1. Paragraph 3.4 shall only apply where the Supplier is a Controller. Paragraph 2.4 shall only apply where the parties are Joint Controllers;
      2. Paragraph 5 shall only apply where the Supplier is a Processor; and
      3. The Appendix may contain additional provisions that are specific to the Supplier as Processor or Controller as the case may be.
   4. The parties acknowledge that if they are Joint Controllers then they are required by Data Protection Law to agree their respective responsibilities for compliance. Unless the Appendix specifies otherwise, the parties consider that, where they are both a Controller in respect of Customer Personal Data then they are independent Controllers and not Joint Controllers. Notwithstanding this, if at any point the parties are Joint Controllers in respect of any Processing of Customer Personal Data, then (subject to any provisions in the Appendix) the following provisions shall apply to such Processing:
      1. The existing provisions of this Schedule shall continue to apply but where and to the extent that this Schedule does not allocate responsibility for compliance with Data Protection Law between the parties then each party shall be responsible for ensuring that any Processing of Customer Personal Data by or on behalf of it complies with Data Protection Law;
      2. The Customer shall be responsible for deciding on the action to take in response to a Relevant Occurrence. The Supplier shall provide the Customer with such assistance as the Customer requests in respect of any Relevant Occurrence; and
      3. Each party shall provide the other with reasonable co-operation, information and assistance, in a timely manner, to facilitate either or both party's compliance with Data Protection Law.
2. Compliance with Data Protection Law
   1. Each party shall comply with Data Protection Law in relation to this agreement and in relation to Customer Personal Data save that a party shall not be in breach of this paragraph to the extent that its non-compliance is a consequence of the other party's breach of this agreement.
   2. The Supplier shall only Process Customer Personal Data as is necessary in connection with this agreement or as is necessary in connection with the provision of the Services and shall not Process Customer Personal Data for any other purpose unless authorised to do so in writing by the Customer, save that nothing in the forgoing provisions of this paragraph shall prevent the Supplier from Processing Customer Personal Data to the extent necessary to comply with a non-contractual legal obligation.
   3. The Supplier shall ensure that its staff are appropriately trained to handle and Process Customer Personal Data in accordance with the requirements of Data Protection Law.
   4. Where the Supplier is a Controller of Customer Personal Data then the Supplier shall be responsible for its compliance with Data Protection Law. Without limit to the generality of the forgoing, the Supplier shall provide privacy notice information to Customer Data Subjects in accordance with its obligations under Data Protection Law and at the Supplier's request, the Customer shall provide the Supplier with reasonable assistance in connection with the Supplier's privacy notice obligations.
3. Security of Processing
   1. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Supplier shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate:
      1. the pseudonymisation and encryption of Customer Personal Data;
      2. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and services in relation to Customer Personal Data;
      3. the ability to restore the availability and access to Customer Personal Data in a timely manner in the event of a physical or technical incident; and
      4. a process for regularly testing, assessing, and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing of Customer Personal Data.
   2. In assessing the appropriate level of security referred to in paragraph 4.1 above, the Supplier shall take into account in particular the risks that are presented by Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Personal Data transmitted, stored or otherwise Processed.
   3. The Supplier's obligations in this paragraph 4 are in addition to any obligations relating to the security of Personal Data in the Appendix.
   4. The Supplier acknowledges and agrees that it may Process Special Category Personal Data and other Personal Data that is by its nature highly confidential and the Supplier shall have regard to this when considering what constitutes appropriate technical and organisational measures for the purposes of this Schedule.
   5. The Supplier shall ensure that any transfer of Personal Data from or on behalf of it to the Customer is secure to the standard required by Data Protection Law.
4. The Supplier's obligations as Processor
   1. Unless the Customer instructs the Supplier in writing otherwise, the Supplier shall only Process Customer Personal Data to the extent necessary to provide the Services and in accordance with this agreement.
   2. The Supplier shall only Process Customer Personal Data on documented instructions from the Customer, including with regard to transfers of Personal Data to a country outside of the United Kingdom, or an international organisation, unless required to do so by applicable law to which the Supplier is subject; in such a case, the Supplier shall inform the Customer of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest. For the avoidance of doubt, paragraph 5.1 constitutes documented instructions for the purposes of this paragraph.
   3. The Supplier shall not transfer Customer Personal Data outside of the United Kingdom, or otherwise Process Customer Personal Data outside of the United Kingdom, without the prior written consent of the Customer (such consent may be provided in the Appendix).
   4. The Supplier shall ensure that persons authorised to Process Customer Personal Data are contractually bound to keep such Personal Data confidential to at least the standard set out in this Schedule.
   5. The Supplier shall comply with Article 32 of the UK GDPR.
   6. The Supplier shall take steps to ensure that any natural person acting under the authority of the Supplier who has access to Customer Personal Data does not Process them except on instructions from the Customer, unless he or she is required to do so by applicable law.
   7. The Supplier shall not engage a Sub-Processor without prior specific written consent from the Customer.
   8. Where the Supplier engages another Processor for carrying out specific Processing activities on behalf of the Customer (a **Sub-Processor**), the same data protection obligations as set out in this Schedule shall be imposed by the Supplier on the Sub-Processor by way of a contract or other legal act under applicable law, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the Processing will meet the requirements of Data Protection Law. Where that Sub-Processor fails to fulfil its data protection obligations, the Supplier shall remain fully liable to the Customer for the performance of the Sub-Processor's obligations. A list of current Sub-Processors used by the Supplier is provided in the Appendix. This paragraph shall constitute specific written authorisation for these Sub-Processors.
   9. Taking into account the nature of the Processing, the Supplier shall assist the Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligation to respond to requests for exercising the Data Subject's rights laid down in Data Protection Law.
   10. The Supplier shall assist the Customer in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the UK GDPR, and the Customer's equivalent obligations under any Data Protection Law which replaces the UK GDPR, taking into account the nature of Processing and the information available to the Supplier.
   11. The Supplier shall unless instructed to do otherwise by the Customer (such instructions may be contained in the Appendix) or an applicable law requires storage of the Personal Data by the Supplier:
       1. return all Customer Personal Data to the Customer after the end of the provision of services relating to the Processing; and
       2. ensure that it has not kept any copy of any such Customer Personal Data.
   12. The Supplier shall make available to the Customer all information necessary to demonstrate compliance with the obligations laid down in the UK GDPR and this Schedule and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer.
   13. With regard to paragraph 5.12, the Supplier shall immediately inform the Customer if, in its opinion, an instruction infringes any Data Protection Law.
5. Rights of the Data Subject, reporting requirements and assistance
   1. If a Relevant Occurrence happens the Supplier shall notify the Customer within three calendar days and provide full co-operation in relation to any questions raised by the Customer about the Relevant Occurrence, and shall also provide any information or documents requested by the Customer, save that if the Relevant Occurrence is any actual or suspected Personal Data Breach concerning Customer Personal Data then the Supplier's obligation to notify shall be reduced to 6 hours.
   2. The Supplier shall provide the Customer with such co-operation, information and assistance, in a timely manner, as requested by the Customer (acting reasonably) from time to time.
6. Consequences of termination or expiry
   1. Following termination or expiry of this agreement, the Supplier shall continue to be bound by the provisions of this Schedule for so long as it is a Controller in respect of Customer Personal Data and for so long as it (or any Sub-Processor) Processes Customer Personal Data.

**Appendix: Data Protection Particulars**

1. Supplier's status as Controller or Processor and other particulars

**Drafting Notes**: Please pass this schedule to your Data Protection Officer. Please choose 1.1, 1.2 or 1.3 depending on whether the Supplier is a Controller, Processor, or both, and delete the other 2 options. There is a detailed explanatory note at the end of this schedule for further information on whether the Supplier will be a Controller or a Processor.

* 1. Subject to paragraph 2.2, the Supplier is a Processor in respect of Customer Personal Data.
  2. The Supplier is a Controller in respect of any Processing of Customer Personal Data by or on behalf of the Supplier.
  3. Subject to paragraph 2.2:
     1. The Supplier is a Controller in respect of the following Processing by it of Customer Personal Data: Processing relating to the provision of an IT helpdesk; and
     2. The Supplier is a Processor in respect of the following Processing by it of Customer Personal Data: Processing relating to the hosting of the Customer's pupil information management system*.*
  4. In relation to the termination or expiry of this agreement, the parties agree the following provisions regarding the return of Customer Personal Data to the Customer: Customer to complete

**Drafting Note**: The Supplier will usually need to return Customer Personal Data to the Customer in a secure way and so the practical arrangements for this should be set out here.

1. Special conditions

**Drafting Notes:**

Include any project specific requirements. Examples of what this might include:

* Specific information security requirements
* Requirement to comply with certain encryption standards. For example "The Supplier shall ensure that any Customer Personal Data Processed by or on behalf of it is encrypted at all times. The encryption used by the Supplier must meet with current standards including [FIPS 140-2 and FIPS 197]."
* Requirement to use multi-factor authentication. For example: "The Supplier shall ensure that multi-factor authentication is used at all times when Customer Personal Data is accessed by or on behalf of the Supplier and that Customer Personal Data cannot be accessed without using multi-factor authentication. The multi-factor authentication shall include [• a username, a password and at least one other credential that is generated at the time the person attempts access to the system through which they access Customer Personal Data]."
* Limiting access to Customer Personal Data to certain identified individuals at the Supplier's end.
* Specific security measures for data sharing.
* Requirement to carry out the Processing at a specific location such as the Customer's premises where only authorised staff can access Customer information.

1. Processor particulars
   1. This paragraph 10 to the Appendix only applies where the Supplier is acting as a Processor. It does not apply where the Supplier is acting as Controller.
   2. The following particulars are applicable to the Processing:

|  |  |
| --- | --- |
| **Subject matter of Processing** | The Provision of Services. |
| **Duration of Processing** | See paragraph 8.4 of this Appendix. |
| **Purpose of Processing** | Please complete  **Drafting Note**: In relation to purpose, something such as the following would be appropriate, assuming this accurately reflects the services provided: "To enable the Supplier to provide managed outsourced IT services to the Customer in accordance with this agreement." |
| **Nature of Processing** | Please complete  **Drafting Note**: The "nature" of the Processing should describe the operations the Supplier will perform on the Customer Personal Data 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." |
| **Types of Personal Data Processed** | Please complete |
| **Categories of Personal Data** | Please complete |

* 1. In accordance with paragraph 5.8, the following Sub-Processors are authorised by the Customer:

|  |  |
| --- | --- |
| **Name of Sub-Processor** | **Description of services provided** |
|  |  |
|  |  |
|  |  |

**Drafting Note:**

**Controllers and processors**

This note is intended to assist in determining whether the supplier is a controller, a processor, or both a controller and a processor.

As a starting point please see the following guidance from the ICO regarding controllers and processors [Controllers and processors | ICO](https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/controllers-and-processors/). The ICO guidance explains the position generally, this note sets out how to apply the principles in relation to the provision of IT services.

The supplier's obligations are different depending on whether it is a controller or a processor. Under data protection law, controllers have more onerous compliance obligations than processors.

Whether the supplier is a controller, or a processor will depend on the nature of the services provided.

**Controllers**

A controller determines for what purposes personal data are processed, and the means. For example, an employer is a controller of the personal data it holds about its employees because it decides for what purpose the data is used for (e.g., to pay the employee, performance management etc) and the means by which it is processed, for example, the employer decides what types of personal data it needs to hold and who it needs to be shared with for the purposes.

If an IT supplier has discretion to make its own decisions when processing personal data, this may suggest it is acting as a controller. For example, when running a support desk, a supplier may often be a processor but factors which may suggest that the IT supplier is performing this function as a controller rather than a processor, include:

* The IT supplier has sole discretion to determine what personal data needs to be collected from the user to assess the level of support required, and how best to provide it (for example, remotely or in-person). The IT supplier may decide it needs to log only basic details about the caller (for example, name and telephone number) or it may need more extensive information (for example, work location, role, qualifications, and experience level of caller).
* The IT supplier may intend to use personal data for purposes ancillary to the primary support obligation (for example, to analyse trends in support requirements, or to generally improve its products or services).
* The support desk may not function correctly if the customer is able to dictate to the IT supplier what data is to be collected, how the data will be processed, and when it needs to be deleted.
* The IT supplier is given a high degree of autonomy to develop the IT support service in the way it sees best and provides tailored training and support to users based on users' needs and experience.

**Processors**

If an entity does not make key decisions around the purposes and means of processing personal data as part of their provision of services, but only processes data on the instructions of the other party, it is likely to be a processor.

A common example would be a web host, who hosts its customer's website (and website data) on its own servers. The host would not ordinarily be permitted to use any personal data stored as part of the website for its own purposes and would typically agree to only act on the instructions of its customer when dealing with that data. For example, the customer would tell its web host when to delete customer data from its systems.

**Controllers or processors**

A party to an IT contract does not need to act exclusively as a controller or a processor. For example, an IT supplier may act as a controller in relation to certain types of processing and a processor in relation to others. This is why the data protection schedule has an option for the supplier being both a controller and a processor. This is increasingly common for IT suppliers.

For example, an IT supplier may consider itself to be acting in the role of:

* A controller when:
  + operating its own help desk;
  + developing bespoke training for users;
  + using personal data for its own purposes, for example, contract administration and advertising and marketing its goods and services to its customers.
* A processor when:
  + hosting personal data contained in a pupil information management system;
  + processing personal data collected via a cloud computing application to perform a task instructed by the customer; and
  + accessing personal data held on a customer's IT infrastructure when providing support or maintenance services to that customer. For example, when accessing a dataset when attempting to replicate a technical error that the customer has reported.

IT suppliers may now struggle to convince their customer that they act as mere processors, especially as they move away from their more historical role of simply "maintaining" a system or mechanically processing data on the instructions of their customer. This is particularly the case where suppliers are putting themselves forward as having business process outsourcing expertise or are providing an overall technology "solution".

**Joint controllers**

In many cases where the supplier is a controller, the customer and the supplier will be independent controllers. Where two or more parties jointly determine the means and purposes of processing, they will be joint controllers. Generally, independent controllers share a pool of personal data which they use independently of one another usually for different and distinct purposes. As the name suggests, joint controllers make joint decisions about the data.

Joint controllers are required to:

* Decide who will carry out which controller obligation under data protection law.
* Have a transparent arrangement which sets out agreed roles and responsibilities for GDPR compliance in particular transparency obligations and individual rights (including rights relating to subject access requests, accuracy, and data minimisation).
* Communicate the essence of the arrangement to data subjects.

The draft data protection schedule (paragraph 2.4) contains some general wording around obligations under joint controllership, for example, by providing that the customer and supplier are each responsible for the data they process respectively but that the Customer will be responsible for responding to incidents such as data breaches. However, it may be appropriate to provide further detail. For example, if in practice the supplier does not have direct contact with data subjects, then it may be appropriate to make the customer responsible for providing both the customer's and the supplier's privacy notice to individuals.

If the supplier is a controller, then the parties will need to decide if the customer and supplier are acting as joint controllers or independent controllers for each of the services provided. In practice, it is often in both the customer's and the supplier's best interest for the relationship to be that of sole controllers rather than joint controllers, as the later comes with an additional compliance burden and makes it more likely that each could be liable for breaches caused by the other. The Schedule has therefore been drafted to provide that the parties are independent controllers unless the Appendix specifies, they are joint controllers.

Using the support desk example above:

* **Supplier as sole controller:** If the supplier has sole autonomy with regards to processing personal data in relation to the support desk, then this would point towards it being a sole controller.
* **Supplier as joint controller with the customer:** If the supplier and customer jointly decide on the use of personal data in relation to the support desk then this would point towards the parties being joint controllers. For example, if they worked together to decide the types of personal data that needed to be collected in order to run the support desk efficiently.
* **Supplier as processor:** If in practice, the supplier has little discretion with regards to processing personal data and does not use the data for its own purposes (for example, does not use the personal data to improve its own services) then it is more likely to be a processor. This is more likely to be the case if the personal data collected is always the same, and is limited in nature (e.g., limited to the name and job title of the person the support relates to). Having the discretion to decide what technical questions to ask (such as what the error message says or what operating system the call is using) does not make the supplier a processor as this type of information is not usually personal data.

1. Change Request Template Form

In accordance with the terms of this agreement, and in particular clause 21, if either party wishes to change the scope of the Services (including Customer requests for additional or varied Services), it shall submit details of the requested change to the other party in writing using the following template change request form:

|  |  |  |  |
| --- | --- | --- | --- |
| **Form**: | Change to the Scope of Services | **Date**: |  |
| **Change Title:** |  | **Change Number:** |  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Requested by:** |  | **Role:** |  |
| **Presented to:** | Project Steering | **Role:** |  |

|  |
| --- |
| **Description of Change** |
|  |
| **Reasons for Change:** |
|  |
| **Proposed Start Date of scope change:** |
|  |
| **Impact/Risk Assessment:** |
|  |
| **Impact of changing scope:** |
|  |
| **Impact of not changing scope:** |
|  |
| **Cost Assessment:** |
|  |
|  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Approvals** | | | | |
| **Approved/Rejected by:** | Signature: |  | | | |
|  | Role: |  | Date: |  | |

Signed for, and on behalf of Supplier\_Name (The Supplier):

|  |  |
| --- | --- |
| Name: | To be completed |
| Role: | Director |
| Signature: |  |
| Date: |  |

Signed for, and on behalf of Contracting\_Authority\_Name (The Contracting Authority):

|  |  |
| --- | --- |
| Name: | To be completed |
| Role: | Director |
| Signature: |  |
| Date: |  |

Document History

Record of changes and updates to Framework Agreement.

**First Published Document**

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