

SERVICES CONTRACT

DATED [xx xxxxx 2025]

(1) RETAIL ENERGY CODE COMPANY LIMITED

and

(2) [THE SUPPLIER]

CONTRACT

relating to

[DIGITAL SERVICES]

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BETWEEN:

- (1) Retail Energy Code Company Limited a company registered in England and Wales under company number 10989875 whose registered office is at 27 Old Gloucester Street, London, England WC1N 3AX ("**RECCo**"); and
- (2) [NAME OF THE SUPPLIER] a company registered in [England and Wales] under company number [] whose registered office is at [] (the "**Supplier**")

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

INTRODUCTION

- (A) RECCo is the corporate vehicle for ensuring the proper, effective and efficient implementation and ongoing management of the Retail Energy Code ("REC") which facilitates the efficient and effective running of the retail energy market including its systems and process to promote innovation, competition and positive customer outcomes.
- (B) The Supplier is a leading provider of [digital and information technology services in the UK energy industry] and has experience in [insert services being procured].
- (C) On the basis of the Supplier's response to the advertisement and a subsequent tender process, RECCo selected the Supplier as its preferred supplier.
- (D) Following negotiations, the Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

IT IS AGREED as follows:

Section A: Preliminaries

1 Definitions and Interpretation

- 1.1 In this Contract, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.
- 1.2 Interpretation is as set out in Schedule 1 (*Definitions*).
- 1.3 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.3.1 the Clauses and Schedule 1 (*Definitions*);
 - 1.3.2 Schedules 2 (*Services Description*) and 3 (*Performance Levels*) and their Annexes;
 - 1.3.3 any other Schedules and their Annexes (other than Schedule 8 (*Supplier Solution*) and its Annexes); and
 - 1.3.4 Schedule 8 (*Supplier Solution*) and its Annexes (if any) unless any part of the Supplier Solution offers a better commercial position for RECCo (as decided by RECCo, in its absolute discretion), in which case that part of the Supplier Solution will take precedence over the documents above.
- 1.4 The Schedules and their Annexes form part of this Contract.

2 Due Diligence

- 2.1 The Supplier agrees and undertakes to RECCo that it has satisfied itself as to the requirements of RECCo for the Services as set out in the document known as the ['Digital Services Package Bid Pack'] published by RECCo to bidders on [26 July 2024] as amended and included in RECCo's 'Invitation to submit a Best and Final Offer' published by RECCo to bidders on [insert date] and the costs, quality and dependencies involved in providing the Services and has gathered all information and asked all relevant questions prior to the Effective Date and is able to (and shall) comply with all of its obligations under this Contract in respect of the Services.
- 2.2 The Supplier shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor, shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:
 - 2.2.1 any unsuitable aspects of the Operating Environment;
 - 2.2.2 any misinterpretation of RECCo Requirements; and/or
 - 2.2.3 any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

3 Warranties

3.1 RECCo represents and warrants that:

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

3.2 The Supplier represents and warrants that:

- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 3.2.2 it has full capacity and authority to enter into and to perform this Contract;
- 3.2.3 this Contract is entered into by its duly authorised representative;
- 3.2.4 it has all necessary consents and regulatory approvals to enter into this Contract;
- 3.2.5 it has notified RECCo in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Contract;
- 3.2.6 its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- 3.2.7 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- 3.2.8 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the selection questionnaire and ITT (if applicable), its tender and any other documents submitted remain true and accurate in all material respects except to the extent that such statements and representations have

been superseded or varied by this Contract or to the extent that the Supplier has otherwise disclosed to RECCo in writing prior to the date of this Contract;

- 3.2.9 it has notified RECCo in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- 3.2.10 it has procured for RECCo all necessary rights in and to the Licensed Software (including any Software specified in the Services Description but excluding the Excluded Software), the Third Party IPRs, the Supplier Background IPRs and any other materials made available or used by the Supplier (and/or any Sub-contractor) under this Contract, (including the right for RECCo to grant sub-licenses to Approved Sub-Licensees, Other Suppliers and End Users) which are necessary for: (i) the performance of the Supplier's obligations under this Contract (including in relation to RECCo's operational and legal requirements set out in the Service Description); (ii) use of the same by Approved Sublicensees and/or Other Suppliers on behalf of RECCo; (iii) receipt of the Services by RECCo; and (vi) access to and use of the Services by End Users, and that such procurement is made on or before the date on which RECCo requires such rights;
- 3.2.11 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
- 3.2.12 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue.

3.3 The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by the Supplier on the Implementation Services Commencement Date (if later than the date of signature of this Contract) by reference to the facts then existing. The representation and warranty set out in Clause 3.2.10 shall be deemed to be repeated by the Supplier on the Operational Services Commencement Date by reference to the facts then existing.

3.4 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.

3.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1 or 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

3.6 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which RECCo may have in respect of breach of that provision by the Supplier.

- 3.7 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.
- 3.8 The Supplier indemnifies RECCo against wilful misconduct of the Supplier, Subcontractor and Supplier Personnel that impacts the Contract (including abandonment of this Contract, wilful breach of a fundamental term of this Contract and wilful repudiatory breach of this Contract).

DRAFT SUBJECT TO CONTRACT

Section B: The Services

4 Term

4.1 This Contract shall:

- 4.1.1 come into force on the Effective Date, save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 19 (*Confidentiality*), 20 (*Transparency*), 22 (*Publicity and Branding*), 23 (*Limitations on Liability*), 35 (*Waiver and Cumulative Remedies*), 36 (*Relationship of the Parties*), 38 (*Severance*), 40 (*Entire Agreement*), 41 (*Third Party Rights*), 42 (*Notices*), 43 (*Disputes*) and 44 (*Governing Law and Jurisdiction*), which shall be binding and enforceable as between the Parties from the date of signature; and
- 4.1.2 unless terminated at an earlier date by operation of Law or in accordance with Clause 31 (*Termination Rights*), terminate:
 - (a) at the end of the Initial Term; or
 - (b) if RECCo elects to extend the Initial Term by giving the Supplier at least 45 Working Days' notice before the end of the Initial Term, at the end of the Extension Period; or
 - (c) if RECCo elects to extend beyond the Extension Period for Further Extension Period(s), on a date notified by RECCo to the Supplier (subject to RECCo providing at least six (6) months prior written notice to the Supplier of such date)

4.2 The aggregate duration of all Further Extension Periods shall not exceed three (3) years.

5 Services

5.1 On or before the Effective Date, RECCo shall notify the Supplier of the Implementation Services Commencement Date.

5.2 RECCo shall notify the Supplier of the Operational Services Commencement Date by giving the Supplier at least forty-five (45) Working Days' notice.

5.3 The Supplier shall provide:

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

Standard of Services

5.4 The Supplier shall ensure that:

- 5.4.1 the Services:
 - (a) comply in all material respects with the Services Description; and

- (b) are supplied in accordance with the Supplier Solution and the provisions of this Contract.

5.5 The Supplier shall:

5.5.1 perform its obligations under this Contract, including in relation to the supply of the Services in accordance with:

- (a) the Retail Energy Code;
- (b) all applicable Law (as applicable to the Supplier and/or to the supply of the Services);
- (c) Good Industry Practice;
- (d) the Standards;
- (e) the Baseline Security Requirements;
- (f) the Quality Plans;
- (g) the RECCo IT Strategy; and
- (h) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.5.1(a) to 5.5.1(g); and

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

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

5.6 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.5.1(a) to 5.5.1(g), the Supplier shall immediately notify RECCo Representative in writing of such inconsistency and RECCo Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

Supplier covenants

5.7 The Supplier shall:

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

5.7.2 save to the extent that obtaining and maintaining the same are RECCo Responsibilities and subject to Clause 13 (*Change*), obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;

5.7.3 ensure that:

- (a) it shall continue to have, and shall ensure that RECCo, Approved Sub-Licensees, Other Suppliers and End Users continue to have all necessary rights in and to the Licensed Software, any Software specified in the Service Description, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to RECCo, Approved Sub-Licensees, Other Suppliers and End Users which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by RECCo, Approved Sub-Licensees, Other Suppliers and End Users;
 - (b) the release of any new Software or upgrade to any Software complies with the interface requirements in the Services Description and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 5 (*Security Management*)) shall notify RECCo 3 months before the release of any new Software or Upgrade, provided that where it is not possible for the Supplier to provide such notice in relation to Software or Software upgrade comprised in 'software as a service', Supplier shall give as much notice as is reasonably practicable (which shall be not less than 1 month);
 - (c) all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
 - (d) any Software, Third Party Data, products or services recommended or otherwise specified by the Supplier for use by RECCo in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet RECCo Requirements; and
 - (e) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with RECCo);
- 5.7.4 minimise any disruption to the Services, the IT Environment and/or RECCo's operations when carrying out its obligations under this Contract;
- 5.7.5 ensure that any Documentation and training provided by the Supplier to RECCo are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- 5.7.6 co-operate with any Other Supplier notified to the Supplier by RECCo from time to time by providing:
- (a) reasonable information (including any Documentation);
 - (b) advice; and
 - (c) reasonable assistance,

in connection with the Services to any such Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the Services (or any of them) to RECCo and/or to any Replacement Supplier in accordance with the following collaborative working principles:

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

- 5.7.7 to the extent it is legally able to do so, hold on trust for the sole benefit of RECCo, all warranties and indemnities provided by third parties or any Sub-contractor to the Supplier in respect of any Software, Third Party Data, Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that RECCo may notify from time to time to the Supplier;
- 5.7.8 unless it is unable to do so, assign to RECCo on RECCo's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 5.7.7;
- 5.7.9 provide RECCo with such assistance, advice and information (including any Documentation) as RECCo may reasonably require during the Term in respect of the supply of the Services;
- 5.7.10 gather, collate and provide such information and co-operation as RECCo may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Contract and with the Retail Energy Code;
- 5.7.11 notify RECCo in writing as soon as reasonably possible and in any event within 1 month of any change of Control taking place;
- 5.7.12 notify RECCo in writing within 10 Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract;

- 5.7.13 ensure that neither it, nor any of its Affiliates, brings RECCo into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the REC Parties or Ofgem places in RECCo or the REC, regardless of whether or not such act or omission is related to the Supplier's obligations under this Contract;
- 5.7.14 manage closure or termination of Services to take account of RECCo's disposal requirements and all applicable Standards.
- 5.8 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
- 5.9 Without prejudice to Clauses 17.2 and 17.3 (*IPRs Indemnity*) and any other rights and remedies of RECCo howsoever arising, the Supplier shall:
 - 5.9.1 remedy any breach of its obligations in Clauses 5.7.2 to 5.7.4 inclusive within 10 Working Days of becoming aware of the breach or being notified of the breach by RECCo where practicable or within such other time period as may be agreed with RECCo (taking into account the nature of the breach that has occurred);
 - 5.9.2 remedy any breach of its obligations in Clause 5.7.1 and Clauses 5.7.5 to 5.7.10 inclusive within 20 Working Days of becoming aware of the breach or being notified of the breach by RECCo; and
 - 5.9.3 meet all the costs of, and incidental to, the performance of such remedial work, and any failure of the Supplier to comply with its obligations under Clause 5.9.1 or Clause 5.9.2 within the specified or agreed timeframe shall constitute a Notifiable Default.

Specially Written Software warranty

- 5.10 Without prejudice to Clauses 5.7 (*Supplier Covenants*) and 5.9 (*Services*) and any other rights and remedies of RECCo howsoever arising, the Supplier warrants to RECCo that all components of the Specially Written Software shall:
 - 5.10.1 be free from material design and programming errors;
 - 5.10.2 perform in all material respects in accordance with the relevant specifications contained in the Supplier Solution and Documentation; and
 - 5.10.3 not infringe any Intellectual Property Rights.

Continuing obligation to provide the Services

- 5.11 The Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the supply of the Services, notwithstanding:
 - 5.11.1 the existence of an unresolved Dispute; and/or
 - 5.11.2 any failure by RECCo to pay any Charges,unless the Supplier is entitled to terminate this Contract under Clauses 31.3.1 or 31.3.2 (*Termination by the Supplier*).

Optional Services

- 5.12 RECCo may require the Supplier to provide any or all of the Optional Services at any time by giving notice to the Supplier in writing. The Supplier acknowledges that RECCo is not obliged to take any Optional Services from the Supplier and that nothing shall prevent RECCo from receiving services that are the same as or similar to the Optional Services from any third party.
- 5.13 If a Change Request is submitted, the Supplier shall, as part of the Impact Assessment provided by the Supplier in relation to such Change Request, provide details of the impact (if any) that the proposed Change will have on the relevant Optional Services.
- 5.14 Following receipt of RECCo's notice pursuant to Clause 5.12:
- 5.14.1 the Parties shall document the inclusion of the relevant Optional Services within the Services in accordance with the Change Control Procedure, modified to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Optional Services have already been agreed;
 - 5.14.2 the Supplier shall implement and Test the relevant Optional Services in accordance with the Optional Services Implementation Plan;
 - 5.14.3 any additional charges for the Optional Services shall be incorporated in the Charges as specified in Paragraph 3 of Part B of Schedule 15 (*Charges and Invoicing*); and
 - 5.14.4 the Supplier shall, from the date agreed in the Optional Services Implementation Plan (or, if later, the date of Achievement of any Milestones associated with the commencement of the relevant Optional Services (if any)), provide the relevant Optional Services to meet or exceed the applicable Target Performance Level in respect of all Performance Indicators applicable to the Optional Services as set out in Annex 1 of Schedule 3 (*Performance Levels*).

RECCo Responsibilities

- 5.15 RECCo shall comply with its responsibilities set out in Schedule 7 (*RECCo Responsibilities*).

6 Implementation

Quality Plans

- 6.1 The Supplier shall develop, within 20 Working Days of the Implementation Services Commencement Date, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").
- 6.2 The Supplier shall obtain the RECCo Representative's written approval of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that RECCo's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Contract.

- 6.3 Following the approval by RECCo of the Quality Plans:
- 6.3.1 the Supplier shall design and deliver all Deliverables and procure that the Services are carried out in accordance with the Quality Plans; and
 - 6.3.2 any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

Implementation Plan and Delays

- 6.4 The Parties shall comply with the provisions of Schedule 13 (*Implementation Plan*) in relation to the agreement and maintenance of the Detailed Implementation Plan.
- 6.5 The Supplier shall:
- 6.5.1 comply with the Implementation Plan; and
 - 6.5.2 ensure that each Milestone is Achieved on or before its Milestone Date.
- 6.6 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:
- 6.6.1 it shall:
 - (a) notify RECCo in accordance with Clause 25.1 (*Rectification Plan Process*); and
 - (b) comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
 - (c) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
 - 6.6.2 if the Delay or anticipated Delay relates to a Key Milestone, the provisions of Clause 26 (*Delay Payments*) shall apply.

Testing and Achievement of Milestones

- 6.7 The Parties shall comply with the provisions of Schedule 14 (*Testing Procedures*) in relation to the procedures to determine whether a Milestone or Test has been Achieved.

7 Performance Indicators

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

Performance Failures

7.2 If in any Service Period:

- 7.2.1 a KPI Failure occurs, Service Credits shall be deducted from the Service Charges in accordance with Paragraph 3 of Part C of Schedule 15 (*Charges and Invoicing*);
- 7.2.2 a Material KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with Clause 7.2.1);

7.3 Service Credits shall be RECCo's exclusive financial remedy for a KPI Failure except where:

- 7.3.1 the Supplier has over the previous 12 month had 3 or more instances of service performance below the minimum service cap of 95% in respect of any one or more of the performance categories set out in Schedule 2.2;
- 7.3.2 the Supplier has over the previous 12 month period accrued Service Credits in excess of the Service Credit Cap;
- 7.3.3 the KPI Failure:
 - (a) breaches the relevant KPI Service Threshold;
 - (b) has arisen due to the wilful default by the Supplier or any Supplier Personnel; or
 - (c) results in:
 - (i) the corruption or loss of any RECCo Data (in which case the remedies under Clause 18.7 (*RECCo Data and Security Requirements*) shall also be available); and/or
 - (ii) RECCo being required to make a compensation payment to one or more third parties;
- 7.3.4 the Supplier has fraudulently misreported its performance against any Performance Indicator; and/or
- 7.3.5 RECCo is otherwise entitled to or does terminate the relevant Services or this Contract pursuant to Clauses 31.1.2 (*Termination by RECCo*), 37.6 (Prevention of Fraud and Bribery) or 38.3 (Severance).

Critical Performance Failure

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

Changes to Performance Indicators and Service Credits

7.5

- 7.6 Any variation to the Key Performance Indicators shall be implemented in accordance with the Change Control Procedure.

8 Services Improvement

- 8.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause 8. As part of this obligation the Supplier shall identify and report to the Service Management Group once every 12 months on:
- 8.1.1 the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services, and those technological advances potentially available to the Supplier and RECCo which the Parties may wish to adopt;
 - 8.1.2 new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
 - 8.1.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or RECCo which might result in efficiency or productivity gains or reduction of operational risk;
 - 8.1.4 changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to RECCo; and/or
 - 8.1.5 changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.
- 8.2 The Supplier shall ensure that the information that it provides to RECCo shall be sufficient for RECCo to decide whether any improvement should be implemented. The Supplier shall provide any further information that RECCo requests.
- 8.3 If RECCo wishes to incorporate any improvement identified by the Supplier RECCo shall send the Supplier a Change Request in accordance with the Change Control Procedure.

9 Equipment and Maintenance

Maintenance

- 9.1 The Supplier shall create and maintain a rolling schedule of planned maintenance to the IT Environment (the “**Maintenance Schedule**”) which shall comply with ISO27001, ISO 20000 IT Service Management standards and Cyber Essentials. Once the Maintenance Schedule has been agreed with RECCo Representative, the Supplier shall only undertake such planned maintenance (which shall be known as “**Permitted Maintenance**”) in accordance with the Maintenance Schedule.
- 9.2 The Supplier shall give as much notice as is reasonably practicable to RECCo Representative prior to carrying out any Emergency Maintenance.
- 9.3 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the IT

Environment or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the IT Environment and the Services.

DRAFT SUBJECT TO CONTRACT

Section C: Payment, Taxation and Value for Money Provisions

10 Financial and Taxation Matters

Charges and Invoicing

- 10.1 In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Services, RECCo shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 15 (*Charges and Invoicing*).
- 10.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.7 (*Testing and Achievement of Milestones*), 12 (*Records, Reports and Audits*), 20 (*Transparency*), 21 (*Protection of Personal Data*) and, to the extent specified therein, Clause 27 (*Remedial Adviser*).
- 10.3 If RECCo fails to pay any undisputed Charges properly invoiced under this Contract, the Supplier shall have the right to charge interest on the overdue amount at the rate of 2% per annum above the base rate for the time being of Barclays Bank Plc, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

VAT

- 10.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by RECCo following delivery of a valid VAT invoice.
- 10.5 The Supplier shall indemnify RECCo on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on RECCo at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due under this Clause 10.5 shall be paid in cleared funds by the Supplier to RECCo not less than five Working Days before the date upon which the tax or other liability is payable by RECCo.

Set-off and Withholding

- 10.6 RECCo may set off any amount owed by the Supplier to RECCo against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and RECCo.

Promoting Tax Compliance

- 10.7 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 10.7.1 notify RECCo in writing of such fact within 5 Working Days of its occurrence; and
 - 10.7.2 promptly provide to RECCo:

- (a) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (b) such other information in relation to the Occasion of Tax Non-Compliance as RECCo may reasonably require.

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Section D: Contract Governance

11 Governance

- 11.1 The Parties shall comply with the provisions of Schedule 21 (*Governance*) in relation to the management and governance of this Contract.

Representatives

- 11.2 Each Party shall have a representative for the duration of this Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Contract.
- 11.3 The initial Supplier Representative shall be the person named as such in Schedule 29 (*Key Personnel*). Any change to the Supplier Representative shall be agreed in accordance with Clause 14 (*Supplier Personnel*).
- 11.4 RECCo shall notify the Supplier of the identity of the initial RECCo Representative within 5 Working Days of the Effective Date. RECCo may, by written notice to the Supplier, revoke or amend the authority of the RECCo Representative or appoint a new RECCo Representative.

12 Records, Reports and Audits

- 12.1 The Supplier shall comply with the provisions of Schedule 24 (*Reports and Records Provisions*) in relation to the maintenance and retention of Records.
- 12.2 The Parties shall comply with the provisions of Schedule 19 (*Financial Reports and Audit Rights*) in relation to the exercise of the Audit Rights by RECCo or any Audit Agents.

13 Change

Change Control Procedure

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

Change in Law

- 13.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Charges as the result of:
- 13.2.1 a General Change in Law; or
 - 13.2.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date; or
 - 13.2.3 a REC Change where the effect of that REC Change on the Services is reasonably foreseeable at the Effective Date.

- 13.3 If a Specific Change in Law or REC Change occurs or will occur during the Term (other than as referred to in Clause 13.2.2), the Supplier shall:
- 13.3.1 notify RECCo as soon as reasonably practicable of the likely effects of that change, including:
- (a) whether any Change is required to the Services, the Charges or this Contract; and
 - (b) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Target Performance Levels; and
- 13.3.2 provide RECCo with evidence:
- (a) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
 - (b) as to how the Specific Change in Law or REC Change (as applicable) has affected the cost of providing the Services; and
 - (c) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 8 (*Services Improvement*), has been taken into account in amending the Charges.
- 13.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law or REC Change (other than as referred to in Clauses 13.2.2 and 13.2.3) shall be implemented in accordance with the Change Control Procedure.

Section E: Supplier Personnel and Supply Chain

14 Supplier Personnel

14.1 The Supplier shall:

14.1.1 ensure that all Supplier Personnel:

- (a) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
- (b) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2 (*Services Description*) and Schedule 5 (*Security Management*); and
- (c) comply with all reasonable requirements of RECCo concerning conduct at RECCo Premises, including the security requirements as set out in Schedule 5 (*Security Management*);

14.1.2 subject to Schedule 28 (*Staff Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of RECCo;

14.1.3 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Contract shall be a Default by the Supplier;

14.1.4 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;

14.1.5 replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever; and

14.1.6 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel.

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

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

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

Key Personnel

14.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 29 (*Key Personnel*) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Operational Service Commencement Date.

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

Employment Indemnity

- 14.7 The Parties agree that:
- 14.7.1 the Supplier shall both during and after the Term indemnify RECCo against all Employee Liabilities that may arise as a result of any claims brought against RECCo by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel; and

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

Income Tax and National Insurance Contributions

- 14.8 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:
- 14.8.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- 14.8.2 indemnify RECCo against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

Staff Transfer

- 14.9 The Parties agree that:
- 14.9.1 it is not expected that the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers;
- 14.9.2 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 28 (*Staff Transfer*) shall apply as follows:
- (a) where the Relevant Transfer involves the transfer of Transferring RECCo Employees, Part A and Part D of Schedule 28 (*Staff Transfer*) shall apply;
- (b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B and Part D of Schedule 28 (*Staff Transfer*) shall apply;
- (c) where the Relevant Transfer involves the transfer of Transferring RECCo Employees and Transferring Former Supplier Employees, Parts A, B and D of Schedule 28 (*Staff Transfer*) shall apply; and
- (d) Part C of Schedule 28 (*Staff Transfer*) shall not apply;
- 14.9.3 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 28 (*Staff Transfer*) shall apply, Part D of Schedule 28 may apply and Parts A and B of Schedule 28 (*Staff Transfer*) shall not apply; and
- 14.9.4 Part E of Schedule 28 (*Staff Transfer*) shall apply on the expiry or termination of the Services or any part of the Services.

15 Supply Chain Rights and Protections

Appointment of Sub-contractors

- 15.1 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:
- 15.1.1 manage any Sub-contractors in accordance with Good Industry Practice;
 - 15.1.2 comply with its obligations under this Contract in the delivery of the Services; and
 - 15.1.3 assign, novate or otherwise transfer to RECCo or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Contract.
- 15.2 Prior to sub-contracting any of its obligations under this Contract, the Supplier shall notify RECCo in writing of:
- 15.2.1 the proposed Sub-contractor's name, registered office and company registration number;
 - 15.2.2 the scope of any Services to be provided by the proposed Sub-contractor; and
 - 15.2.3 where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of RECCo that the proposed Sub-contract has been agreed on "arm's-length" terms.
- 15.3 If requested by RECCo within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.2, the Supplier shall also provide:
- 15.3.1 a copy of the proposed Sub-contract; and
 - 15.3.2 any further information reasonably requested by RECCo.
- 15.4 RECCo may, within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.2 (or, if later, receipt of any further information requested pursuant to Clause 15.3), object to the appointment of the relevant Sub-contractor if it considers that:
- 15.4.1 the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of RECCo;
 - 15.4.2 the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
 - 15.4.3 the proposed Sub-contractor employs unfit persons; and/or
 - 15.4.4 the proposed Sub-contractor should be excluded in accordance with Clause 15.12 (*Termination of sub-contracts*);
- in which case, the Supplier shall not proceed with the proposed appointment.
- 15.5 If:
- 15.5.1 RECCo has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of 10 Working Days of receipt of:
-

- (a) the Supplier's notice issued pursuant to Clause 15.2; and
 - (b) any further information requested by RECCo pursuant to Clause 15.3; and
- 15.5.2 the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of RECCo in accordance with Clause 15.6 (*Appointment of Key Sub-contractors*),

the Supplier may proceed with the proposed appointment and, where the Sub-contract is entered into exclusively for the purpose of delivery of the Services, may notify RECCo that the relevant Sub-contract shall constitute a Third Party Contract for the purposes of Schedule 11 (*Third Party Contracts*).

Appointment of Key Sub-contractors

- 15.6 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of RECCo, such consent not to be unreasonably withheld or delayed. For these purposes, RECCo may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:
- 15.6.1 the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of RECCo;
 - 15.6.2 the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
 - 15.6.3 the proposed Key Sub-contractor employs unfit persons; and/or
 - 15.6.4 the proposed Key Sub-contractor should be excluded in accordance with Clause 15.12 (*Termination of sub-contracts*).
- 15.7 RECCo consents to the appointment of the Key Sub-contractors listed in Schedule 10 (*Notified Key Sub-contractors*).
- 15.8 Except where RECCo has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:
- 15.8.1 provisions which will enable the Supplier to discharge its obligations under this Contract;
 - 15.8.2 a right under CRTPA for RECCo to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon RECCo;
 - 15.8.3 a provision enabling RECCo to enforce the Key Sub-contract as if it were the Supplier;
 - 15.8.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to RECCo or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by RECCo;
 - 15.8.5 obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Contract in respect of:

- (a) data protection requirements set out in Clauses 18 (*RECCo Data and Security Requirements*) and 21 (*Protection of Personal Data*);
 - (b) the obligation not to embarrass RECCo or otherwise bring RECCo into disrepute set out in Clause 5.7.13 (*Services*);
 - (c) the keeping of records in respect of the services being provided under the Key Sub-contract; and
 - (d) the conduct of Audits set out in Schedule 19 (*Financial Reports and Audit Rights*);
 - (e) confidentiality obligations set out in Clause 19 (*Confidentiality*);
- 15.8.6 provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on RECCo under Clauses 31.1.1 (*Termination by RECCo*) and 32.5 (*Payments by RECCo*) and Schedule 16 (*Payments on Termination*) of this Contract;
- 15.8.7 a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of RECCo;
- 15.8.8 a provision enabling the Supplier or RECCo to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 27 (*Remedial Adviser*);
- 15.8.9 a provision requiring the Key Sub-contractor to participate in, and if required by RECCo in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and
- 15.9 The Supplier shall not terminate or materially amend the terms of any Key Sub-contract without RECCo's prior written consent, which shall not be unreasonably withheld or delayed.

Supply chain protection

- 15.10 For Sub-contracts in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract:
- 15.10.1 where such Sub-Contracts are entered into after the Effective Date, the Supplier will ensure that they all contain provisions that; or
 - 15.10.2 where such Sub-Contracts are entered into before the Effective Date, the Supplier will take all reasonable endeavours to ensure that they all contain provisions that:
 - (a) give the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour Law;

- (b) require the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- (c) if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 15.10.2(b), the invoice shall be regarded as valid and undisputed for the purpose of Clause 15.10.2(d) after a reasonable time has passed;
- (d) require the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
- (e) give RECCo a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (f) require the Sub-contractor to include a clause to the same effect as this Clause 15.10 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract.

15.11 The Supplier shall:

- 15.11.1 pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed.

Termination of Sub-contracts

15.12 RECCo may require the Supplier to terminate:

15.12.1 a Sub-contract where:

- (a) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to RECCo's right of termination pursuant to Clause 31.1.2 (*Termination by RECCo*);
- (b) the relevant Sub-contractor or any of its Affiliates have embarrassed RECCo or otherwise brought RECCo into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in RECCo, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
- (c) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or
- (d) RECCo has found grounds for exclusion of the Sub-contractor in accordance with Clause 15.16; and

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

- (a) RECCo has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
- (b) RECCo has not served its notice of objection within 6 months of the later of the date the change of Control took place or the date on which RECCo was given notice of the change of Control.

Competitive Terms

- 15.13 If RECCo is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Services, then RECCo may require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by RECCo in respect of the relevant item.
- 15.14 If RECCo exercises its option pursuant to Clause 15.13, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.

Retention of Legal Obligations

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

Exclusion of Sub-contractors

- 15.16 Where RECCo considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:
- 15.16.1 if RECCo finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;
 - 15.16.2 if RECCo finds there are non-compulsory grounds for exclusion, RECCo may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

Reporting SME/VCSE Sub-contracts

- 15.17 In addition to any other Management Information requirements set out in this Contract, the Supplier agrees that it shall, at no charge, provide timely, full, accurate and complete Supply Chain Transparency Reports to RECCo thirty (30) days prior to the end of each financial year by providing all of the information described in the Supply Chain Transparency Information Template in the format set out in the Schedule 24 (*Reports and Records Provisions*) Annex 4 and in accordance with any guidance issued by RECCo from time to time.

15.18 RECCo may update the Supply Chain Transparency Information Template from time to time (including the data required and/or format) by issuing a replacement version with at least thirty (30) days' notice and specifying the date from which it must be used.

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Section F: Intellectual Property, Data and Confidentiality

16 Intellectual Property Rights

- 16.1 The Parties agree that the terms set out in Schedule 32 (*Intellectual Property Rights*) shall apply to this Contract.

17 IPRs Indemnity

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

Contract to the extent such obligations require use of the items which are the subject of the IPRs Claim.

- 17.5 The indemnity given by the Indemnifying Party in Clause 17.1 shall not apply to the extent that the IPRs Claim is caused by:
- 17.5.1 Use of the Relevant IPRs by the Indemnified Party in breach of this Contract or of licence terms applicable to such Relevant IPRs; or
 - 17.5.2 modification of the Relevant IPRs other than by the Indemnifying Party or its licensors or its Sub-contractors; or
 - 17.5.3 use of the Relevant IPRs by the Indemnified Party in combination with any item not supplied or recommended by the Indemnifying Party pursuant to this Contract or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Contract.

18 RECCo Data and Security Requirements

- 18.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to RECCo Data.
- 18.2 The Supplier shall not store, copy, disclose, or use RECCo Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by RECCo.
- 18.3 To the extent that RECCo Data is held and/or processed by the Supplier, the Supplier shall supply that RECCo Data to RECCo as requested by RECCo in the format specified in Schedule 2 (*Services Description*).
- 18.4 The Supplier shall preserve the integrity of RECCo Data and prevent the corruption or loss of RECCo Data at all times that the relevant RECCo Data is under its control or the control of any Sub-contractor.
- 18.5 The Supplier shall perform secure back-ups of all RECCo Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Service Continuity Plan. The Supplier shall ensure that such back-ups are available to RECCo (or to such other person as RECCo may direct) at all times upon request and are delivered to RECCo at no less than 6 monthly intervals (or such other intervals as may be agreed in writing between the Parties) via a secure encrypted method.
- 18.6 The Supplier shall ensure that any system on which the Supplier holds any RECCo Data, including back-up data, is a secure system that complies with the Security Requirements.
- 18.7 If RECCo Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, RECCo may:
- 18.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of RECCo Data to the extent and in accordance with the requirements specified in Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*) and the Supplier shall do so as soon as practicable but not later than 5 Working Days from the date of receipt of RECCo's notice; and/or

- 18.7.2 itself restore or procure the restoration of RECCo Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*).
- 18.8 If at any time the Supplier suspects or has reason to believe that RECCo Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify RECCo immediately and inform RECCo of the remedial action the Supplier proposes to take.
- 18.9 The Supplier shall comply with the requirements of Schedule 5 (*Security Management*).
- 18.10 RECCo shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.
- 18.11 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.
- 18.12 Until and/or unless a change to the Charges is agreed by RECCo pursuant to Clause 18.11 the Supplier shall continue to perform the Services in accordance with its existing obligations.
- 18.13 The Supplier shall indemnify RECCo against all liabilities, costs, expenses, fines, damages and losses and all professional costs suffered or incurred by RECCo resulting from loss of or damage to RECCo Data that is caused by the Supplier's Default.

19 Confidentiality

- 19.1 For the purposes of this Clause 19, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 19.2 Except to the extent set out in this Clause 19 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:
- 19.2.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
- 19.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Contract or without obtaining the owner's prior written consent;
- 19.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract; and

- 19.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 19.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- 19.3.1 the Recipient is required to disclose the Confidential Information by Law or in accordance with the REC;
- 19.3.2 the need for such disclosure arises out of or in connection with:
- (a) any legal challenge or potential legal challenge against RECCo arising out of or in connection with this Contract;
 - (b) the examination and certification of RECCo's accounts (provided that the disclosure is made on a confidential basis); or
- 19.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 19.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 19.5 The Supplier may disclose the Confidential Information of RECCo on a confidential basis only to:
- 19.5.1 Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Contract;
- 19.5.2 its auditors; and
- 19.5.3 its professional advisers for the purposes of obtaining advice in relation to this Contract.
- Where the Supplier discloses Confidential Information of RECCo pursuant to this Clause 19.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.
- 19.6 RECCo may disclose the Confidential Information of the Supplier:
- 19.6.1 on a confidential basis to Ofgem for any proper purpose of RECCo or of Ofgem;
- 19.6.2 to the extent that RECCo (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its functions under the REC;
- 19.6.3 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 19.6.1 for any purpose relating to or connected with this Contract;
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- 19.6.4 on a confidential basis for the purpose of the exercise of its rights under this Contract, including the Audit Rights, its rights to appoint a Remedial Adviser pursuant to Clause 27 (*Remedial Adviser*) and Exit Management rights; or
- 19.6.5 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

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

- 19.7 Nothing in this Clause 19 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.
- 19.8 Each Party (as the Indemnifying Party) shall indemnify the other Party (as the Indemnified Party) against all liabilities, costs, expenses, damages and losses and all professional costs suffered or incurred by the Indemnified Party arising out of or in connection with any breach by the Indemnifying Party of this Clause 19.

20 Transparency

- 20.1 The Parties acknowledge that:

- 20.1.1 any information which RECCo is required to publish under the REC or under Code Manager licence arrangements (whether existing or in the future);
- 20.1.2 the content of this Contract, including any changes to this Contract agreed from time to time, except for Commercially Sensitive Information; and
- 20.1.3 the Publishable Performance Information

(together the "**Transparency Information**") are not Confidential Information.

- 20.2 Notwithstanding any other provision of this Contract, the Supplier hereby gives its consent for RECCo to publish to the general public the Transparency Information in its entirety.
- 20.3 The Supplier agrees that any Information it holds that is not included in the Transparency Information but is reasonably relevant to or that arises from the provision of the Services shall be provided to RECCo on request. RECCo may (except for Commercially Sensitive Information and Confidential Information (subject to Clause 19.6.2)) publish such Information. The Supplier shall provide to RECCo within five (5) Working Days (or such other period as RECCo may reasonably specify) any such Information requested by RECCo.

21 Protection of Personal Data

- 21.1 The Supplier shall indemnify RECCo against any and all Losses incurred by RECCo due to breach by the Supplier of Data Protection Legislation or Clause 21.

Status of the Controller

21.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Contract will determine the status of each Party under the Data Protection Legislation. A Party may act as:

- 21.2.1 “Controller” (where the other Party acts as the “Processor”);
- 21.2.2 “Processor” (where the other Party acts as the “Controller”);
- 21.2.3 “Joint Controller” (where both Parties are considered to jointly control the same Personal Data);
- 21.2.4 “Independent Controller” of the Personal Data where the other Party is also “Controller” of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall set out in Schedule 31 (*Processing Personal Data*) which scenario or scenarios are intended to apply under this Contract.

Where one Party is Controller and the other Party its Processor

21.3 Where a Party is a Processor, the only processing that it is authorised to do is listed in Schedule 31 (*Processing Personal Data*) by the Controller and may not be determined by the Processor. The term “processing” and any associated terms are to be read in accordance with Article 4 of the UK GDPR and EU GDPR (as applicable).

21.4 The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.

21.5 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

- 21.5.1 a systematic description of the envisaged processing operations and the purpose of the processing;
- 21.5.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- 21.5.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
- 21.5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

21.6 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- 21.6.1 process that Personal Data only in accordance with Schedule 31 (*Processing Personal Data*), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify RECCo before processing the Personal Data unless prohibited by Law;

- 21.6.2 ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 18 (*RECCo Data and Security Requirements*), which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
- (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
- 21.6.3 ensure that:
- (a) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 31 (*Processing Personal Data*));
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Processor's duties under this Clause 21, Clauses 19 (*Confidentiality*) and 18 (*RECCo Data and Security Requirements*);
 - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 21.6.4 not transfer such Personal Data outside of the UK and/or the EEA unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- (a) the destination country has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR (or section 74A of DPA 2018) and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable); or
 - (b) the Controller and/or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75 and/or Article 46 of the EU GDPR (where applicable)) as determined by the Controller which could include relevant parties entering into:

- (i) where the transfer is subject to UK GDPR:
 - (A) the UK International Data Transfer Agreement as published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 from time to time; or
 - (B) the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time ("**EU SCCs**"), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "**Addendum**") as published by the Information Commissioner's Office from time to time; and/or
- (ii) where the transfer is subject to EU GDPR, the EU SCCs, as well as any additional measures determined by the Controller being implemented by the importing party;
- (c) the Data Subject has enforceable rights and effective legal remedies;
- (d) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
- (e) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and

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

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

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

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

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

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

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

21.7.6 becomes aware of a Data Loss Event.

- 21.8 The Processor's obligation to notify under Clause 21.7 shall include the provision of further information to the Controller in phases, as details become available.
- 21.9 Taking into account the nature of the processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 21.7 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- 21.9.1 the Controller with full details and copies of the complaint, communication or request;
 - 21.9.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 21.9.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 21.9.4 reasonable assistance as requested by the Controller following any Data Loss Event; and/or
 - 21.9.5 reasonable assistance as requested by the Controller with respect to any request from the Information Commissioner's Office or any other regulatory authority, or any consultation by the Controller with the Information Commissioner's Office or any other regulatory authority.
- 21.10 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 21. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 21.10.1 the Controller determines that the processing is not occasional;
 - 21.10.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - 21.10.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 21.11 Upon reasonable notice from the Controller of not less than twenty (20) days, the Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor, provided that (unless expressly required otherwise by a regulatory authority):
- 21.11.1 The audit shall be conducted during regular business hours and shall not unreasonably interfere with the Processor's business activities; and
 - 21.11.2 Where the Supplier is the Processor, the audit shall not require the disclosure by the Processor or Personal Data or Confidential Information which does not relate to the Processor's Processing activities under this Contract.
- 21.12 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.

- 21.13 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
- 21.13.1 notify the Controller in writing of the intended Sub-processor and processing;
 - 21.13.2 obtain the written consent of the Controller;
 - 21.13.3 enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause 21 such that they apply to the Sub-processor; and
 - 21.13.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 21.14 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 21.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office or any other regulatory authority. RECCo may on not less than 30 Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office or any other regulatory authority.

Where the Parties are Joint Controllers of Personal Data

- 21.16 In the event that the Parties are Joint Controllers in respect of Personal Data under this Contract, the Parties shall implement Clauses that are necessary to comply with Article 26 of the UK GDPR.

Where the Parties are Independent Controllers of Personal Data

- 21.17 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.
- 21.18 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 21.19 Where a Party has provided Personal Data to the other Party in accordance with Clause 21.17, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 21.20 The Parties shall be responsible for their own compliance with Articles 13 and 14 of the UK GDPR in respect of the processing of Personal Data for the purposes of this Contract.
- 21.21 The Parties shall only provide Personal Data to each other:
- 21.21.1 to the extent necessary to perform the respective obligations under this Contract;
 - 21.21.2 in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects);
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- 21.21.3 where the provision of Personal Data from one Party to another involves transfer of such data to outside the UK and/or the EEA, if the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
- (a) the destination country has been recognised as adequate by the UK government is in accordance with Article 45 of the UK GDPR or DPA 2018 Section 74A and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable); or
 - (b) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75 and/or Article 46 of the EU GDPR (where applicable)) as determined by the non-transferring Party which could include the relevant parties entering into:
 - (i) where the transfer is subject to UK GDPR:
 - (A) the UK International Data Transfer Agreement (the "**IDTA**") as published by the Information Commissioner's Office or such updated version of such IDTA as is published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 from time to time; or
 - (B) the European Commission's Standard Contractual Clauses per decisions 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time (the "**EU SCCs**"), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "**Addendum**") as published by the Information Commissioner's Office from time to time; and/or
 - (ii) where the transfer is subject to EU GDPR, the EU SCCs, as well as any additional measures determined by the Controller being implemented by the importing party;
 - (c) the Data Subject has enforceable rights and effective legal remedies;
 - (d) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
 - (e) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and

21.21.4 where it has recorded it in Schedule 31 (*Processing Personal Data*).

- 21.22 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
- 21.23 A Party processing Personal Data for the purposes of this Contract shall maintain a record of its processing activities in accordance with Article 30 of the UK GDPR and shall make the record available to the other Party upon reasonable request.
- 21.24 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Contract ("**the Request Recipient**"):
- 21.24.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
 - 21.24.2 where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:
 - (a) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and
 - (b) provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 21.25 Each party shall promptly notify the other Party upon it becoming aware of any Data Loss Event relating to Personal Data provided by the other party pursuant to this Contract and shall:
- 21.25.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
 - 21.25.2 implement any measures necessary to restore the security of any compromised Personal Data;
 - 21.25.3 work with the other Party to make any required notifications to the Information Commissioner's Office or any other regulatory authority and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
 - 21.25.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.

- 21.26 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Contract as specified in Schedule 31 (*Processing Personal Data*).
- 21.27 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Contract which is specified in Schedule 31 (*Processing Personal Data*).
- 21.28 Notwithstanding the general application of Clauses 21.3 to 21.15 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Clause 21.16 to 21.27.

Standard Contractual Clauses

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

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

Clauses 21.30 to 21.31 below shall apply.

21.30 The Parties agree:

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

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

- 21.31.1 that the most up to date Standard Contractual Clauses from time to time shall be automatically incorporated in place of those in use at the time of such update, amendment, substitution, adoption or publication and that such incorporation is not a Change;
- 21.31.2 that where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Contract (and to which Chapter V of the EU GDPR applies) will be transferred in accordance with the relevant form of the most up to date Standard Contractual Clauses as of the date the European Commission decision regarding such new Standard Contractual Clauses becomes effective;
- 21.31.3 to use best endeavours to complete any part of the most up to date Standard Contractual Clauses that a Party must complete promptly and at their own cost for the purpose of giving full effect to them; and
- 21.31.4 that if there is any conflict between this Contract and the most up to date Standard Contractual Clauses the terms of the most up to date Standard Contractual Clauses shall apply.

22 Publicity and Branding

22.1 The Supplier shall not:

- 22.1.1 make any press announcements or publicise this Contract or its contents in any way; or
- 22.1.2 use RECCo's name or brand in any promotion or marketing or announcement of orders;

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

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

Section G: Liability, Indemnities and Insurance

23 Limitations on Liability

Unlimited liability

23.1 Neither Party limits its liability for:

- 23.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
- 23.1.2 fraud or fraudulent misrepresentation by it or its employees (including in the case of the Supplier, breach of Clause 37 (Prevention of Fraud and Bribery));
- 23.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 23.1.4 any liability to the extent it cannot be limited or excluded by Law.

23.2 The Supplier's liability in respect of the indemnities in Clause 3.8 (Warranties), (Clause 10.5 (VAT), Clause 14.7 (*Employment Indemnity*), Clause 14.8 (*Income Tax and National Insurance Contributions*), Schedule 28 (*Staff Transfer*) and the Annexes to Schedule 28 (*Staff Transfer*) shall be unlimited.

23.3 RECCo's liability in respect of the indemnities in Clause 14.7 (*Employment Indemnity*), Schedule 28 (*Staff Transfer*) and the Annexes to Schedule 28 (*Staff Transfer*) shall be unlimited.

Financial and other limits

23.4 The aggregate liability of each Party under the indemnity in Clause 17 (IPRs Indemnity) arising in any Contract Year or in any subsequent year shall in no event exceed £10 million for that Contract Year or subsequent year as applicable.

23.5 The aggregate liability of each Party in respect of its Defaults under Clause 19 (Confidentiality) and under the indemnity in Clause 19.8 arising in any Contract Year or in any subsequent year shall in no event exceed £10 million for that Contract Year or subsequent year as applicable.

23.6 Subject to Clauses 23.1 and 23.2 (*Unlimited Liability*), 23.4 and 23.5 (*Financial and other Limits*) and Clauses 23.10 (*Consequential losses*):

- 23.6.1 the Supplier's aggregate liability in respect of loss of or damage to RECCo Premises or other property or assets of RECCo (including technical infrastructure, assets or equipment but excluding any loss or damage to RECCo Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed £10 million;
- 23.6.2 the Supplier's aggregate liability in respect of loss or damage to RECCo Data and under the indemnities at Clauses 18.13 and 21.1 in each and any Contract Year shall in no event exceed £10 million;

- 23.6.3 the Supplier's aggregate liability in respect of all Service Credits incurred in any rolling period of 12 months shall be subject to the Service Credit Cap; and
- 23.6.4 the Supplier's aggregate liability in respect of all other Losses incurred by RECCo under or in connection with this Contract as a result of Defaults by the Supplier shall in no event exceed:
- (a) in relation to Defaults occurring during any Contract Year, an amount equal to 200% of the Charges paid and/or payable to the Supplier under this Contract in that Contract Year; and
 - (b) in relation to Defaults occurring after the end of the Term, an amount equal to 200% of the Charges paid and/or payable to the Supplier in the 12 month period immediately prior to the last day of the Term.
- 23.7 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clause 23.6.3.
- 23.8 Service Credits shall be taken into consideration when calculating the Supplier's liability under Clause 23.6.3.
- 23.9 Subject to Clauses 23.1 and 23.3 (*Unlimited Liability*) and Clause 23.10 (*Consequential Losses*) and without prejudice to RECCo's obligation to pay the Charges as and when they fall due for payment, RECCo's total aggregate liability:
- 23.9.1 in respect of loss of or damage to property or assets of the Supplier (including technical infrastructure, assets or equipment) that is caused by Defaults of RECCo occurring in any Contract Year shall in no event exceed £1 million;
 - 23.9.2 in respect of all other Losses incurred by the Supplier under or in connection with this Contract as a result of Defaults of RECCo shall in no event exceed:
 - (a) in relation to Defaults occurring during any Contract Year, an amount equal to the total Charges paid and/or payable under this Contract in that Contract Year; and
 - (b) in relation to Defaults occurring after the end of the Term, an amount equal to the total Charges paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Term.

Consequential Losses

- 23.10 Subject to Clauses 23.1, 23.2 and 23.3 (*Unlimited Liability*) and Clause 23.11, neither Party shall be liable to the other Party for:
- 23.10.1 any indirect, special or consequential Loss; and/or
 - 23.10.2 any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect),
- provided that this Clause 23.10 shall not apply to indemnities expressed in this Agreement or to the Losses set out in Clause 23.11.
- 23.11 Notwithstanding Clause 23.10 but subject to Clause 23.4, the Supplier acknowledges that RECCo may, amongst other things, recover from the Supplier the following Losses
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incurred by RECCo to the extent that they arise as a result of a Default by the Supplier (which the Supplier acknowledges is not a comprehensive list of direct Losses):

- 23.11.1 any additional operational and/or administrative costs and expenses incurred by RECCo and proportionate to the Default, including costs relating to time spent by or on behalf of RECCo in dealing with the consequences of the Default;
- 23.11.2 any wasted expenditure or charges (in each case which are proportionate to the Default);
- 23.11.3 any charges or compensation which RECCo is contractually obliged to pay to an Other Supplier in respect of services which that Other Supplier has been directly prevented from performing by the Supplier's Default;
- 23.11.4 the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Contract;
- 23.11.5 any compensation or interest which RECCo is obliged to pay to a third party by operation of Law, pursuant to a court order or by direction of a regulatory body;
- 23.11.6 any fine or penalty incurred by RECCo pursuant to Law and any costs incurred by RECCo in defending any proceedings which result in such fine or penalty; and
- 23.11.7 conduct of indemnity claims (where applicable, in accordance with Schedule 23 (*Conduct of Claims*)).

Conduct of indemnity claims

- 23.12 Where under this Contract one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 27 (*Conduct of Claims*) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

Mitigation

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

24 Insurance

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

Section H: Remedies and Relief

25 Rectification Plan Process

25.1 In the event that:

- 25.1.1 there is, or is reasonably likely to be, a Delay; and/or
- 25.1.2 in any Service Period there has been a Material KPI Failure; and/or
- 25.1.3 the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied (which taken together constitute a material Default),

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

Notification

25.2 If:

- 25.2.1 the Supplier notifies RECCo pursuant to Clause 25.1 that a Notifiable Default has occurred; or
- 25.2.2 RECCo notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

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

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

Submission of the draft Rectification Plan

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

25.5 The draft Rectification Plan shall set out:

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

- 25.5.2 the actual or anticipated effect of the Notifiable Default; and
 - 25.5.3 the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).
- 25.6 The Supplier shall promptly provide to RECCo any further documentation that RECCo reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 23 (*Dispute Resolution Procedure*).

Agreement of the Rectification Plan

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

26 Delay Payments

- 26.1 If a Key Milestone has not been Achieved by its relevant Milestone Date, the provisions of Paragraph 1 of Part C of] Schedule 15 (*Charges and Invoicing*) shall apply in relation to the payment of Delay Payments.
- 26.2 Delay Payments shall be RECCo's exclusive financial remedy for the Supplier's failure to Achieve a Key Milestone by its Milestone Date except where:

- 26.2.1 RECCo is entitled to or does terminate this Contract pursuant to Clause 31.1.2 (*Termination by RECCo*); or
- 26.2.2 the Delay exceeds the Delay Deduction Period.

27 Remedial Adviser

27.1 If:

- 27.1.1 any of the Intervention Trigger Events occur; or
 - 27.1.2 RECCo reasonably believes that any of the Intervention Trigger Events are likely to occur,
- (each an “**Intervention Cause**”), RECCo may give notice to the Supplier (an “**Intervention Notice**”) giving reasonable details of the Intervention Cause and requiring:
- 27.1.3 a meeting between RECCo Representative and the Supplier Representative to discuss the Intervention Cause; and/or
 - 27.1.4 the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause 27.

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

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

- 27.2.1 the Remedial Adviser shall be:
 - (a) a person selected by the Supplier and approved by RECCo; or
 - (b) if none of the persons selected by the Supplier have been approved by RECCo (or no person has been selected by the Supplier) within 10 Working Days following the date on which the Intervention Notice is given, a person identified by RECCo;
- 27.2.2 the terms of engagement and start date agreed with the Remedial Adviser must be approved by RECCo; and
- 27.2.3 any right of RECCo to terminate this Contract pursuant to Clause 31.1.2 (*Termination by RECCo*) for the occurrence of that Intervention Cause shall be suspended for 60 Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties)(the “**Intervention Period**”).

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

- 27.3.1 observe the conduct of and work alongside the Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
 - 27.3.2 gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
 - 27.3.3 write reports and provide information to RECCo in connection with the steps being taken by the Supplier to remedy the Intervention Cause;
 - 27.3.4 make recommendations to RECCo and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or
 - 27.3.5 take any other steps that RECCo and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.
- 27.4 The Supplier shall:
- 27.4.1 work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
 - 27.4.2 ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;
 - 27.4.3 submit to such monitoring as RECCo and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
 - 27.4.4 implement any reasonable recommendations made by the Remedial Adviser that have been approved by RECCo within the timescales given by the Remedial Adviser; and
 - 27.4.5 not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of RECCo (such consent not to be unreasonably withheld).
- 27.5 The Supplier shall be responsible for:
- 27.5.1 the costs of appointing, and the fees charged by, the Remedial Adviser; and
 - 27.5.2 its own costs in connection with any action required by RECCo and/or the Remedial Adviser pursuant to this Clause 27.
- 27.6 If:
- 27.6.1 the Supplier:
 - (a) fails to perform any of the steps required by RECCo in an Intervention Notice; and/or
 - (b) is in Default of any of its obligations under Clause 27.4; and/or
 - 27.6.2 the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a “**Remedial Adviser Failure**”), RECCo shall be entitled to terminate this Contract pursuant to Clause 31.1.2 (*Termination by RECCo*).

28 Not Used

29 RECCo Cause and Other Supplier Cause

29.1 Notwithstanding any other provision of this Contract, if the Supplier has failed to:

- 29.1.1 Achieve a Milestone by its Milestone Date;
- 29.1.2 provide the Operational Services in accordance with the Target Performance Levels; and/or
- 29.1.3 comply with its obligations under this Contract,

(each a “**Supplier Non-Performance**”),

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

- (a) the Supplier shall not be treated as being in breach of this Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by RECCo Cause or Other Supplier Cause;
- (b) RECCo shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:
 - (i) to terminate this Contract pursuant to Clause 31.1.2 (*Termination by RECCo*); or
 - (ii) to take action pursuant to Clauses 27 (*Remedial Adviser*);
- (c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
 - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by RECCo Cause or Other Supplier Cause;
 - (ii) if RECCo, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from RECCo Cause or Other Supplier Cause;
 - (iii) if the Milestone is a Key Milestone, the Supplier shall have no liability to pay any Delay Payments associated with the Key Milestone to the extent that the Supplier can demonstrate that such failure was caused by RECCo Cause or Other Supplier Cause; and
 - (iv) the Supplier shall be entitled to claim compensation in respect of RECCo Cause subject to and in accordance with the principles

set out in Paragraph 2 of Part C of Schedule 15 (*Charges and Invoicing*); and/or

- (d) where the Supplier Non-Performance constitutes a Performance Failure:
 - (i) the Supplier shall not be liable to accrue Service Credits; and
 - (ii) the Supplier shall be entitled to invoice for the Service Charges for the relevant Operational Services affected by RECCo Cause or Other Supplier Cause,

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

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

29.2.1 the Supplier Non-Performance;

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

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

29.2.4 the relief and/or compensation claimed by the Supplier in relation to the RECCo Cause and the relief claimed by the Supplier in relation to the Other Supplier Cause.

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

29.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of a RECCo Cause or Other Supplier Cause to the Supplier and its provision of the Services, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

29.5 Without prejudice to Clause 5.11 (*Continuing obligation to provide the Services*), if a Dispute arises as to:

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

- 29.5.2 the nature and/or extent of the relief and/or compensation claimed by the Supplier in relation to a RECCo Cause and/or extent of the relief claimed by the Supplier in relation to the Other Supplier Cause,

either Party may refer the Dispute to the Dispute Resolution Procedure (and in the case of a Dispute relating to an Other Supplier Cause, the relevant Other Supplier may also refer the Dispute to the Multi-Party Dispute Resolution Procedure). Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

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

30 Force Majeure

- 30.1 Subject to the remaining provisions of this Clause 30 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*)), a Party may claim relief under this Clause 30 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 30.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 30.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 30 to the extent that consequences of the relevant Force Majeure Event:
- 30.3.1 are capable of being mitigated by any of the Services including the Service Continuity Services, but the Supplier has failed to do so;
 - 30.3.2 would have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract; or
 - 30.3.3 are the result of the Supplier's failure to comply with its Service Continuity Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the Service Continuity Plan).
- 30.4 Subject to Clause 30.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 30.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and

mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

30.6 Where, as a result of a Force Majeure Event:

30.6.1 an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:

- (a) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure other than pursuant to Clause 31.1.3 (*Termination by RECCo*) or Clause 31.3.3 (*Termination by the Supplier*); and
- (b) neither Party shall be liable for any Default arising as a result of such failure;

30.6.2 the Supplier fails to perform its obligations in accordance with this Contract:

- (a) RECCo shall not be entitled:
 - (i) during the continuance of the Force Majeure Event to exercise its rights under Clause 27 (*Remedial Adviser*) as a result of such failure;
 - (ii) to receive Delay Payments pursuant to Clause 26 (*Delay Payments*) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
 - (iii) to receive Service Credits to the extent that a Performance Failure has been caused by the Force Majeure Event; and
- (b) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.

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

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

Section I: Termination and Exit Management

31 Termination Rights

Termination by RECCo

31.1 RECCo may terminate this Contract by issuing a Termination Notice to the Supplier:

- 31.1.1 for convenience at any time on giving no less than 12 months written notice to the Supplier during the Initial Term (subject to payment by RECCo of the Termination Payment) or on giving no less than 6 months written notice to the Supplier during the Extension Period or Further Extension Period (in each case subject to payment by RECCo of any Termination Payment);
- 31.1.2 if a Supplier Termination Event occurs;
- 31.1.3 if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or
- 31.1.4 if the Services are no longer required as a result of a Change in Law or a change to the REC or the termination of the REC on giving no less than 12 months written notice to the Supplier during the Initial Term (subject to payment by RECCo of the Termination Payment) or on giving no less than 6 months written notice to the Supplier during the Extension Period or Further Extension Period (in each case subject to payment by RECCo of any Termination Payment),

and this Contract shall terminate on the date specified in the Termination Notice.

31.2 Where RECCo:

- 31.2.1 is terminating this Contract under Clause 31.1.2 due to the occurrence of either limb (b),(h) and/or (i) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
- 31.2.2 has the right to terminate this Contract under Clause 31.1.2 or Clause 31.1.3, it may, prior to or instead of terminating the whole of this Contract, serve a Termination Notice requiring the partial termination of this Contract to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances and/or
- 31.2.3 has the right to terminate this Agreement under Clauses 31.1.1 or 31.1.4 (where such termination takes effect during the Further Extension Period), it may prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring Partial Termination of this Agreement.

Termination by the Supplier

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

- 31.3.1 this Contract if RECCo commits a material Default of Clauses 19 (Confidentiality) or 21 (Protection of Personal Data) which is either incapable of being remedied or which has not been remedied by RECCo within 30 Working Days of notification from the Supplier providing full details of the Default and requiring its remedy;
- 31.3.2 this Contract if RECCo fails to pay an undisputed sum due to the Supplier under this Contract which in aggregate exceeds an amount equivalent to 3 month's average Charges and such amount remains outstanding 40 Working Days after the receipt by RECCo of a notice of non-payment from the Supplier; or
- 31.3.3 any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Contract or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than 20 Working Days from the date of the issue of the Termination Notice). If the operation of Clause 31.3.3 would result in a Partial Termination, the provisions of Clause 31.4 (*Partial Termination*) shall apply.

Partial Termination

- 31.4 If the Supplier notifies RECCo pursuant to Clause 31.3.3 (*Termination by the Supplier*) that it intends to terminate this Contract in part and RECCo, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of RECCo Requirements, then RECCo shall be entitled to terminate the remaining part of this Contract by serving a Termination Notice to the Supplier within 1 month of receiving the Supplier's Termination Notice. For the purpose of this Clause 31.4, in assessing the significance of any part of RECCo Requirements, regard shall be had not only to the proportion of that part to RECCo Requirements as a whole, but also to the importance of the relevant part to RECCo.
- 31.5 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:
 - 31.5.1 the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;
 - 31.5.2 if the Partial Termination arises during the Extension Period or any Further Extension Period in accordance with Clause 31.1.1 or 31.1.4:
 - (a) Subject to paragraph (c) below, if the Supplier's costs reduce due to Partial Termination, the Charges shall be reduced on a fair and reasonable basis to reflect any such reduction to Supplier's costs and the Supplier shall provide evidence of such cost reduction showing that such cost reduction is fair and reasonable; and

- (b) subject to paragraph (c) below, the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated; and
 - (c) if the Supplier's costs increase due to Partial Termination, then the Supplier shall be entitled to charge for such costs increase (subject to the Supplier providing evidence of such cost increase and that such cost increase is fair and reasonable); and
- 31.5.3 without prejudice to Clause 31.5.2, any adjustment to the Charges (if any) shall be calculated in accordance with Schedule 15 (*Charges and Invoicing*); and
- 31.5.4 the Supplier shall not be entitled to reject the Change.

32 Consequences of Expiry or Termination

General Provisions on Expiry or Termination

- 32.1 The provisions of Clauses 5.10 (*Specially Written Software warranty*), 10.4 and 10.5 (*VAT*), 10.6 and 12 (*Records, Reports, Audits*), 14.7 (*Employment Indemnity*), 14.8 (*Income Tax and National Insurance Contributions*), 16 (*Intellectual Property Rights*), 17.1 (*IPRs Indemnity*), 19 (*Confidentiality*), 20 (*Transparency*), 21 (*Protection of Personal Data*), 23 (*Limitations on Liability*), 32 (*Consequences of Expiry or Termination*), 38 (*Severance*), 40 (*Entire Agreement*), 41 (*Third Party Rights*), 43 (*Disputes*) and 44 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 15 (*Charges and Invoicing*), 16 (*Payments on Termination*), 19 (*Financial Reports and Audit Rights*), 23 (*Dispute Resolution Procedure*), 24 (*Reports and Records Provisions*), 25 (*Exit Management*), 28 (*Staff Transfer*), and 32 (*Intellectual Property Rights*), shall survive the termination or expiry of this Contract.
- 32.2 Accumulated rights of the Parties shall not be affected by termination or expiry of the Contract.

Exit Management

- 32.3 The Parties shall comply with the provisions of Schedule 25 (*Exit Management*) and any current Exit Plan in relation to orderly transition of the Services to RECCo or a Replacement Supplier.

Payments by RECCo

- 32.4 If this Contract is terminated by RECCo pursuant to Clause 31.1.1 (*Termination by RECCo*) or by the Supplier pursuant to Clauses 31.3.1, 31.3.2 (*Termination by the Supplier*) or 34.3, RECCo shall pay the Supplier the Termination Payment as set out in Schedule 16 (*Payments on Termination*) (which shall be the Supplier's sole remedy for the termination of the Contract).
- 32.5 If this Contract is terminated (in part or in whole) by RECCo pursuant to Clauses 31.1.2, 31.1.3, 31.1.4, 31.2 (*Termination by RECCo*), 33.7.12(b) and/or 33.9.2, or the Term expires, the only payments that RECCo shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:
- 32.5.1 payments in respect of any Assets or apportionments in accordance with Schedule 25 (*Exit Management*); and

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

32.6 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Contract for a continuing Force Majeure Event pursuant to Clauses 31.1.3 or 31.2.2 (*Termination by RECCo*) or 31.3.3 (*Termination by the Supplier*).

Payments by the Supplier

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

DRAFT SUBJECT TO CONTRACT

Section J: Miscellaneous and Governing Law

33 Compliance

Health and Safety

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

Employment Law

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

Equality and Diversity

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

Conflicts of Interest

- 33.5 The Supplier:
- 33.5.1 must take action to ensure that neither the Supplier nor the Supplier Personnel are placed in the position of an actual, potential or perceived Conflict of Interest.

- 33.5.2 must promptly notify and provide details to RECCo if an actual, potential or perceived Conflict of Interest happens or is expected to happen.
- 33.6 RECCo will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of RECCo, such measures do not or will not resolve an actual or potential Conflict of Interest, RECCo may terminate this Contract in accordance with Clause 31.1.2 immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest and Clauses 32.2 and 32.6 to 32.7 shall apply.

Modern Slavery

33.7 The Supplier:

- 33.7.1 shall not use, nor allow its sub-contractors to use forced, bonded or involuntary prison labour;
- 33.7.2 shall not require any Supplier Personnel or the personnel of any sub-contractors to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice;
- 33.7.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
- 33.7.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;
- 33.7.5 shall make reasonable enquires to ensure that its officers, employees and sub-contractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- 33.7.6 shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its sub-contractors anti-slavery and human trafficking provisions;
- 33.7.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;
- 33.7.8 shall prepare and deliver to RECCo, an annual slavery and human trafficking report equivalent to the statement under section 54 of the Modern Slavery Act setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;
- 33.7.9 shall not use, nor allow its employees or sub-contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or sub-contractors;
- 33.7.10 shall not use or allow child or slave labour to be used by its sub-contractors; and
- 33.7.11 shall report the discovery or suspicion of any slavery, trafficking, forced labour, child labour, involuntary prison labour or labour rights abuses by it or its sub-

contractors to RECCo and the Modern Slavery Helpline and relevant national or local law enforcement agencies;

- 33.7.12 if the Supplier is in Default under Clauses 33.7.1 to 33.7.11 RECCo may by notice:
- (a) require the Supplier to remove from performance of the Contract any sub-contractor, Supplier Personnel or other persons associated with it whose acts or omissions have caused the Default; or
 - (b) immediately terminate the Contract in accordance with Clause 31.1.2; and
- 33.7.13 shall, if the Supplier or RECCo identifies any occurrence of modern slavery connected to this Contract, comply with any request of RECCo to follow the Rectification Plan Process to submit a remedial action plan which follows the form set out in Annex D of the Tackling Modern Slavery in Government Supply Chains guidance to PPN 02/23 (Tackling Modern Slavery in Government Supply Chains);
- 33.8 If the Supplier notifies RECCo pursuant to Clause 33.7.11 it shall respond promptly to RECCo's enquiries, co-operate with any investigation, and allow RECCo to audit any books, records and/or any other relevant documentation in accordance with the Contract.
- 33.9 If the Supplier is in Default under Clause 33.7 RECCo may by notice:
- 33.9.1 require the Supplier to remove from performance of the Contract any Sub-Contractor, Supplier Personnel or other persons associated with it whose acts or omissions have caused the Default; or
 - 33.9.2 immediately terminate the Contract in accordance with Clause 31.1.2.

Whistleblowing

- 33.10 As soon as it is aware of it the Supplier and Supplier Personnel must report to RECCo any actual or suspected breach of:
- 33.10.1 Law;
 - 33.10.2 Clauses 33.1 to 33.7 or 33.11; or
 - 33.10.3 Clause 37.
- 33.11 The Supplier must not retaliate against any of the Supplier Personnel who in good faith reports a breach listed in this Clause to RECCo or a Prescribed Person.

34 Assignment and Novation

- 34.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without the prior written consent of RECCo.
- 34.2 RECCo may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Contract and/or any associated licences to:

34.2.1 Ofgem; or

34.2.2 a Successor Body,

and the Supplier shall, at RECCo's request, enter into a novation agreement in such form as RECCo shall reasonably specify in order to enable RECCo to exercise its rights pursuant to this Clause 34.2.

34.3 If RECCo assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Contract to a Successor Body, the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of RECCo under limb (k) of the definition of Supplier Termination Event (as if references in that limb (k) to the Supplier and the Guarantor were references to the Successor Body) and the consequences of termination set out in Clause 32.3 shall apply.

35 Waiver and Cumulative Remedies

35.1 The rights and remedies under this Contract may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Contract or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

35.2 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

36 Relationship of the Parties

36.1 Except as expressly provided otherwise in this Contract, nothing in this Contract, nor any actions taken by the Parties pursuant to this Contract, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

37 Prevention of Fraud and Bribery

37.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:

37.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

37.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

37.2 The Supplier shall not during the term of this Contract:

37.2.1 commit a Prohibited Act; and/or

- 37.2.2 do or suffer anything to be done which would cause RECCo or any of RECCo's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 37.3 The Supplier shall during the term of this Contract:
- 37.3.1 establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
 - 37.3.2 have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;
 - 37.3.3 keep appropriate records of its compliance with its obligations under Clause 37.3.1 and make such records available to RECCo on request; and
 - 37.3.4 take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.
- 37.4 The Supplier shall immediately notify RECCo in writing if it becomes aware of any breach of Clause 37.1 and/or 37.2, or has reason to believe that it has or any of the Supplier Personnel have:
- 37.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 37.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 37.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- 37.5 If the Supplier makes a notification to RECCo pursuant to Clause 37.4, the Supplier shall respond promptly to RECCo's enquiries, co-operate with any investigation, and allow RECCo to Audit any books, Records and/or any other relevant documentation in accordance with Clause 12 (*Records, Reports and Audits*).
- 37.6 If the Supplier is in Default under Clauses 37.1 and/or 37.2, RECCo may by notice:
- 37.6.1 require the Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused the Default; or
 - 37.6.2 immediately terminate this Contract in accordance with Clause 31.1.2.

- 37.7 Any notice served by RECCo under Clause 37.6 shall specify the nature of the Prohibited Act, the identity of the Party who RECCo believes has committed the Prohibited Act and the action that RECCo has elected to take (including, where relevant, the date on which this Contract shall terminate).

38 Severance

- 38.1 If any provision or part provision of this Contract is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract.
- 38.2 In the event that any deemed deletion under Clause 38.1 is so fundamental as to prevent the accomplishment of the purpose of this Contract or materially alters the balance of risks and rewards in this Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Contract and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 38.3 If the Parties are unable to agree on the revisions to this Contract within 5 Working Days of the date of the notice given pursuant to Clause 38.2, the matter shall be dealt with in accordance with Paragraph 4 (Commercial Negotiation) of Schedule 8.3 (Dispute Resolution Procedure) except that if the representatives are unable to resolve the dispute within 30 Working Days of the matter being referred to them, this Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Contract is terminated pursuant to this Clause 38.3.

39 Further Assurances

- 39.1 Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Contract.

40 Entire Agreement

- 40.1 This Contract constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 40.2 Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.
- 40.3 Nothing in this Clause 40 shall exclude any liability in respect of misrepresentations made fraudulently.

41 Third Party Rights

- 41.1 The provisions of Clause 17.1 (*IPRs Indemnity*), [Paragraphs 2.1 and 2.6 of Part A, Paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, Paragraphs 2.1 and 2.3 of Part C, Part D and Paragraphs 1.4, 2.3 and 2.8 of Part E of Schedule 28 (*Staff Transfer*)] and the provisions of Paragraph 6.9 of Schedule 25 (*Exit Management*) (together "**Third Party Provisions**") confer benefits on persons named or identified in such provisions other than the Parties

(each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

- 41.2 Subject to Clause 41.1, a person who is not a Party to this Contract has no right under the CRTPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 41.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of RECCo, which may, if given, be given on and subject to such terms as RECCo may determine.
- 41.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 41.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

42 Notices

- 42.1 Any notices sent under this Contract must be in writing.
- 42.2 Subject to Clause 42.4, the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

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

- 42.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Contract:

	Supplier	RECCo
Contact		
Address		
Email		

- 42.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 42.2:
- 42.4.1 Force Majeure Notices;
 - 42.4.2 notices issued by the Supplier pursuant to Clause 31.3 (*Termination by the Supplier*);
 - 42.4.3 Termination Notices; and
 - 42.4.4 Dispute Notices.
- 42.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 42.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 42.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 42.6 This Clause 42 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 23 (*Dispute Resolution Procedure*)).

43 Disputes

- 43.1 The Parties shall resolve Disputes arising out of or in connection with this Contract in accordance with the Dispute Resolution Procedure.
- 43.2 The Supplier shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.

44 Governing Law and Jurisdiction

- 44.1 This Contract and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 44.2 Subject to Clause 43 (*Disputes*) and Schedule 23 (*Dispute Resolution Procedure*) (including RECCo's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

This Contract has been duly entered into by the Parties on the date which appears at the head of its page 1.

SIGNED for and on behalf of)
[name of the Supplier] by a director:)
)
) Signature:
 Name (block
 capitals):

Director

SIGNED for and on behalf of)
[name of RECCo])
)
) Signature:
 Name (block
 capitals):
 Position:

Schedule 1: Definitions

1. Definitions

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

- 1.3.9 references to “**Paragraphs**” are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided;
- 1.3.10 references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified; and
- 1.3.11 the headings in the Contract are for ease of reference only and shall not affect the interpretation or construction of the Contract.
- 1.4 Any reference in this Contract which immediately before IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to Section 1A of the European Union (Withdrawal) Act 2018) is a reference to (as it has effect from time to time):
- 1.4.1 any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (“**EU References**”) which is to form part of domestic law by application of Section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of Section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
- 1.4.2 any EU institution or EU authority or other such EU body shall be read on and after IP Completion Day as a reference to the UK institution, authority or body to which its functions were transferred.
- 1.5 Where a standard, policy or document is referred to in this Contract by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify RECCo and the Parties shall update this Contract with a reference to the replacement hyperlink.
- “Achieve”**
- (a) in respect of a Test, to successfully pass a Test without any Test Issues; and
- (b) in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of Schedule 14 (*Testing Procedures*),
- and “**Achieved**” and “**Achievement**” shall be construed accordingly;
- “Affected Party”**
- the Party seeking to claim relief in respect of a Force Majeure Event;
- “Affiliate”**
- in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;

“Allowable Assumptions”	the assumptions set out in Annex 5 of Schedule 15 (Charges and Invoicing);
“Approved Sub-Licensee”	any of the following: <ul style="list-style-type: none"> (a) a REC Party; (b) Ofgem; and/or (c) any Successor Body;
“Assets”	all assets and rights used by the Supplier to provide the Services in accordance with this Contract but excluding RECCo Assets;
“Associated Person”	has the meaning given to it in Section 44(4) of the Criminal Finances Act 2017;
“Associates”	means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;
“ATP Milestone”	the final Key Milestone linked to Authority to Proceed for the relevant Operational Services set out in the Implementation Plan;
“Audit”	any exercise by RECCo of its Audit Rights pursuant to Clause 12 (<i>Records, Reports and Audit</i>) and Schedule 19 (<i>Financial Reports and Audit Rights</i>);
“Audit Agents”	<ul style="list-style-type: none"> (a) RECCo’s internal and external auditors; (b) RECCo’s statutory or regulatory auditors; (c) any party formally appointed by RECCo to carry out audit or similar review functions; and (d) successors or assigns of any of the above;
“Audit Rights”	the audit and access rights referred to in Schedule 19 (<i>Financial Reports and Audit Rights</i>);
“RECCo Assets”	RECCo Materials, RECCo infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to RECCo and which is or may be used in connection with the provision or receipt of the Services;

“RECCo Background IPRs”

- (a) IPRs owned by RECCo before the Effective Date, including IPRs contained in any of RECCo’s Know-How, documentation, processes and procedures;
- (b) IPRs created by RECCo independently of this Contract; but excluding IPRs owned by RECCo subsisting in RECCo Software;

“RECCo Cause”

any material breach by RECCo of any of RECCo Responsibilities, except to the extent that such breach is:

- (a) the result of any act or omission by RECCo to which the Supplier has given its prior consent; or
- (b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;

“RECCo Data”

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
 - (i) supplied to the Supplier by or on behalf of RECCo; and/or
 - (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Contract; or
- (b) any Personal Data for which RECCo is the Controller;

“RECCo IT Strategy”

RECCo’s IT policy in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Change Control Procedure;

“RECCo Materials”

RECCo Data together with any materials, documentation, information, programs and codes supplied by RECCo to the Supplier, the IPRs in which:

- (a) are owned or used by or on behalf of RECCo; and
- (b) are or may be used in connection with the provision or receipt of the Services,

but excluding any Project Specific IPRs, Specially Written Software, Supplier Software, Third Party Software, Third Party Data and Documentation relating to Supplier Software or Third Party Software;

“RECCo Premises”	premises owned, controlled or occupied by RECCo which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them);
“RECCo Representative”	the representative appointed by RECCo pursuant to Clause 11.4 (<i>Representatives</i>);
“RECCo Requirements”	the requirements of RECCo set out in Schedule 2 (<i>Services Description</i>), Schedule 3 (<i>Performance Levels</i>) Schedule 4 (<i>Standards</i>), Schedule 5 (<i>Security Management</i>), Schedule 6 (<i>Insurance Requirements</i>) Schedule 13 (<i>Implementation Plan</i>), Schedule 24 (<i>Reports and Records Provisions</i>), Schedule 25 (<i>Exit Management</i>) and Schedule 26 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“RECCo Responsibilities”	the responsibilities of RECCo specified in Schedule 7 (<i>RECCo Responsibilities</i>);
“RECCo Software”	software which is owned by or licensed to RECCo (other than under or pursuant to this Contract) and which is or will be used by the Supplier for the purposes of providing the Services;
“RECCo System”	RECCo’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by RECCo or the Supplier in connection with this Contract which is owned by RECCo or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for RECCo to receive the Services;
“Authority to Proceed” or “ATP”	the authorisation to the Supplier to commence the provision of the relevant Operational Services to RECCo, provided by RECCo in the form of a Milestone Achievement Certificate in respect of the ATP Milestone;
“Baseline Security Requirements”	RECCo’s baseline security requirements, the current copy of which is contained in Annex 1 of Schedule 5 (Baseline Security Requirements), as updated from time to time by RECCo and notified to the Supplier;
“Board”	means the Supplier’s board of directors;
“Change”	any change to this Contract;
“Change Authorisation Note”	a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2: Change Authorisation Note;

“Change Control Procedure”	the procedure for changing this Contract set out in Schedule 22 (<i>Change Control Procedure</i>);
“Change in Law”	Any change in Law which impacts on the performance of the Services which comes into force after the Effective Date provided that a change to the REC shall also be treated as a Change in Law;
“Change Request”	a written request for a Contract Change substantially in the form set out at Annex 1 (<i>Change Request Form</i>) to Schedule 22 (<i>Change Control Procedure</i>);
“Charges”	the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 15 (<i>Charges and Invoicing</i>), including any Milestone Payment or Service Charge;
“Commercially Sensitive Information”	<p>the information listed in Schedule 9 (<i>Commercially Sensitive Information</i>) comprising the information of a commercially sensitive nature relating to:</p> <ul style="list-style-type: none"> (a) the pricing of the Services; (b) details of the Supplier’s IPRs; and (c) the Supplier’s business and investment plans; <p>which the Supplier has indicated to RECCo that, if disclosed by RECCo, would cause the Supplier significant commercial disadvantage or material financial loss;</p>
“Comparable Supply”	the supply of services to another customer of the Supplier that are the same or similar to any of the Services;
“Confidential Information”	<ul style="list-style-type: none"> (a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Contract that relates to: <ul style="list-style-type: none"> (i) the Disclosing Party Group; or (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group; (b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Contract that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which

comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Contract;

(c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Contract and all matters arising therefrom; and

(d) Information derived from any of the above,

but not including any Information which:

- (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
- (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
- (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality;
- (iv) was independently developed without access to the Confidential Information; or
- (v) relates to the Supplier's:
 - (1) performance under this Contract; or
 - (2) failure to pay any Sub-contractor as required pursuant to Clause 15.15(a) (*Supply Chain Protection*);

“Conflict of Interest”

a conflict between the financial or personal duties of the Supplier or the Supplier Personnel and the duties owed to RECCo under the Contract, in the reasonable opinion of RECCo;

“Contract”

the contract between RECCo and the Supplier;

“Contract Change”

any change to this Contract other than an Agile Change or an Operational Change or a Low Value Change;

“Contract Year”

- (a) a period of 12 months commencing on the Effective Date; or
- (b) thereafter a period of 12 months commencing on each anniversary of the Effective Date;

provided that the final Contract Year shall end on the expiry or termination of the Term;

“Control”

the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “**Controls**” and “**Controlled**” shall be interpreted accordingly;

“Controller”

has the meaning given in the UK GDPR or the EU GDPR as the context requires;

“Corporate Change Event”

means:

- (a) any change of Control of the Supplier or a Parent Undertaking of the Supplier;
- (b) any change of Control of any member of the Supplier Group which, in the reasonable opinion of RECCo, could have a material adverse effect on the Services;
- (c) any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion of RECCo, could have a material adverse effect on the Services;
- (d) a Class 1 Transaction taking place in relation to the shares of the Supplier or any Parent Undertaking of the Supplier whose shares are listed on the main market of the London Stock Exchange plc;
- (e) an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier or any Parent Undertaking of the Supplier;
- (f) payment of dividends by the Supplier or the ultimate Parent Undertaking of the Supplier Group exceeding 25% of the Net Asset Value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any 12 month period;
- (g) an order is made or an effective resolution is passed for the winding up of any member of the Supplier Group;

- (h) any member of the Supplier Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Supplier Group;
- (i) the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or
- (j) any process or events with an effect analogous to those in Paragraphs (e) to (g) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;

“Corporate Change Event Grace Period”

means a grace period agreed to by RECCo for providing CRP Information and/or updates to Service Continuity Plan after a Corporate Change Event

“Corporate Resolvability Assessment (Structural Review)”

means part of the CRP Information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 2 and Annex 2: Corporate Resolvability Assessment (Structural Review) of Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*);

“Costs”

has the meaning given in Schedule 15 (*Charges and Invoicing*);

“CPP Milestone” or “MVP Milestone”

a contract performance point as set out in the Implementation Plan, being the Key Milestone at which the Supplier has demonstrated that the Supplier Solution or relevant Service is working satisfactorily in its operating environment in accordance with Schedule 14 (*Testing Procedures*) and the Test Success Criteria (as defined in Schedule 14) for a minimum viable product;

“Critical Performance Failure”

- (a) the Supplier accruing in aggregate **24** or more Service Points (in terms of the number of points allocated) in any period of **6** months; or
- (b) the Supplier accruing Service Credits or Compensation for Unacceptable KPI Failure which meet or exceed the Service Credit Cap;

“CRTPA”

the Contracts (Rights of Third Parties) Act 1999;

“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Data Loss Event;
“Data Protection Impact Assessment”	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
“Data Protection Legislation”	<ul style="list-style-type: none"> (a) the UK GDPR; (b) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (c) all applicable Law about the processing of personal data and privacy; and (d) (to the extent that it applies) the EU GDPR;
“Data Subject”	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
“Data Subject Request”	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to their Personal Data;
“Deductions”	all Service Credits, Delay Payments or any other deduction which is paid or payable to RECCo under this Contract;
“Default”	<p>any breach of the obligations of the relevant Party (including abandonment of this Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:</p> <ul style="list-style-type: none"> (a) in the case of RECCo, of its employees, servants, agents; or (b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel, <p>in connection with or in relation to the subject-matter of this Contract and in respect of which such Party is liable to the other;</p>
“Defect”	<ul style="list-style-type: none"> (a) any error, damage or defect in the manufacturing of a Deliverable; or (b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or

- (c) any failure of any Deliverable to provide the performance, features and functionality specified in RECCo Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria; or
- (d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in RECCo Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria;

“Delay”

- (a) a delay in the Achievement of a Milestone by its Milestone Date; or
- (b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;

“Delay Deduction Period”

the period of one hundred (100) days commencing on the relevant Milestone Date;

“Delay Payments”

the amounts payable by the Supplier to RECCo in respect of a Delay in Achieving a Key Milestone as specified in Schedule 15 (*Charges and Invoicing*);

“Deliverable”

an item, feature, software, process or outcome delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Contract;

“Dependency”

Any activity, action or deliverable expressly identified as a dependency in Schedule [x2] (Services Description) which must be performed or provided by an Other Supplier and which is necessary for the Supplier’s performance of any of its obligations;

“Detailed Implementation Plan”

the plan developed and revised from time to time in accordance with Paragraphs 3 and 4 of Schedule 13 (*Implementation Plan*);

“Disclosing Party”

has the meaning given in Clause 19.1 (*Confidentiality*);

“Disclosing Party Group”

- (a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and

- (b) where the Disclosing Party is RECCo, RECCo and the REC Parties with which RECCo or the Supplier interacts in connection with this Contract;

“Dispute”

any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

“Dispute Notice”

a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;

“Dispute Resolution Procedure”

the dispute resolution procedure set out in Schedule 23 (*Dispute Resolution Procedure*);

“Documentation”

descriptions of the Services and Performance Indicators, details of the Supplier System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:

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

but excluding Supplier’s internal drafts of Documentation where Supplier continues to work on the same, Supplier’s internal cost information, Supplier’s internal correspondence and Supplier’s correspondence with its professional advisers;

“DOTAS”

the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified

notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

“DPA 2018”

the Data Protection Act 2018;

“Due Diligence Information”

any information supplied to the Supplier by or on behalf of RECCo prior to the Effective Date;

“EEA”

European Economic Area;

“Effective Date”

the date on which this Contract is signed by both Parties;

“Emergency Maintenance”

ad hoc and unplanned maintenance provided by the Supplier where:

- (a) RECCo reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a fault, and notifies the Supplier of the same; or
- (b) the Supplier reasonably suspects that the IT Environment or the Services, or any part the IT Environment or the Services, has or may have developed a fault;

“Employee Liabilities”

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

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

and maternity or sexual orientation or claims for equal pay;

- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

“Employment Regulations”

the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;

“End User”

A user of the Services that is not RECCo or an Other Supplier

“EU GDPR”

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law;

“EU”

European Union

“Excluded Third Party Software”

Third Party Software which is, will be or is proposed to be used by the Supplier for the purposes of providing the Services and which is specified as such in Schedule 12 (*Software and Data*);

“Exit Management”

services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to RECCo and/or a Replacement Supplier, as set out or referred to in Schedule 25 (*Exit Management*);

“Exit Plan”

the plan produced and updated by the Supplier during the Term in accordance with Paragraph 4 of Schedule 25 (*Exit Management*);

“Expedited Dispute Timetable”

the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 23 (*Dispute Resolution Procedure*);

“Expert”	has the meaning given in Schedule 23 (<i>Dispute Resolution Procedure</i>);
“Expert Determination”	the process described in Paragraph 6 of Schedule 23 (<i>Dispute Resolution Procedure</i>);
“Extension Period”	a period of up to three (3) years from the end of the Initial Term;
“Financial Model”	has the meaning given in Schedule 19 (<i>Financial Reports and Audit Rights</i>);
“Financial Reports”	has the meaning given in Schedule 19 (<i>Financial Reports and Audit Rights</i>);
“Financial Transparency Objectives”	has the meaning given in Schedule 19 (<i>Financial Reports and Audit Rights</i>);
“Force Majeure Event”	any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or other natural disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier’s or a Sub-contractor’s supply chain;
“Force Majeure Notice”	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
“Former Supplier”	has the meaning given in Schedule 28 (<i>Staff Transfer</i>);
“Further Extension Period”	Subject to Clause 4.2, a period of up to 3 years to be determined by RECCo (in its sole discretion) from the end of the Extension Period or Further Extension Period;
“General Anti-Abuse Rule”	<ul style="list-style-type: none"> (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

“General Change in Law”	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
“Good Industry Practice”	at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like RECCo, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;
“Halifax Abuse Principle”	the principle explained in the CJEU Case C-255/02 Halifax and others;
“Health and Safety Policy”	the health and safety policy of RECCo and/or other REC Party, Other Supplier as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;
“HMRC”	HM Revenue & Customs;
“Impact Assessment”	has the meaning given in Schedule 22 (<i>Change Control Procedure</i>);
“Implementation Plan”	the Outline Implementation Plan or (if and when approved by the Authority pursuant to Paragraph 3 of Schedule 13 (<i>Implementation Plan</i>)) the Detailed Implementation Plan as updated in accordance with Paragraph 4 of Schedule 13 (<i>Implementation Plan</i>) from time to time;
“Implementation Services”	the implementation services described as such in the Services Description;
“Implementation Services Commencement Date”	the date on which the Supplier is to commence provision of the first of the Services, being [insert date] ;
“Indemnified Person”	where RECCo is the Indemnified Party, RECCo and each and every person to whom RECCo (or any direct or indirect sub-licensee of RECCo) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Contract; and where the Supplier is the Indemnified Party, Supplier and relevant Sub-contractors granted sub-licences pursuant to Paragraph [X] of Schedule 32 (<i>Intellectual Property Rights</i>);

“Independent Controller”	a party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data;
“Information”	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);
“Initial Term”	the period of [5 years] from and including the Services Start Date;
“Insolvency Event”	<p>with respect to any person, means:</p> <ul style="list-style-type: none"> (a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or: <ul style="list-style-type: none"> (i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986; (b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person; (c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person; (d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person’s assets and such attachment or process is not discharged within fourteen (14) days;

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

“Intellectual Property Rights” or “IPRs”

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and

	(c) all other rights having equivalent or similar effect in any country or jurisdiction;
“Intervention Cause”	has the meaning given in Clause 27.1 (<i>Remedial Adviser</i>);
“Intervention Notice”	has the meaning given in Clause 27.1 (<i>Remedial Adviser</i>);
“Intervention Period”	has the meaning given in Clause 27.2(c) (<i>Remedial Adviser</i>);
“Intervention Trigger Event”	<p>(a) any event falling within limb (a), (b), (c), (e), (f) or (g) of the definition of a Supplier Termination Event;</p> <p>(b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;</p> <p>(c) the Supplier accruing Service Credits which meet or exceed 75% of the Service Credit Cap; and/or</p> <p>(d) the Supplier not Achieving a Key Milestone within seventy-five (75) days of its relevant Milestone Date;</p>
“IP Completion Day”	has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020;
“IPRs Claim”	any claim against any Indemnified Person and/or Indemnified Party of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of RECCo Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Contract or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Contract;
“IT”	information and communications technology;
“IT Environment”	RECCo System and the Supplier System;
“Joint Controllers”	has the meaning given in Article 26 of the UK GDPR, or EU GDPR, as the context requires;
“Key Milestone”	the Milestones identified in the Implementation Plan as key milestones and in respect of which Delay Payments may be payable in accordance with Paragraph 1 of Part C of Schedule 15 (<i>Charges and Invoicing</i>) if the Supplier fails to Achieve the Milestone Date in respect of such Milestone;

“Key Performance Indicator”	the key performance indicators set out in Table 1 of Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“Key Personnel”	those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 29 (<i>Key Personnel</i>) against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 14.5 and 14.6 (<i>Key Personnel</i>);
“Key Roles”	a role described as a Key Role in Schedule 29 (<i>Key Personnel</i>) and any additional roles added from time to time in accordance with Clause 14.4 (<i>Key Personnel</i>);
“Key Sub-contract”	each Sub-contract with a Key Sub-contractor;
“Key Sub-contractor”	any Sub-contractor: <ul style="list-style-type: none"> (a) which, in the opinion of RECCo, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or (b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Contract (as set out in the Financial Model);
“Know-How”	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party’s possession before this Contract;
“KPI Failure”	a failure to meet the Target Performance Level in respect of a Key Performance Indicator;
“KPI Service Threshold”	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“Law”	any law, statute, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;

“Licensed Software”	all and any Software licensed by or through the Supplier, its Sub-contractors or any third party to RECCo for the purposes of or pursuant to this Contract, including any Supplier Software, Third Party Software and/or any Specially Written Software;
“Low Value Change”	has the meaning given in Schedule 22 (Change Control Procedure);
“Losses”	losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
“Maintenance Schedule”	shall have the meaning set out in Clause 9.4 (<i>Maintenance</i>);
“Malicious Software”	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
“Management Information”	the management information specified in Schedule 3 (<i>Performance Levels</i>), Schedule 15 (<i>Charges and Invoicing</i>) and Schedule 21 (<i>Governance</i>) to be provided by the Supplier to RECCo;
“Material KPI Failure”	<p>(a) a Serious KPI Failure;</p> <p>(b) a Severe KPI Failure; or</p> <p>(c) a failure by the Supplier to meet a KPI Service Threshold;</p> <p>(d)</p>
“Measurement Period”	in relation to a Key Performance Indicator, the period over which the Supplier’s performance is measured (for example, a Service Period if measured monthly or a 12 month period if measured annually);
“Milestone”	an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date;

“Milestone Achievement Certificate”	the certificate to be granted by RECCo when the Supplier has Achieved a Key Milestone, which shall be in substantially the same form as that set out in Annex 3 of Schedule 14 (<i>Testing Procedures</i>);
“Milestone Date”	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
“Milestone Payment”	a payment identified in Schedule 15 (<i>Charges and Invoicing</i>) to be made following the issue of a Milestone Achievement Certificate;
“Milestone Retention”	has the meaning given in Schedule 15 (<i>Charges and Invoicing</i>);
“Minor KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“Mobilisation Period”	The period from the Implementation Services Commencement Date to immediately before the Services Start Date;
“Month”	a calendar month and “ monthly ” shall be interpreted accordingly;
“Multi-Party Dispute Resolution Procedure”	has the meaning given in Paragraph 9.1 of Schedule 28 (<i>Staff Transfer</i>) of Schedule 23 (<i>Dispute Resolution Procedure</i>);
“Multi-Party Procedure Initiation Notice”	has the meaning given in Paragraph 9.2 of Schedule 23 (<i>Dispute Resolution Procedure</i>);
“NCSC”	the National Cyber Security Centre or any replacement or successor body carrying out the same function;
“New Releases”	an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
“Non-trivial Customer Base”	a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;
“Notifiable Default”	shall have the meaning given in Clause 25.1 (<i>Rectification Plan Process</i>);

“Object Code”	software and/or data in machine-readable, compiled object code form;
“Occasion of Tax Non-Compliance”	<p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <ul style="list-style-type: none"> (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or <p>(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;</p>
“Open Licence”	<p>means any material that is published for use, with rights to access, copy and modify and publish, by any person for free, under a generally recognised open licence including Open Government Licence as set out at http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/ and the Open Standards Principles documented at https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles , and includes the Open Source publication of Software;</p>
“Open Source”	computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;
“Operating Environment”	RECCo System and the Sites;
“Operational Change”	any change in the Supplier’s operational procedures which in all respects, when implemented:

- (a) will not affect delivery of the Key Milestones by their associated Milestone Dates;
- (b) will not affect the Charges and will not result in any other costs to RECCo;
- (c) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services;
- (d) will not adversely affect the interfaces or interoperability of the Services with any of RECCo's IT infrastructure; and
- (e) will not require a change to this Contract;

"Operational Period"	the period from the Operational Services Commencement Date until the end of the Term;
"Operational Service Commencement Date"	the date notified by RECCo to the Supplier in accordance with Clause 5.2;
"Operational Services"	the operational services described as such in the Services Description;
"Optional Services"	the services described as such in Schedule 2 (<i>Services Description</i>) and any REC Changes in excess of the threshold set out in Schedule 15 (<i>Charges and Invoicing</i>) which are to be provided by the Supplier if required by RECCo in accordance with Clause 5.10 (<i>Optional Services</i>);
"Optional Services Implementation Plan"	the implementation plan to effect the Optional Services agreed between the Parties prior to the Effective Date and, if not agreed prior to the Effective Date, to be developed by the Supplier and approved by RECCo;
"Other Supplier"	any supplier to RECCo (other than the Supplier) which is notified to the Supplier from time to time;
"Other Supplier Cause"	any material failure by an Other Supplier to perform a Dependency, except to the extent that such failure is caused by the Supplier, any Sub-contractor or any Supplier Personnel;
"Outline Implementation Plan"	the outline plan set out at Annex A of Schedule 13 (<i>Implementation Plan</i>);
"Parent Undertaking"	has the meaning set out in section 1162 of the Companies Act 2006;

“Partial Termination”	the partial termination of this Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 31 (Termination Rights).2(b) (Termination by RECCo) or 31.3(b) (Termination by the Supplier) or otherwise by mutual agreement by the Parties;
“Parties” and “Party”	have the meanings respectively given on page 1 of this Contract;
“Performance Failure”	a KPI Failure;
“Performance Indicators”	the Key Performance Indicators;
“Permitted Maintenance”	has the meaning given in Clause 9.4 (<i>Maintenance</i>);
“Performance Monitoring Report”	has the meaning given in Schedule 3 (<i>Performance Levels</i>);
“Personal Data”	has the meaning given in the UK GDPR or the EU GDPR as the context requires;
“Data Loss Event”	has the meaning given in the UK GDPR or the EU GDPR as the context requires;
“Prescribed Person”	a legal adviser, an MP, or an appropriate body which a whistle-blower may make a disclosure to as detailed in ‘Whistleblowing: list of prescribed people and bodies’, available online at: https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies , as updated from time to time;
“Processor”	has the meaning given to it under the UK GDPR or the EU GDPR as the context requires;
“Processor Personnel”	means all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-processor engaged in the performance of its obligations under this Contract;
“Prohibited Act”	(a) to directly or indirectly offer, promise or give any person working for or engaged by RECCo a financial or other advantage to:

- (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- (c) an offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts; or
 - (iii) defrauding, attempting to defraud or conspiring to defraud RECCo (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

“Protective Measures” appropriate technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it, including those outlined in Schedule 5 (*Security Management*);

“Project Specific IPRs”

- (a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or
- (b) Intellectual Property Rights arising as a result of the performance of the Supplier’s obligations under this Contract;

but shall not include the Supplier Background IPRs or the Specially Written Software;

“Publishable Performance Information”

means any of the information in the Performance Monitoring Report as it relates to a Performance Indicator where it is expressed as publishable in the table in Annex 1 which shall not constitute Commercially Sensitive Information;

“Quality Plans”

has the meaning given in Clause 6.1 (*Quality Plans*);

“Quarter”

the first three Service Periods and each subsequent three Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Contract);

“REC”

the Retail Energy Code designated under the gas and electricity supply licences granted by Ofgem;

“REC Change”

a change to the REC which impacts on the performance of the Services and which comes into force after the Effective Date;

“REC Parties”

The parties to the REC;

“Recipient”

has the meaning given in Clause 19.1 (*Confidentiality*);

“Records”

has the meaning given in Schedule 24 (*Reports and Records Provisions*);

“Rectification Plan”

a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;

“Rectification Plan Failure”

- (a) the Supplier failing to submit or resubmit a draft Rectification Plan to RECCo within the timescales specified in Clauses 25.4 (*Submission of the draft Rectification Plan*) or 25.8 (*Agreement of the Rectification Plan*);
- (b) RECCo, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 25.7 (*Agreement of the Rectification Plan*);
- (c) the Supplier failing to rectify a material Default within the later of:
 - (i) 30 Working Days of a notification made pursuant to Clause 25.2 (*Notification*); and
 - (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing

the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default;

- (d) a Material KPI Failure (other than a Serious KPI Failure) which is assessed as such prior to the application of the multiplier in Schedule 3 (*Performance Levels*), re-occurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in any 2 of the 3 Measurement Periods subsequent to the Measurement Period in which the initial Material KPI Failure occurred;
- (e) the Supplier not Achieving a Key Milestone by the expiry of the Delay Deduction Period; and/or
- (f) following the successful implementation of a Rectification Plan, the same Notifiable Default (other than a Serious KPI Failure) which is assessed as such prior to the application of the multiplier in Schedule 3 (*Performance Levels*) recurring on two or more occasions within a period of 6 months for the same (or substantially the same) root cause as that of the original Notifiable Default;

“Rectification Plan Process”

the process set out in Clauses 25.4 (*Submission of the draft Rectification Plan*) to 25.9 (*Agreement of the Rectification Plan*);

“Registers”

has the meaning given in Schedule 25 (*Exit Management*);

“Reimbursable Expenses”

has the meaning given in Schedule 15 (*Charges and Invoicing*);

“Relevant IPRs”

where RECCo is the Indemnified Party, IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to RECCo or a third party in the fulfilment of the Supplier’s obligations under this Contract including IPRs in the Specially Written Software, Project Specific IPRs, the Supplier Non-COTS Software, the Supplier Non-COTS Background IPRs, Third Party Data, the Third Party Non-COTS Software, and the Third Party Non-COTS IPRs, Supplier Background IPRs, Supplier COTS Software, Supplier COTS Background IPRs, Third Party IPRs, Third Party COTS Software and Third Party COTS IPRs but excluding any IPRs in RECCo Software, RECCo Background IPRs; and where the Supplier is the Indemnified Party, RECCo Software and RECCo Background IPRs licensed by RECCo pursuant to Paragraph [x]4 of Schedule 32 (Intellectual Property Rights)

“Relevant Requirements”	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
“Relevant Tax Authority”	HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relief Notice”	has the meaning given in Clause 29.2 (<i>RECCo Cause</i>);
“Remaining Services”	Has the meaning given in Clause 31.5.1 (<i>Partial Termination</i>);
“Remedial Adviser”	the person appointed pursuant to Clause 27.2 (<i>Remedial Adviser</i>);
“Remedial Adviser Failure”	has the meaning given in Clause 27.6 (<i>Remedial Adviser</i>);
“Replacement Services”	any services which are the same as or substantially similar to any of the Services and which RECCo receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Contract, whether those services are provided by RECCo internally and/or by any third party;
“Replacement Supplier”	any third party service provider of Replacement Services appointed by RECCo from time to time (or where RECCo is providing replacement Services for its own account, RECCo);
“Risk Register”	the register of risks and contingencies that have been factored into any Costs due under this Contract, a copy of which is set out in Annex 4 of Schedule 15 (<i>Charges and Invoicing</i>);
“Security Management Plan”	the Supplier’s security plan as attached as Annex 2 of Schedule 5 (<i>Security Management</i>) and as subsequently developed and revised pursuant to Paragraphs 3 and 4 of Schedule 5 (<i>Security Management</i>);
“Serious KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“Service Charges”	the periodic payments made in accordance with Schedule 15 (<i>Charges and Invoicing</i>) in respect of the supply of the Operational Services;

“Service Continuity Plan”	any plan prepared pursuant to Paragraph 2 of Schedule 26 (<i>Service Continuity Plan and Corporate Resolution Planning</i>) as may be amended from time to time;
“Service Continuity Services”	the business continuity, disaster recovery and insolvency continuity services set out in Schedule 26 (<i>Service Continuity Plan and Corporate Resolution Planning</i>)
“Service Credit Cap”	<p>for each 12 month period commencing on the Services Start Date, 10% of the Service Charges paid and/or due to be paid under this Contract for such 12 month period provided that:</p> <ul style="list-style-type: none"> (a) Quantitative measures are subject to a cap of 5% of the monthly or, where applicable, quarterly Service Charges paid and/or due to be paid to the Supplier in such 12 month period; (b) Annual Survey measures are subject to a cap of 5% of the annual Service Charges paid and/or due to be paid to the Supplier in such 12 month period;
“Service Management Group”	has the meaning given in Schedule 21 (<i>Governance</i>);
“Service Credits”	credits payable by the Supplier due to the occurrence of 1 or more KPI Failures, calculated in accordance with Paragraph 3 of Part C of Schedule 15 (<i>Charges and Invoicing</i>);
“Service Period”	<p>a calendar month, save that:</p> <ul style="list-style-type: none"> (a) the first service period shall begin on the first Operational Service Commencement Date and shall expire at the end of the calendar month in which the first Operational Service Commencement Date falls; and (b) the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term; (c) the measure of Quarterly Performance Assurance Audit Qualitative Key Performance Indicators for the service period shall be calendar quarters; and (d) the measure of Annual Stakeholder Satisfaction Survey Quarterly Key Performance Indicators for the service period shall be each calendar year;

“Service Points”	in relation to a KPI Failure, the points that are set out against the relevant Key Performance Indicator in the fifth column of the table in Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“Services”	any and all of the services to be provided by the Supplier under this Contract, including those set out in Schedule 2 (<i>Services Description</i>);
“Services Start Date”	[1 September 2026] except where the first Operational Services Commencement Date is different in which case the Services Start Date shall be the first Operational Services Commencement Date;
“Service Transfer Date”	has the meaning given in Schedule 28 (<i>Staff Transfer</i>);
“Services Description”	the services description set out in Schedule 2 (<i>Services Description</i>);
“Severe KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“Sites”	<p>any premises (including RECCo Premises, the Supplier’s premises or third party premises):</p> <ul style="list-style-type: none"> (a) from, to or at which: <ul style="list-style-type: none"> (i) the Services are (or are to be) provided; or (ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or (b) where: <ul style="list-style-type: none"> (i) any part of the Supplier System is situated; or (ii) any physical interface with RECCo System takes place;
“SME”	an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;
“Software”	Specially Written Software, Supplier Software and Third Party Software;

“Software Supporting Materials”	has the meaning given in Paragraph 1.1.1 of Schedule 32 (<i>Intellectual Property Rights</i>) (<i>Specially Written Software and Project Specific IPRs</i>);
“Source Code”	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
“Specially Written Software”	Any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Contract but not including (i) configuration of Third Party Software not involving the creation of additional code; (ii) specific software which would fall within the scope of this definition but which the Parties have agreed in writing in advance of any development and specified in Schedule 12 (Software) that shall not be treated as Specially Written Software.
“Specific Change in Law”	a Change in Law that relates specifically to the business of RECCo and which would not affect a Comparable Supply;
“Staffing Information”	has the meaning given in Schedule 28 (<i>Staff Transfer</i>);
“Standards”	the standards, policies and/or procedures identified in Schedule 4 (<i>Standards</i>);
“Sub-contract”	any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;

“Sub-contractor”	any third party with whom: (a) the Supplier enters into a Sub-contract; or (b) a third party under (a) above enters into a Sub-contract, or the servants or agents of that third party;
“Sub-processor”	any third party appointed to process Personal Data on behalf of the Processor related to this Contract;
“Subsidiary Undertaking”	has the meaning set out in section 1162 of the Companies Act 2006;
“Successor Body”	any person who performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by RECCo, including where RECCo is amalgamated with another energy industry code;
“Supplier Background IPRs”	(a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier’s standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier’s Know-How or generic business methodologies; and/or (b) Intellectual Property Rights created by the Supplier independently of this Contract, which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;
“Supplier COTS Background IPRs”	Any embodiments of Supplier Background IPRs that: (a) the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and (b) has a Non-trivial Customer Base;
“Supplier COTS Software”	Supplier Software (including open source software) that: (a) the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not

typically negotiated by the Supplier save as to price;
and

(b) has a Non-trivial Customer Base;

“Supplier Equipment”	the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from RECCo) for the provision of the Services;
“Supplier Group”	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
“Supplier Non-COTS Background IPRs”	Any embodiments of Supplier Background IPRs that have been delivered by the Supplier to RECCo and that are not Supplier COTS Background IPRs;
“Supplier Non-COTS Software”	Supplier Software that is not Supplier COTS Software;
“Supplier Non-Performance”	has the meaning given in Clause 29.1 (<i>RECCo Cause</i>);
“Supplier Personnel”	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier’s obligations under this Contract;
“Supplier Representative”	the representative appointed by the Supplier pursuant to Clause 11.3 (<i>Representatives</i>);
“Supplier Software”	software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 12 (<i>Software and Data</i>);
“Supplier Solution”	the Supplier’s solution for the Services set out in Schedule 8 (<i>Supplier Solution</i>) including any Annexes of that Schedule;
“Supplier System”	the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, Third Party Data, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding RECCo System);

“Supplier Termination Event”

- (a) the Supplier’s level of performance constituting a Critical Performance Failure in accordance with Clause 7.6;
- (b) the Supplier committing a material Default which is irremediable;
- (c) as a result of the Supplier’s Default, RECCo incurring Losses in any Contract Year which exceed 80% of the value of the aggregate annual liability cap for that Contract Year as set out in Clause 23.6(a) (*Financial and other Limits*);
- (d) a Remedial Adviser Failure;
- (e) a Rectification Plan Failure;
- (f) where a right of termination is expressly reserved in this Contract, including pursuant to:
 - (i) Clause 17 (*IPRs Indemnity*);
 - (ii) Clause 33 (*Compliance*)
 - (iii) Clause 37.6(b) (*Prevention of Fraud and Bribery*); and/or
 - (iv) Paragraph 3 of Part B to Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*);
- (g) the representation and warranty given by the Supplier pursuant to Clauses 3.2(h) or 3.2(i) (*Warranties*) being materially untrue or misleading;
- (h) the Supplier committing a material Default under any of the following Clauses or Schedules:
 - (i) Clause 5.5(j) (*Services*);
 - (ii) Clause 21 (*Protection of Personal Data*);
 - (iii) Clause 20 (*Transparency*);
 - (iv) Clause 19 (*Confidentiality*);
 - (v) Clause 33 (*Compliance*);
 - (vi) in respect of any security requirements or Cyber Essentials obligations set out in Schedule 2 (*Services Description*), Schedule 5 (*Security Management*) or the Baseline Security Requirements;

- (vii) in respect of any requirements set out in Schedule 32 (Intellectual Property Rights) and/or
- (viii) in respect of any requirements set out in Schedule 28 (*Staff Transfer*);

in each case where the material Default is capable or remedy and has not been remedied within the relevant remedial period expressed in the Contract or if none is specified then within thirty (30) days of the date of RECCo's notice to the Supplier of the Default;

- (i) a change of Control of the Supplier (excluding an internal solvent reorganisation of the Supplier Group where this does not have the effect of reducing Supplier's financial standing) unless:
 - (i) RECCo has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) RECCo has not served its notice of objection within 6 months of the later of the date on which the Change of Control took place or the date on which RECCo was given notice of the change of Control;
- (j) a change of Control of a Key Sub-contractor unless, within 6 months of being notified by RECCo that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by RECCo pursuant to Clause 15.10 (*Appointment of Key Sub-contractors*);
- (k) any failure by the Supplier to enter into or to comply with an Admission Agreement under under Part D of Schedule 28 (*Staff Transfer*);
- (l) [RECCo has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;]
- (m) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law where the gravity of such failure is reasonably likely to embarrass or bring RECCo into disrepute or otherwise diminish the trust that the public places in RECCo through RECCo's association with the Supplier;

- (n) in relation to Schedule 5 (*Security Management*):
 - (i) RECCo has issued two rejection notices in respect of the Security Management Plan under Paragraph 4.5.2 (Part A);
 - (ii) the Supplier fails to implement a change required by the Required Changes Register in accordance with the timescales set out in the Required Changes Register;
 - (iii) Supplier COTS Software and Third Party COTS Software is not within mainstream support unless RECCo has agreed in writing;
 - (iv) the Supplier fails to patch vulnerabilities in accordance with the Security Requirements set out in the Annexes to Schedule 5 (*Security Management*); and/or,
 - (v) the Supplier fails to comply with the Incident Management Process;
- (o) the Supplier is in Material Default of any Joint Controller Agreement relating to the Contract;
- (p) a Default that occurs and continues to occur on one or more occasions within 6 Months following RECCo serving a warning notice on the Supplier that it may terminate for persistent breach of the Contract; or
- (q) the Supplier or its Affiliates embarrass or bring RECCo into disrepute or diminish the public trust in them;

“Supply Chain Transparency Report”	means the report provided by the Supplier to RECCo in the form set out in Annex 4 of Schedule 24 (<i>Reports and Records Provisions</i>);
“Target Performance Level”	the minimum level of performance for a Performance Indicator which is required by RECCo, as set out against the relevant Performance Indicator in the tables in Annex 1 of Schedule 3 (<i>Performance Levels</i>);
“Term”	the period commencing on the Effective Date and ending on the expiry of the Initial Term, or any Extension Period, Further Extension Period or on earlier termination of this Contract;
“Termination Assistance Notice”	has the meaning given in Paragraph 5 of Schedule 25 (<i>Exit Management</i>);

“Termination Assistance Period”	in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to Paragraph 5.2 of Schedule 25 (<i>Exit Management</i>);
“Termination Date”	the date set out in a Termination Notice on which this Contract (or a part of it as the case may be) is to terminate;
“Termination Notice”	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract (or any part thereof) on a specified date and setting out the grounds for termination;
“Termination Payment”	the payment determined in accordance with Schedule 16 (<i>Payments on Termination</i>);
“Termination Services”	the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 of Schedule 25 (<i>Exit Management</i>), and any other services required pursuant to the Termination Assistance Notice;
“Test Issues”	has the meaning given in Schedule 14 (<i>Testing Procedures</i>);
“Tests” and “Testing”	any tests required to be carried out under this Contract, as further described in Schedule 14 (<i>Testing Procedures</i>) and “Tested” shall be construed accordingly;
“Test Success Criteria”	has the meaning given in Schedule 14 (<i>Testing Procedures</i>);
“Third Party Auditor”	an independent third party auditor as appointed by RECCo from time to time to confirm the completeness and accuracy of information in accordance with the requirements outlined in Schedule 24 (<i>Reports and Records Provisions</i>);
“Third Party Beneficiary”	has the meaning given in Clause 41.1 (<i>Third Party Rights</i>);
“Third Party COTS IPRs”	Third Party IPRs that: <ul style="list-style-type: none"> (a) the supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and (b) has a Non-trivial Customer Base;

“Third Party COTS Software”	Third Party Software (including open source software) that: <ul style="list-style-type: none"> (a) the supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and (b) has a Non-trivial Customer base;
“Third Party IPRs”	Intellectual Property Rights owned by a third party, but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software and/or Third Party Data, which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services;
“Third Party Non-COTS IPRs”	Third Party IPRs that are not Third Party COTS IPRs;
“Third Party Non-COTS Software”	Third Party Software that is not Third Party COTS Software;
“Third Party Provisions”	has the meaning given in Clause 41.1 (<i>Third Party Rights</i>);
“Third Party Software”	software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 12 (<i>Software</i>);
“Third Party Data”	data which is proprietary to any third party (other than an Affiliate of the Supplier) which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the third party data specified as such in Schedule 12 (<i>Software and Data</i>);]
“Transferring Assets”	has the meaning given in Paragraph 6.2.1 of Schedule 25 (<i>Exit Management</i>);
“Transferring RECCo Employees”	has the meaning given in Schedule 28 (<i>Staff Transfer</i>);
“Transferring Former Supplier Employees”	has the meaning given in Schedule 28 (<i>Staff Transfer</i>);
“Transferring Supplier Employees”	has the meaning given in Schedule 28 (<i>Staff Transfer</i>);

“Transparency Information”	has the meaning given in Clause 20.1 (<i>Transparency</i>);
“UK”	the United Kingdom;
“UK GDPR”	has the meaning as set out in section 3(10) of the DPA 2018, supplemented by section 205(4) of the DPA 2018;
[“Unrecovered Payment”]	has the meaning given in Schedule 16 (<i>Payments on Termination</i>);
“Updates”	in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
“Update Requirement”	means the occurrence of an event detailed in Schedule 24 (<i>Reports and Records Provisions</i>) which requires the Supplier to update the relevant information;
“Upgrades”	means any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term;
“Valid”	in respect of an Assurance, has the meaning given to it in Paragraph 2.7 of Part B to Schedule 26 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“VAT”	value added tax as provided for in the Value Added Tax Act 1994;
“Working Day”	any day other than a Saturday, Sunday or public holiday in England and Wales.

Schedule 2: Services Description

1. Definitions

1.1 In this Schedule, the following definitions shall apply:

[insert definitions as required]

2. Introduction

2.1 **[Outline why RECCo has identified that it needs the Supplier to provide the Services.]**

2.2 This Schedule sets out the intended scope of the Services to be provided by the Supplier and to provide a description of what each Service entails.

3. Services Description

3.1 **Implementation Services** – **[Description of the services to be provided by the Supplier for the design, build, test, implementation and roll out of the Operational Services]**

3.2 **Operational Services** – **[Description of the business as usual services including Operational Hours]**

3.3 **Interface Requirements** - **[insert as required]**

3.3.1 technical interface and

3.3.2 management obligations/responsibilities]

3.4 **Security Requirements** **[insert as required]**

3.5 **Social Value Requirements** – **[Description of the additional social, environmental and economic benefits to be delivered in line with the [Public Services \(Social Value\) Act 2012](#), [PPN 06/20](#), and RECCo's policies and practices]**

3.6 **Other RECCo Requirements** – **[Description of any other requirements of the Authority e.g. wider sustainability requirements and other RECCo commitments]**

3.7 **Optional Services** - **[insert as required]**

Schedule 3

Performance Levels

Schedule 3: Performance Levels

1. Definitions

1.0 In this Schedule, the following definitions shall apply:

“Available”	has the meaning given in Paragraph 1.1 of Part B;
“End User”	any person authorised by RECCo to use the IT Environment and/or the Services;
“Help Desk”	the single point of contact help desk set up and operated by the Supplier for the purposes of this Contract;
“Non-Available”	in relation to the IT Environment or the Services, that the IT Environment or the Services are not Available;
“Performance Monitoring Report”	has the meaning given in Paragraph 1.1.1 of Part B;
“Service Management Group Meeting”	the regular meetings between the Supplier and RECCo to manage and review the Supplier’s performance under this Contract, as further described in Paragraph 4.1 of Schedule 21 ;
“Repeat KPI Failure”	has the meaning given in Paragraph 3.1 of Part A;
“Satisfaction Survey”	has the meaning given in Paragraph 4.1 of Part B;
“Service Availability”	has the meaning given in Paragraph 2 of Part B;
“Service Downtime”	any period of time during which any of the Services are not Available; and
“System Response Time”	has the meaning given in Paragraph 3.1 of Part B.

Part A: Performance Indicators and Service Credits

1. Performance Indicators

- 1.0 Annex 1 sets out the Key Performance Indicators (KPI) which the Parties have agreed shall be used to measure the performance of the Services by the Supplier.
- 1.1 The Supplier shall monitor its performance against each Performance Indicator and shall send RECCo a report detailing the level of service achieved in accordance with Part B.
- 1.2 Service Points, and therefore Service Credits, shall accrue for any KPI Failure and shall be calculated in accordance with Paragraphs 2, 3 and 5.
- 1.3 Annex 1 sets out the Performance Incentives (PI), as defined in Annex 1, which the Parties have agreed shall apply to performance better than the Target Performance Level for identified KPIs.

2. Service Points and Performance Incentive Points

- 2.1 If the level of performance of the Supplier during a Service Period achieves the Target Performance Level in respect of a Key Performance Indicator, no Service Points shall accrue to the Supplier in respect of that Key Performance Indicator.
- 2.2 If the level of performance of the Supplier during a Service Period is below the Target Performance Level in respect of a Key Performance Indicator, Service Points shall accrue to the Supplier in respect of that Key Performance Indicator as set out in Paragraph 2.3.
- 2.3 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure shall be the applicable number as set out in Annex 1 depending on whether the KPI Failure is a Minor KPI Failure, a Serious KPI Failure or a Severe KPI Failure, unless the KPI Failure is a Repeat KPI Failure when the provisions of Paragraph 3.2 shall apply.
- 2.4 If the level of performance of the Supplier during a Service Period exceeds the Target Performance Level in respect of selected Key Performance Indicators, Performance Incentive Points shall accrue to the Supplier in respect of that Key Performance Indicator.
- 2.5 The number of Performance Incentive Points that shall accrue to the Supplier in respect of better than the Target Performance Level for the selected KPIs shall be the applicable number as set out in Annex 1 Part A for Quantitative Key Performance Targets and Annex 1 Part B for Satisfaction Survey Key Performance Indicators.
- 2.6 For the avoidance of doubt, any Performance Incentive Points in any Service Period cannot be set off or netted off against any Service Points for the Service Period. Both must be reported separately and identified separately on each applicable invoice.

3. Repeat KPI Failures and Related KPI Failures

Repeat KPI Failures

- 3.1 If a KPI Failure occurs in respect of the same Key Performance Indicator in any two consecutive Measurement Periods, the second and any subsequent such KPI Failure shall be a **“Repeat KPI Failure”**.

- 3.2 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure that is a Repeat KPI Failure shall be calculated as follows:

$$SP = P \times 2$$

where:

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

P = the applicable number of Service Points for that KPI Failure as set out in Annex 1 depending on whether the Repeat KPI Failure is a Minor KPI Failure, a Serious KPI Failure, a Severe KPI Failure or a failure to meet the KPI Service Threshold.

Worked example based on the following Service Points regime for Service Availability:

Service Availability Severity Levels	Level	Service Points
Target Performance Level:	99.90% - 100%	0
Minor KPI Failure:	99.50% - 99.89%	1
Serious KPI Failure:	98.00% - 99.49%	2
Severe KPI Failure:	95.00% - 97.99%	3
KPI Service Threshold:	below 95.00%	4

Example 1:

If the Supplier achieves Service Availability of 99.50% in a given Measurement Period, it will incur a Minor KPI Failure for Service Availability in that Measurement Period and accordingly accrue 1 Service Point. If, in the next Measurement Period, it achieves Service Availability of 96.50%, it will incur a Severe KPI Failure and accordingly accrue 3 Service Points, but as the failure is a Repeat Failure, this amount is doubled and so the Supplier will incur 6 Service Points for the failure (i.e. $SP = 3 \times 2$). If in the next Measurement Period it achieves Service Availability of 96.50%, the Supplier will again incur 6 Service Points. In both cases as the Service Points will incur the maximum Service Credits.

Example 2:

If the Supplier achieves Service Availability of 96.50% in a given Measurement Period, it will incur a Severe KPI Failure for Service Availability in that Measurement Period and accordingly accrue 3 Service Points. If, in the next Measurement Period, it achieves Service Availability of 99.50%, it will incur a Minor KPI Failure and accordingly accrue 1 Service Point, but as the failure is a Repeat Failure, this amount is doubled and so the Supplier will incur 2 Service Points for the failure (i.e. $SP = 1 \times 2$). If in the next Measurement Period it achieves Service Availability of 96.50%, the Supplier will incur 6 Service Points.

- 3.3 Where the calculation of Service Points using the multiplier in Paragraph 3.2 does not produce a whole number, the Service Credits allocated to the Service Points shall take into account the fractional number and shall be apportioned accordingly as set out in Schedule 15.
- 3.4 The multiplier in this Paragraph 3 shall not apply to the Satisfaction Survey Qualitative

Targets KPIs.

Related KPI Failures

- 3.5 If any specific Key Performance Indicators refer to other Key Performance Indicators, the Supplier shall not incur any Service Points for failure to meet that Key Performance Indicator in circumstances where such failure is a result of, and the Supplier has already incurred Service Points for, other Key Performance Indicators.

4. Service Credits and Performance Incentive Bonuses

- 4.1 Schedule 15 (*Charges and Invoicing*) sets out the mechanism by which Service Points shall be converted into Service Credits and by which Performance Incentive Points shall be converted into Performance Incentive Bonuses.
- 4.2 RECCo shall use the Performance Monitoring Reports provided pursuant to Part B, among other things including but not limited to Audits carried out by RECCo or its Audit Agents, to verify the calculation and accuracy of the Service Credits (if any) and Performance Incentive Bonuses (if any) applicable to each Service Period.

5. Third Party Cause

- 5.1 Without prejudice to Clause 29 of the Agreement (RECCo Cause and Other Supplier Cause), the Supplier shall not be treated as failing to meet Key Performance Indicators to the extent that the Supplier can demonstrate that it was prevented from meeting such Key Performance Indicators due to the acts or omissions of third parties (excluding Supplier Affiliates, Supplier Personnel, their agents and sub-contractors) where such acts/omissions could not have been reasonably mitigated through the use of reasonable measures.

Part B: Performance Monitoring

1. Performance Monitoring and Performance Review

- 1.0 Within 10 Working Days of the end of each Service Period, the Supplier shall provide a report to RECCo which summarises the performance by the Supplier against each of the Performance Indicators as more particularly described in Paragraph 1.2 (the “**Performance Monitoring Report**”); and

Performance Monitoring Report

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

Information in respect of the Service Period just ended

- 1.1.1 for each Key Performance Indicator, the actual performance achieved over the Service Period, and that achieved over the previous 3 Measurement Periods;
- 1.1.2 a summary of all Performance Failures that occurred during the Service Period;
- 1.1.3 the severity level of each KPI Failure which occurred during the Service Period;
- 1.1.4 which Performance Failures remain outstanding and progress in resolving them;
- 1.1.5 for any Material KPI Failures occurring during the Service Period, the cause of the relevant KPI Failure and the action being taken to reduce the likelihood of recurrence;
- 1.1.6 the status of any outstanding Rectification Plan processes, including:
 - (a) whether or not a Rectification Plan has been agreed; and
 - (b) where a Rectification Plan has been agreed, a summary of the Supplier’s progress in implementing that Rectification Plan;
- 1.1.7 for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;
- 1.1.8 the number of Service Points awarded in respect of each KPI Failure;
- 1.1.9 the Service Credits to be applied, indicating the KPI Failure(s) to which the Service Credits relate;
- 1.1.10 the number of Performance Incentive Points claimed for each relevant KPI;
- 1.1.11 the Performance Incentive Bonuses to be applied, indicating the KPI to which they relate;
- 1.1.12 the conduct and performance of any agreed periodic tests that have occurred, such as the annual failover test of the Service Continuity Plan;
- 1.1.13 relevant particulars of any aspects of the Supplier’s performance which fail to

meet the requirements of this Contract;

- 1.1.14 such other details as RECCo may reasonably require from time to time; and

Information in respect of previous Service Periods

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

Information in respect of the next Quarter

- 1.1.18 any scheduled Service Downtime for Permitted Maintenance and Updates that has been agreed between RECCo and the Supplier for the next Quarter.

Performance Monitoring Report

- 1.2 The Performance Monitoring Report shall be reviewed and their contents agreed by the Parties at the next Service Management Group Meeting held in accordance with Schedule 21.
- 1.3 The Parties shall attend meetings monthly (unless otherwise agreed) to review the Performance Monitoring Reports. The Service Management Group shall meet in accordance with Paragraph 4.1 and Annex 1 of Schedule 21.
- 1.4 RECCo shall be entitled to raise any additional questions and/or request any further information from the Supplier regarding any KPI Failure.

2. Performance Records

- 2.0 The Supplier shall keep appropriate documents and records in relation to the Services being delivered. Without prejudice to the generality of the foregoing, the Supplier shall maintain accurate records for a minimum of the current and previous Contract Years and provide prompt access to such records to RECCo upon RECCo's request. The records and documents of the Supplier shall be available for inspection by RECCo and/or its Audit Agents in accordance with Schedule 19 (Financial Reports and Audit Rights) and RECCo and/or its Audit Agents may make copies of any such records and documents.
- 2.1 In addition to the requirement in Paragraph 2.1 to maintain appropriate documents and records, the Supplier shall provide to RECCo such supporting documentation as RECCo may reasonably require in order to verify the level of the performance of the Supplier both before and after each Operational Service Commencement Date and the calculations of the amount of Service Credits for any specified period.
- 2.2 The Supplier shall ensure that the Performance Monitoring Report, (as well as historic Performance Monitoring Reports) and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by RECCo are available to RECCo on-line and

are capable of being printed.

3. Performance Verification

- 3.0 RECCo reserves the right to verify the performance of the Services and the Supplier's performance under this Contract against the KPI Performance Indicators by itself or through use of the Audit Agents. RECCo reserves the right to verify the availability of the IT Environment including by sending test transactions through the IT Environment or otherwise.

4. SATISFACTION SURVEYS

- 4.1 To assess the level of performance of the Supplier, RECCo shall undertake annual satisfaction surveys in respect of End Users or various groups of REC stakeholders (each such survey a "**Satisfaction Survey**"), the results of which may be reflected in calculation of Service Credits. The Service Period for the Satisfaction Survey is 12 months. The subject matter of Satisfaction Surveys may include:
- a. the assessment of the Supplier's performance by the End Users and other RECCo stakeholders against the agreed Key Performance Indicators, REC processes, that insights are captured via accurate and regular reporting, innovation and continuous improvements are delivered and any user awareness/training ensures that End Users are equipped to use the Services effectively and productively and they fully understand changes following releases of improvements to portal and quality of service; and/or
 - b. other suggestions for improvements to the Services.
- 4.2 RECCo will provide the Supplier with its proposed survey questions for the Satisfaction Survey at least [30] working days prior to commencement of the Satisfaction Survey.
- 4.3 RECCo will endeavour to ensure that all survey questions are expressed in a manner that is fair, balanced, impartial and which does not lead a respondent to a particular response.
- 4.4 RECCo will consult with the Supplier in relation to the proposed survey questions and will take into account the Supplier's responses having regard to Paragraph 4.3 provided that where RECCo disagrees with the Supplier in relation to the proposed survey questions and in absence of manifest error or unreasonableness by RECCo, RECCo's decision in relation to the proposed survey questions shall be final.
- 4.5 RECCo will provide the Supplier with the final survey questions for the Satisfaction Survey at least [5] working days prior to commencement of the Satisfaction Survey.
- 4.6 The Satisfaction Survey will be published by RECCo no later than the end of the first quarter of each Contract Year with the first Satisfaction Survey being published in the first quarter following the first anniversary of the Services Start Date.
- 4.7 RECCo will have full discretion to survey all or a sample of End Users and/or REC stakeholders including but not limited to, REC Parties, RECCo Board and management, other RECCO Suppliers and Ofgem.

- 4.8 RECCo shall reflect in the Service Credits any aspects of the Supplier's performance of the Services which the responses to the Satisfaction Surveys reasonably suggest are not meeting the Services Description as set out in Annex 1.
- 4.9 For the avoidance of doubt, there is no expectation that the Supplier independently carries out its own customer satisfaction surveys in relation to the services it delivers to RECCo. If the Supplier does carry out such surveys, RECCo will not be obliged consider the outputs in relation to its evaluation of the Supplier performance.

Annex 1: Key Performance Indicators

Part A: Quantitative Key Performance Indicators Table

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

1. Quantitative Key Performance Indicators

No.	Key Performance Indicator Title	Definition	Frequency of Measurement (Service Period)	Severity Levels	Service Points	Performance Incentive Points
KPI1	Service Availability	See Paragraph 1 of Part B of this Annex	Quarterly	Target Performance Level: >99.90% Minor KPI Failure: 99.50% - 99.90% Serious KPI Failure: 98.00% - 99.49% Severe KPI Failure: 95.00% - 97.99% KPI Service Threshold: Below 95%	0 1 2 3 4	No
KPI2	APDEX Scoring	See Paragraph 3 of Part B of this Annex	Monthly	Target Performance Level: Top 20% of pages accessed = >0.8 80% least used pages = >0.5 Minor KPI Failure: See Paragraph 2. Serious KPI Failure: See Paragraph 2. Severe KPI Failure: See Paragraph 2. KPI Service Threshold: See Paragraph 2	0 1 2 3 4	Yes, see section 3 below
KPI3	Severity 1 Service Incident Resolution	See Paragraph 4 of Part B of this Annex	Monthly	Target Performance Level: - 95% of Severity 1 Incidents resolved in 4 Hours; and - 100% of Severity 1 Incidents resolved in 1WD Minor KPI Failure: - 100% of Severity 1 Incidents resolved in 2 Working Days Serious KPI Failure: - 100% of Severity 1 Incidents resolved in 3 Working Days Severe KPI Failure: - 100% of Severity 1 Incidents resolved in 5 Working Days	0 1 2 3	No

No.	Key Performance Indicator Title	Definition	Frequency of Measurement (Service Period)	Severity Levels	Service Points	Performance Incentive Points
		Schedule 22 Change Control Procedure.				
KPI11	Problem Management – Priority 1	Resolution of Problems arising from Priority 1 Service Incidents or otherwise categorised as a Priority 1 Problem	Monthly	<p>Target Performance Level: Root Cause Investigation complete within 5 Working Days</p> <p>Problem Management Report with remediation plan (including fix) complete within 10 Working Days of Root Cause Investigation Complete</p> <p>Minor KPI Failure: Root Cause Investigation complete in > 5 Working Days</p> <p>Problem Management Report with remediation plan (including fix) complete in > 10 Working Days of Root Cause Investigation Complete</p>	<p>0</p> <p>1</p>	No
KPI12	Problem Management – all other priorities	Resolution of Problems not categorised as Priority 1 Problems.	Monthly	<p>Target Performance Level: Root Cause Investigation complete within 30 Working Days</p> <p>Problem Management Report with remediation plan (including fix) complete in > 30 Working Days of Root Cause Investigation Complete</p> <p>Minor KPI Failure: Root Cause Investigation complete within 30 Working Days</p> <p>Problem Management Report with remediation plan (including fix) complete in > 30 Working Days of Root Cause Investigation Complete</p>	<p>0</p> <p>1</p>	No
KPI13	Customer Satisfaction (CSAT) score	See Paragraph 5 of Part B of this Annex	Monthly	<p>Target Performance Level: >=75.00%</p> <p>Minor KPI Failure: 70.00% - 74.99%</p> <p>Serious KPI Failure: 60.00% - 69.99%</p> <p>Severe KPI Failure: 50.00% - 59.99%</p> <p>KPI Service Threshold: below 50%</p>	<p>0</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p>	Yes, see section 3 below

2. APDEX Scoring Severity Levels

The Severity Levels that shall apply to the APDEX Scoring Key Performance Indicator shall be determined based on a combination of measures, which are:

		APDEX score for top 20% of pages accessed				
		>= 0.80	0.79-0.70	0.69-0.60	0.59-0.50	< 0.5
APDEX score for 80% least used pages	>= 0.50	Target Performance Level	Minor KPI Failure	Serious KPI Failure	Severe KPI Failure	Service Threshold
	0.49-0.40	Minor KPI Failure	Serious KPI Failure	Severe KPI Failure	Severe KPI Failure	Service Threshold
	0.39-0.30	Serious KPI Failure	Severe KPI Failure	Severe KPI Failure	Service Threshold	Service Threshold
	0.29-0.20	Severe KPI Failure	Severe KPI Failure	Service Threshold	Service Threshold	Service Threshold
	< 0.20	Service Threshold	Service Threshold	Service Threshold	Service Threshold	Service Threshold

Table 1 – Severity Levels for APDEX score KPI Failures

Severity Levels	Service Points
Target Performance Level	0
Minor KPI Failure	1
Serious KPI Failure	2
Severe KPI Failure	3
Service Threshold	4

3. PERFORMANCE INCENTIVE POINTS FOR QUANTITATIVE KPIs

Performance Incentive Points will be capped at four (4) points in any Service Period across all qualifying Key Performance Indicators.

Qualifying Key Performance Indicators are KPI2 APDEX Scoring and KPI13: Customer Satisfaction (CSAT). Performance Incentive Points only apply for performance more than the Target Performance Level.

3.1 KPI2 APDEX Scoring: Performance Incentive Points

		APDEX score for top 20% of pages accessed			
		0.8001-0.8499	0.8500-0.8999	0.9000-0.9499	>=0.9500
APDEX score for 80% least used pages	0.5000-0.5999	1	2	3	4
	0.6000-0.6999	2	3	3	4
	0.7000-0.7999	3	3	4	4
	>=0.8000	4	4	4	4

3.2 KPI13 Customer Satisfaction (CSAT): Performance Incentive Points

Performance Level	Performance Incentive Points
75.01-79.99%	1
80.00% - 84.99%	2
85.00%-89.99%	3
>90.00%	4

Part B: Satisfaction Survey Key Performance Indicators Table

4. Annual Stakeholder Satisfaction Survey – Qualitative Targets [Note: the following are indicative of the areas which will be included in the survey. The areas to be surveyed will be finalised prior to the first Satisfaction Survey and will not exceed 10 areas of survey].

1. [Overall satisfaction score
2. Whether the service has improved over last 12 months
3. User Experience
4. Stakeholder Engagement
5. Quality of training
6. Quality of communication
7. Maintenance of communication methods
8. Flexibility
9. Innovation]

Performance Level	Level	Service Points
Target Performance Level	$\geq 7.50/10$ average score across aggregate of all questions	0
Minor KPI Failure	7.00-7.49/10 average score across aggregate of all questions	1
Serious KPI Failure	6.50-6.99/10 average score across aggregate of all questions	2
Severe KPI Failure	6.00-6.49/10 average score across aggregate of all questions	3
KPI Service Threshold	$\leq 6.00/10$ average score across aggregate of all questions	4

5. PERFORMANCE INCENTIVE POINTS FOR ANNUAL SATISFACTION SURVEY

Performance Incentive Points for the Satisfaction Survey Key Performance Indicators will be capped at four (4) points in any Service Period.

Performance Level	Performance Incentive Points
75.01-79.99%	1
80.00% - 84.99%	2
85.00%-89.99%	3
>90.00%	4

Part B: Definitions

1. Available

1.0 The IT Environment and/or the Services shall be Available when:

- 1.0.1 End Users are able to access and utilise all the functions of the Supplier System and/or the Services; and
- 1.0.2 the Supplier System is able to process RECCo Data and to provide any required reports within the timescales set out in the Services Description (as measured on a 24 x 7 basis); and

2. Service Availability

2.1 Service Availability shall be measured as a percentage of the total time in a Service Period, in accordance with the following formula:

$$\text{Service Availability \%} = \frac{(MP - SD) \times 100}{MP}$$

where:

MP = total number of minutes within the relevant Service Period; and

SD = total number of minutes of Service Downtime, including Permitted Maintenance, in the relevant Service Period.

2.2 When calculating Service Availability in accordance with this Paragraph 2:

2.2.1 Service Downtime arising due to Permitted Maintenance that is carried out by the Supplier in accordance with Clause 9.4 (*Maintenance*) shall be subtracted from the total number of minutes in the relevant Service Period; and

2.2.2 Service Points shall accrue if:

- (a) any Service Downtime occurs as a result of Emergency Maintenance undertaken by the Supplier; or
- (b) where Planned Maintenance undertaken by the Supplier exceeds the allowed time in any Service Period.

3. APDEX Scoring

3.1 The Application Performance Index (APDEX) shall be used as the method to measure and assess system response times for the purposes of performance evaluation and a Key Performance Indicator.

3.2 The APDEX score is a standard metric that measures user satisfaction with the response time of applications. It is calculated based on three categories of response times: satisfied, tolerating, and frustrated, according to the following thresholds:

- 3.2.1 Satisfied (T): Responses that are less than or equal to a specified target time (T)
- 3.2.2 Tolerating (4T): Responses that are greater than the target time (T) but less than or equal to four times the target time (4T).
- 3.2.3 Frustrated: Responses that are greater than four times the target time (4T).

T is 1 second.

- 3.2.4 An APDEX Score is calculated using the formula:

$$\text{APDEX} = \frac{(\text{SatisfiedCount}) + (0.5 \times \text{ToleratingCount})}{\text{Total Samples}}$$

- 3.3 The following procedures will be adhered to for data collection and analysis:

- 3.3.1 Data Collection: System response times will be continuously monitored. The collected data will include timestamps for request initiation and completion.
- 3.3.2 Analysis Period: The APDEX score will be calculated on a daily basis.
- 3.3.3 Reporting: A summary report of the APDEX scores will be provided to the RECCo on a monthly basis. This report will include detailed breakdowns of satisfied, tolerating, and frustrated response times.

KPI compliance will be assessed based on the average APDEX score over each analysis period, during the relevant Service Period.

4. Incident Resolution Times

- 4.1 The “**Resolution Time**” of a Service Incident is the period from the time that the Service Incident has been reported to the Supplier to the point of its Resolution and “**Resolution**” means in relation to a Service Incident either:
 - 4.1.1 the root cause of the Service Incident has been removed and the Services are being provided in accordance with the Services Description and Target Performance Levels; or
 - 4.1.2 RECCo has been provided with a workaround in relation to the Service Incident deemed acceptable by RECCo.
- 4.2 Resolution Times for Severity 3 Service Incidents and Severity 4 Service Incidents shall be measured in Operational Hours.
- 4.3 Resolution Times for Severity 1 Service Incidents and Severity 2 Service Incidents shall be measured 24x7.
- 4.4 The Supplier shall measure Resolution Times as part of its service management responsibilities and report periodically to RECCo on Resolution Times as part of the Performance Monitoring Report.

4.5 For the purposes of this Paragraph 4, the following expressions shall have the meanings set opposite them below:

“Operational Hours” In relation to any Service, the hours for which that Service is to be operational as set out in Schedule 2 (*Services Description*);

“Service Incident” a reported occurrence of a failure to deliver any part of the Services in accordance with RECCo Requirements or the Performance Indicators;

“Severity 1 Service Incident” a Service Incident which, in the reasonable opinion of RECCo:

- (a) constitutes a loss of the Service which prevents a large group of End Users from working;
- (a) has a critical impact on the activities of RECCo;
- (b) causes significant financial loss and/or disruption to RECCo; or
- (c) results in any material loss or corruption of RECCo Data;

Non-exhaustive examples:

- (a) a loss of power to a data centre causing failure of Services; or
- (b) a failure of the Services to provide user authentication service;

“Severity 2 Service Incident” a Service Incident which, in the reasonable opinion of RECCo has the potential to:

- (c) have a major (but not critical) adverse impact on the activities of RECCo and no workaround acceptable to RECCo is available;
- (d) have a major (but not critical) adverse impact on the activities of RECCo and no workaround acceptable to RECCo is available; or
- (e) cause a financial loss and/or disruption to RECCo which is more than trivial but less severe than the significant financial loss described in the definition of a Severity 1 Service Failure;

Non-exhaustive examples:

- (a) corruption of organisational database tables; or
- (b) loss of ability to update RECCo Data.

“Severity 3 Service Incident”

- a Service Incident which, in the reasonable opinion of RECCo has the potential to:
- (c) have a major adverse impact on the activities of RECCo which can be reduced to a moderate adverse impact due to the availability of a workaround acceptable to RECCo; or
 - (d) have a moderate adverse impact on the activities of RECCo;

Non-exhaustive example:

- (a) inability to access data for a class of customers;

“Severity 4 Service Incident”

- a Service Incident which, in the reasonable opinion of RECCo has the potential to have a minor adverse impact on the provision of the Services to End Users;

Non-exhaustive example:

- (a) inability to access data for a single customer; and
- (b)

5. Customer Satisfaction (CSAT)

- 5.1 Customer Satisfaction (CSAT) is defined as a metric that measures the level of satisfaction expressed of the Services by End Users. It is typically captured through user feedback mechanisms, such as surveys, ratings, or feedback forms, focusing on specific aspects of the Services performance and user experience.
- 5.2 The Supplier shall implement a mechanism, agreed by RECCo, designed to capture feedback on key areas such as content relevance, loading speed, site navigation and overall satisfaction.
- 5.3 The Supplier shall provide a monthly report to RECCo detailing the overall satisfaction score, response rate, key trends, and any identified areas for improvement. The report shall also include comparative analysis with previous months to track progress over time.

Schedule 4

Standards

Schedule 4: Standards

1. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Standards Hub”	the Government’s open and transparent standards adoption process as documented at http://standards.data.gov.uk/ ; and
“Suggested Challenge”	a submission to suggest the adoption of new or emergent standards in the format specified on Standards Hub.

2. General

- 2.1 Throughout the term of this Contract, the Parties shall monitor and notify each other of any new or emergent standards which could affect the Supplier’s provision, or RECCo’s receipt, of the Services. Any changes to the Standards, including the adoption of any such new or emergent standard, shall be agreed in accordance with the Change Control Procedure.
- 2.2 Where a new or emergent standard is to be developed or introduced by RECCo, the Supplier shall be responsible for ensuring that the potential impact on the Supplier’s provision, or RECCo’s receipt, of the Services is explained to RECCo (in a reasonable timeframe), prior to the implementation of the new or emergent standard.
- 2.3 Where Standards referenced conflict with each other or with Good Industry Practice, then options should be recommended to RECCo by the Supplier and RECCo will decide the best way to proceed. Any such alteration to any Standard(s) shall require the prior written agreement of RECCo and shall be implemented within an agreed timescale.

3. Technology and Digital Services Principles

- 3.1 The Supplier shall (when designing, implementing and delivering the Services) adopt the principles defined in the latest RECCo’s Data & Digitalisation (D&D) Strategy as published on the RECCo website from time to time with the goal of delivering the D&D strategic vision.

4. Open Data Standards & Standards Hub

- 4.1 The Supplier shall comply to the extent within its control with Ofgem’s Data Best Practices as documented at: https://www.ofgem.gov.uk/sites/default/files/2021-11/Data_Best_Practice_Guidance_v1.pdf
- 4.2 The Supplier shall, for all solutions, comply with the latest version of RECCo’s API Management and Reliability Policies as provided to the Supplier from time to time. Where there is a requirement under these policies which the Supplier can demonstrate should not apply to the Services an exception should be documented and raised to RECCo without reasonable delay for RECCo to decide.
- 4.3 The Supplier shall comply to the extent within its control with UK Government’s Open

Standards Principles as documented at <https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles>, as they relate to the specification of standards for software interoperability, data and document formats in the IT Environment.

- 4.4 Without prejudice to the generality of Paragraph 2.2, the Supplier shall, when implementing or updating a technical component or part of the Software or Supplier Solution where there is a requirement under this Contract or opportunity to use a new or emergent standard, submit a Suggested Challenge to RECCo.
- 4.5 The Supplier shall ensure that all documentation published on behalf of RECCo pursuant to this Contract is provided in a non-proprietary format (such as PDF or Open Document Format (ISO 26300 or equivalent)) as well as any native file format documentation in accordance with the obligation under Paragraph 4.1 to comply with the UK Government's Open Standards Principles, unless RECCo otherwise agrees in writing.

5. Technology Architecture Standards

- 5.1 The Supplier shall produce full and detailed technical architecture documentation for the Supplier Solution in accordance with the latest RECCo's D&D Strategy and Architecture Principles as provided by RECCo to the Supplier from time to time.

6. Accessible Digital Standards

- 6.1 The Supplier shall comply with (or with equivalents to):
 - 6.1.1 the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.2 Conformance Level AA; and
 - 6.1.2 ISO/IEC 13066-1: 2011 Information Technology – Interoperability with assistive technology (AT) – Part 1: Requirements and recommendations for interoperability.

7. Service Management Software & Standards

- 7.1 Subject to Paragraphs 2 to 4 (inclusive), and unless otherwise agreed with RECCo, the Supplier shall reference relevant industry and HM Government standards and best practice guidelines in the management of the Services, including the following and/or their equivalents:
 - 7.1.1 ITIL v4;
 - 7.1.2 ISO/IEC 20000-1 2018 "Information technology — Service management – Part 1";
 - 7.1.3 ISO/IEC 20000-2 2019 "Information technology — Service management – Part 2";
 - 7.1.4 ISO 10007: 2017 "Quality management systems – Guidelines for configuration management"; and
 - 7.1.5 ISO 22313:2020 "Security and resilience. Business continuity management

systems. Guidance on the use of ISO 22301” and, ISO/IEC 27031:2011 and ISO 22301:2019.

- 7.2 For the purposes of management of the Services and delivery performance the Supplier shall make use of Software that complies with Good Industry Practice including availability, change, incident, knowledge, problem, release & deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio management.

8. Sustainability

- 8.1 The Supplier shall comply with the sustainability requirements set out in Annex 1 to this Schedule 4.

9. Hardware Safety Standards

- 9.1 The Supplier shall comply with those BS or other standards relevant to the provision of the Services, including the following or their equivalents:
- 9.1.1 any new hardware required for the delivery of the Services (including printers), shall conform to BS EN IEC 62368-1:2020+A11:2020 or subsequent replacements. In considering where to site any such hardware, the Supplier shall consider the future working user environment and shall position the hardware sympathetically, wherever possible;
 - 9.1.2 any new audio, video and similar electronic apparatus required for the delivery of the Services, shall conform to the following standard: BS EN IEC 62368-1:2020+A11:2020 or any subsequent replacements;
 - 9.1.3 any new laser printers or scanners using lasers, required for the delivery of the Services, shall conform to either of the following safety Standards: BS EN 60825-1:2014 or any subsequent replacements; and
 - 9.1.4 any new apparatus for connection to any telecommunication network, and required for the delivery of the Services, shall conform to the following safety Standard: BS EN 62949:2017 or any subsequent replacements.
- 9.2 Where required to do so as part of the Services, the Supplier shall perform electrical safety checks in relation to all equipment supplied under this Contract in accordance with the relevant health and safety regulations.

Annex 1: Sustainability

1. Definitions

1.1 In this Annex 1, the following definitions shall apply:

- “Sustainability Reports”** written reports to be completed by the Supplier containing the information outlined in Table A of this Annex 1; and
- “Waste Hierarchy”** means prioritisation of waste management in the following order of preference as set out in the Waste (England and Wales) Regulation 2011:
- (a) Prevention;
 - (b) Preparing for re-use;
 - (c) Recycling;
 - (d) Other Recovery; and
 - (e) Disposal.

2. NOT USED

3. Environmental Requirements

- 3.1 The Supplier must perform its obligations meeting in all material respects the requirements of all applicable Laws and this Contract regarding the environment.
- 3.2 The Supplier warrants that it has obtained relevant Environment Management System (EMS) certified to ISO 14001 or an equivalent certification from a UKAS accredited body and shall comply with and maintain certification requirements throughout the Term.
- 3.3 In performing its obligations under the Contract the Supplier shall, where applicable to the Contract, to the reasonable satisfaction of RECCo:
- 3.3.1 demonstrate low carbon resource efficiency, including minimising the use of resources and responding promptly to the RECCo’s reasonable questions;
 - 3.3.2 prioritise waste management in accordance with the Waste Hierarchy as set out in Law;
 - 3.3.3 reduce and minimise carbon emissions by taking into account factors including, but not limited to, the locations from which materials are sourced, the transport of materials, the locations from which the work force are recruited and emissions from offices and on-site equipment.

- 3.4 In performing its obligations under the Contract, the Supplier shall to the reasonable satisfaction of RECCo publish and maintain a credible Carbon Reduction Plan in accordance with PPN 06/21.
- 3.5 The Supplier must have a documented management system and controls in place to manage the environmental impacts of delivering the Services.
- 3.6 The Supplier shall ensure that any Services are designed, sourced and delivered in a manner which is environmentally and socially responsible.
- 3.7 In performing its obligations under the Contract, the Supplier shall to the reasonable satisfaction of RECCo:
 - 3.7.1 demonstrate that the whole life cycle impacts (including end of use) associated with the Services that extend beyond direct operations into that of the supply chain have been considered and reduced;
 - 3.7.2 minimise the consumption of resources and use them efficiently (including water and energy), working towards a circular economy including designing out waste and non-renewable resources, using re-use and closed loop systems;
 - 3.7.3 demonstrate protection of the environment including understanding and reduction of biosecurity risks (which include risks to plant and tree health from harmful pests and diseases), and reducing and eliminating hazardous/harmful substances to the environment and preventing pollution; and
 - 3.7.4 achieve continuous improvement in environmental performance particularly sustainability and reducing the intensity of net-zero carbon emissions.

4. Supplier Code of Conduct

- 4.1 In February 2019, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government which can be found online at:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1163536/Supplier_Code_of_Conduct_v3.pdf
- 4.2 RECCo expects the Supplier and its Key-Subcontractors to meet the standards set out in that Code.

5. Reporting Requirements

- 5.1 The Supplier shall comply with reasonable requests by RECCo for information evidencing compliance:
 - 5.1.1 with Paragraphs 2.1, 3.1 to 3.6, 3.13 and 4 of this Annex 1 within [fourteen (14)] days of such request; and
 - 5.1.2 With Paragraphs 2.2, 2.3 and 3.7 to 3.12 of this Annex 1 within [thirty (30) days] of such request; and

provided that such requests are limited to [two] per Contract Year.]

- 5.2 The Supplier shall complete the Sustainability Report in relation to its provision of the Services under this Contract and provide the Sustainability Report to RECCo on the date and frequency outlined in Table A of this Annex 1.

Table A – Sustainability Reports

Sustainability Report Name	Content of Report	Frequency of Report
Sustainability - General	as proportionate and relevant to the Contract, the key sustainability impacts identified; the sustainability improvements planned or delivered; and the risks to the Services of climate change, including mitigation, adaptation and continuity plans employed by the Supplier in response to those risks.	Within 6 months of the Services Commencement Date and then on each anniversary of such date
Greenhouse Gas Emissions	<p>Detail the Scope 1, Scope 2, and Scope 3 GHG emissions associated with the delivery of the contract.</p> <p>Emissions reporting should be in accordance with established best practice and internationally accepted standards.</p> <p>Greenhouse gas reporting from emissions sources (Scope 1, Scope 2 and Scope 3), and specific activities as requested by RECCo. This may include activities such as transportation, energy use and waste disposal.</p>	Within 6 months of the Services Commencement Date and then on each anniversary of such date

Schedule 5

Security Management

1. Definitions

1.1 In this Schedule:

“Anti-Malicious Software”	means software that scans for and identifies possible Malicious Software in the IT Environment;
“Breach of Security”	<p>an event that results, or could result, in:</p> <p>(a) any unauthorised access to or use of RECCo Data, the Services and/or the Information Management System; and/or</p> <p>(b) the loss, corruption and/or unauthorised disclosure of any information or data (including the Confidential Information and RECCo Data), including any copies of such information or data, used by RECCo and/or the Supplier in connection with this Contract;</p>
“Certification Requirements”	means the information security requirements set out in Paragraph 6;
“CHECK Service Provider”	means a company which has been certified by the National Cyber Security Centre, holds “Green Light” status and is authorised to provide the IT Health Check services required by Paragraph 7.1;
“CREST Service Provider”	means a company with a SOC Accreditation from CREST International;
“Cyber Essentials”	means the Cyber Essentials certificate issued under the Cyber Essentials Scheme;
“Cyber Essentials Plus”	means the Cyber Essentials Plus certificate issued under the Cyber Essentials Scheme;
“Cyber Essentials Scheme”	means the Cyber Essentials scheme operated by the National Cyber Security Centre;
“Incident Management Process”	means the process which the Supplier shall implement immediately after it becomes aware of a Breach of Security which is intended to restore normal operations as quickly as possible, minimising any adverse impact on RECCo Data, RECCo, the Services and/or users of the Services and which shall be prepared by the Supplier in accordance with Paragraph 4 using the template set out in Annex 3;

“Information Assurance Assessment”	means the set of policies, procedures, systems and processes (including without limitation an API and services inventory) which the Supplier shall implement, maintain and update in accordance with Paragraph 4 in order to manage, mitigate and, where possible, avoid information security risks including cyber-attacks, hacks, data leaks, Data Loss Events and/or theft and which shall be prepared by the Supplier using the template set out in Annex 3;
“Information Management System”	means <ul style="list-style-type: none"> (a) those parts of the Supplier System, and those of the Sites, that the Supplier or its Sub-contractors will use to provide the parts of the Services that require Processing RECCo Data; and (b) the associated information assets and systems (including organisational structure, controls, policies, practices, procedures, processes and resources);
“Information Security Approval Statement”	means a notice issued by RECCo which sets out the information risks which the Supplier has identified as being associated with using the Information Management System and confirms that: <ul style="list-style-type: none"> (a) RECCo is satisfied that the identified risks have been adequately and appropriately addressed; (b) RECCo has accepted the residual risks; and (c) the Supplier may use the Information Management System to Process RECCo Data;
“IT Health Check”	has the meaning given in Paragraph 7.1.1;
“Process”	means any operation which is performed on data, whether or not by automated means, including collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
“Remediation Action Plan”	has the meaning given in Paragraph 7.3.3(a);
“Required Changes Register”	mean the register within the Security Management Plan which is to be maintained and updated by the Supplier and which shall record each of the changes that the Supplier shall make to the Information Management System and/or the Security Management Plan as a consequence of the occurrence of any of the events set out in Paragraph 5.2 together with the date

by which such change shall be implemented and the date on which such change was implemented;

“Risk Register”

is the risk register within the Information Assurance Assessment which is to be prepared and submitted to RECCo for approval in accordance with Paragraph 4;

“Security Management Plan”

means the document prepared by the Supplier using the template in Annex 3, comprising:

- (a) the Information Assurance Assessment;
- (b) the Required Changes Register; and
- (c) the Incident Management Process;

“Special Category Personal Data”

means the categories of Personal Data set out in article 9(1) and article 10 of the UK GDPR;

2. Introduction

2.1 This Schedule sets out:

- 2.1.1 the arrangements the Supplier must implement before, and comply with when, providing the Services and performing its other obligations under this Contract to ensure the security of RECCo Data and the Information Management System;
- 2.1.2 the Certification Requirements applicable to the Supplier and each of those Sub-contractors which Processes RECCo Data;
- 2.1.3 the security requirements in Annex 1, with which the Supplier must comply;
- 2.1.4 the tests which the Supplier shall conduct on the Information Management System during the Term; and
- 2.1.5 the Supplier's obligations to:
 - (a) return or destroy RECCo Data on the expiry or earlier termination of this Contract; and
 - (b) prevent the introduction of Malicious Software into the Supplier System and to scan for, contain the spread of, and minimise the impact of Malicious Software which is introduced into the Supplier System in Paragraph 9; and
 - (c) report Breaches of Security to RECCo.

3. Principles of Security

- 3.1 The Supplier acknowledges that RECCo places great emphasis on the confidentiality, integrity and availability of RECCo Data and, consequently on the security of:
 - 3.1.1 the Sites;
 - 3.1.2 the IT Environment;
 - 3.1.3 the Information Management System; and
 - 3.1.4 the Services.
- 3.2 Notwithstanding the involvement of RECCo in assessing the arrangements which the Supplier implements to ensure the security of RECCo Data and the Information Management System, the Supplier shall be, and shall remain, responsible for:
 - 3.2.1 the security, confidentiality, integrity and availability of RECCo Data whilst that RECCo Data is under the control of the Supplier or any of its Sub-contractors; and
 - 3.2.2 the security of the Information Management System.
- 3.3 The Supplier shall:
 - 3.3.1 comply with the security requirements in Annex 1; and
 - 3.3.2 ensure that each Sub-contractor that Processes RECCo Data complies with the Sub-contractor Security Requirements.
- 3.4 The Supplier shall provide RECCo with access to Supplier Personnel responsible for information assurance to facilitate RECCo's assessment of the Supplier's compliance with its obligations set out in this Schedule at reasonable times on reasonable notice.

4. Information Security Approval Statement

- 4.1 The Supplier must ensure that its Implementation Plan sets out in sufficient detail how it will ensure compliance with the requirements of this Schedule, including any requirements imposed on Sub-contractors by Annex 2, from the first Operational Service Commencement Date.
- 4.2 The Supplier may not use the Information Management System to Process RECCo Data unless and until:
 - 4.2.1 the Supplier has procured the conduct of an IT Health Check of the Supplier System by a CHECK Service Provider or a CREST Service Provider in accordance with Paragraph 7.1; and
 - 4.2.2 RECCo has issued the Supplier with an Information Security Approval Statement in accordance with the process set out in this Paragraph 4;

- 4.3 Approval by RECCo of the Security Management Plan or of any change to the Security Management Plan shall not relieve the Supplier of its obligations under this Schedule.
- 4.4 The Supplier shall document in the Security Management Plan how the Supplier and its Sub-contractors shall comply with the requirements set out in this Schedule and the Contract in order to ensure the security of RECCo Data and the Information Management System.
- 4.5 The Supplier shall at its cost prepare and submit to RECCo within 20 Working Days of the date of this Contract, the Security Management Plan, which comprises:
- 4.5.1 an Information Assurance Assessment;
 - 4.5.2 the Required Changes Register;
 - 4.5.3 the Incident Management Process.
- 4.6 RECCo shall review the Supplier's proposed Security Management Plan as soon as possible and, in any event within 20 Working Days of receipt and shall either issue the Supplier with:
- 4.6.1 an Information Security Approval Statement, which shall confirm that the Supplier may use the Information Management System to Process RECCo Data; or
 - 4.6.2 a rejection notice, which shall set out RECCo's reasons for rejecting the Security Management Plan.
- 4.7 If RECCo rejects the Supplier's proposed Security Management Plan, the Supplier shall take RECCo's reasons into account in the preparation (at the Supplier's cost) of a revised Security Management Plan, which the Supplier shall submit to RECCo for review within 10 Working Days or such other timescale as agreed with RECCo.
- 4.8 Subject to Paragraph 4.9, the process set out in Paragraphs 4.6 to 4.7 shall be repeated until such time as RECCo issues an Information Security Approval Statement or terminates this Contract.
- 4.9 If RECCo rejects the Supplier's proposed Security Management Plan on more than two occasions, the failure to receive RECCo's acceptance of the Security Management Plan shall constitute a material Default and RECCo may by terminate this Contract with immediate effect by issuing a Termination Notice to the Supplier in accordance with Clause 31.1.2.
- 4.10 RECCo may require, and the Supplier shall provide RECCo and its authorised representatives with:
- 4.10.1 access to the Supplier Personnel;
 - 4.10.2 access to the Information Management System to audit the Supplier and its Sub-contractors' compliance with this Contract; and

4.10.3 such other information and/or documentation that RECCo or its authorised representatives may reasonably require,

to assist RECCo to establish whether the arrangements which the Supplier and its Sub-contractors have implemented in order to ensure the security of RECCo Data and the Information Management System are consistent with the representations in the Security Management Plan. The Supplier shall provide the access required by RECCo in accordance with this Paragraph within 10 Working Days of receipt of such request, except in the case of a Breach of Security in which case the Supplier shall provide RECCo with the access that it requires within 24 hours of receipt of such request.

5. Compliance Reviews

- 5.1 The Supplier shall maintain and shall regularly review and update the Security Management Plan, and provide such to RECCo, at least once each year and as required by this Paragraph.
- 5.2 The Supplier shall notify RECCo within 2 Working Days after becoming aware of:
 - 5.2.1 a significant change to the components or architecture of the Information Management System;
 - 5.2.2 a new risk to the components or architecture of the Information Management System;
 - 5.2.3 a vulnerability to the components or architecture of the Service which is classified 'Medium', 'High', 'Critical' or 'Important' in accordance with the classification methodology set out in Paragraph 9.2 of Annex 1 to this Schedule;
 - 5.2.4 a change in the threat profile;
 - 5.2.5 a significant change to any risk component;
 - 5.2.6 a significant change in the quantity of Personal Data held within the Service;
 - 5.2.7 a proposal to change any of the Sites from which any part of the Services are provided; and/or
 - 5.2.8 an ISO/IEC 27001 (at least ISO/IEC 27001:2022) or a Cyber Essentials Plus audit report produced in connection with the Certification Requirements indicates significant concerns.
- 5.3 Within 10 Working Days of such notifying RECCo or such other timescale as may be agreed with RECCo, the Supplier shall make the necessary changes to the Required Changes Register and submit the updated Required Changes Register RECCo for review and approval.
- 5.4 Where the Supplier is required to implement a change, including any change to the Information Management System, the Supplier shall effect such change at its own cost and expense.

- 5.5 If the Supplier fails to maintain, review and update the Security Management Plan or fails to implement a change set out in the Required Changes Register by the date agreed with RECCo, such failure shall constitute a material Default and the Supplier shall:
- 5.5.1 immediately cease using the Information Management System to Process RECCo Data until the Default is remedied, unless directed otherwise by RECCo in writing and then it may only continue to Process RECCo Data in accordance with RECCo's written directions; and
 - 5.5.2 where such Default is capable of remedy, the Supplier shall remedy such Default within the timescales set by RECCo and, should the Supplier fail to remedy the Default within such timescales, RECCo may terminate this Contract with immediate effect by issuing a Termination Notice to the Supplier in accordance with Clause 31.1.2.

6. Certification Requirements

- 6.1 The Supplier shall be certified as compliant and shall at all times comply with:
- 6.1.1 ISO/IEC 27001 (at least ISO/IEC 27001:2022) by a UK Accreditation Service-approved certification body or is included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2022); and
 - 6.1.2 Cyber Essentials PLUS,
and shall provide RECCo with a copy of each such certificate of compliance before the Supplier shall be permitted to receive, store or Process RECCo Data.
- 6.2 The Supplier shall ensure that each sub-contractor is certified as and shall at all times be compliant with either:
- 6.2.1 ISO/IEC 27001 (at least ISO/IEC 27001:2022) by a UK Accreditation Service-approved certification body or is included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2022); or
 - 6.2.2 Cyber Essentials PLUS,
and shall provide RECCo with a copy of each such certificate of compliance before the Sub-contractor shall be permitted to receive, store or Process RECCo Data.
- 6.3 The Supplier shall ensure that the Supplier and each Sub-contractor who is responsible for the secure destruction of RECCo Data:
- 6.3.1 securely destroys RECCo Data only on Sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2022);
 - 6.3.2 should satisfy RECCo that their data destruction/deletion practices

comply with UK GDPR requirements and follows all relevant NCSC guidance; and

- 6.3.3 must maintain an asset register of all RECCo supplied information, data and equipment to ensure RECCo assets are returned and/or deleted.
- 6.4 The Supplier shall provide RECCo with evidence of its and its Sub-contractor's compliance with the requirements set out in this Paragraph 6 before the Supplier or the relevant Sub-contractor (as applicable) may carry out the secure destruction of any RECCo Data.
- 6.5 The Supplier shall notify RECCo as soon as reasonably practicable and, in any event within 2 Working Days, if the Supplier or any Sub-contractor ceases to be compliant with the Certification Requirements and, on request from RECCo, shall or shall procure that the relevant Sub-contractor shall:
 - 6.5.1 immediately ceases using RECCo Data; and
 - 6.5.2 procure that the relevant Sub-contractor promptly returns, destroys and/or erases RECCo Data in accordance with the requirements set out in this Paragraph.
- 6.6 RECCo may agree to exempt, in whole or part, the Supplier or any Sub-contractor from the requirements of this Paragraph 6. Any exemption must be in writing to be effective. The Supplier must include the exemption in the Security Management Plan.

7. Security Testing

- 7.1 The Supplier shall, at its own cost and expense procure and conduct:
 - 7.1.1 testing of the Information Management System by a CHECK Service Provider or a CREST Service Provider ("**IT Health Check**") ; and
 - 7.1.2 such other security tests as may be required by RECCo,
- 7.2 The Supplier shall:
 - 7.2.1 complete all of the above security tests before:
 - (a) the Supplier submits the Security Management Plan to RECCo for review in accordance with Paragraph 4; and
 - (b) before the Supplier is given permission by RECCo to Process or manage any RECCo Data; and
 - 7.2.2 repeat the IT Health Check not less than once every 12 months during the Term and submit the results of each such test to RECCo for review in accordance with this Paragraph.
- 7.3 In relation to each IT Health Check, the Supplier shall:
 - 7.3.1 agree with RECCo the aim and scope of the IT Health Check;

- 7.3.2 promptly, and no later than ten (10) Working Days, following the receipt of each IT Health Check report, provide RECCo with a copy of the full report;
- 7.3.3 in the event that the IT Health Check report identifies any vulnerabilities, the Supplier shall:
- (a) prepare a remedial plan for approval by RECCo (each a **“Remediation Action Plan”**) which sets out in respect of each vulnerability identified in the IT Health Check report:
 - (b) how the vulnerability will be remedied;
 - (c) unless otherwise agreed in writing between the Parties, the date by which the vulnerability will be remedied, which must be:
 - (d) within three months of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “medium”;
 - (e) within one month of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “high”; and
 - (f) within 7 Working Days of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “critical”;
 - (g) the tests which the Supplier shall perform or procure to be performed (which may, at the discretion of RECCo, include a further IT Health Check) to confirm that the vulnerability has been remedied;
 - (h) comply with the Remediation Action Plan; and
 - (i) conduct such further tests on the Service as are required by the Remediation Action Plan to confirm that the Remediation Action Plan has been complied with.
- 7.4 The Supplier shall ensure that any testing which could adversely affect the Supplier System shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such tests shall be agreed in advance with RECCo.
- 7.5 If any testing conducted by or on behalf of the Supplier identifies a new risk, new threat, vulnerability or exploitation technique that has the potential to affect the security of the Information Management System, the Supplier shall within 2 Working Days of becoming aware of such risk, threat, vulnerability or exploitation technique provide RECCo with a copy of the test report and:
- 7.5.1 propose interim mitigation measures to vulnerabilities in the Information Management System known to be exploitable where a security patch is not immediately available; and

- 7.5.2 where and to the extent applicable, remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the Supplier System) within the timescales set out in the test report or such other timescales as may be agreed with RECCo.
- 7.6 The Supplier shall conduct such further tests of the Supplier System as may be required by RECCo from time to time to demonstrate compliance with its obligations set out this Schedule and the Contract.
- 7.7 The Supplier shall notify RECCo immediately if it fails to, or believes that it will not, mitigate the vulnerability within the timescales set out in Paragraph 7.3.
- 7.8 If any repeat security test carried out pursuant to Paragraph 7 reveals an actual or potential breach of security or weakness exploiting the same root cause failure, such circumstance shall constitute a material Default and RECCo may terminate this Contract with immediate effect by issuing a Termination Notice to the Supplier in accordance with Clause 31.1.2.

8. Security Monitoring and Reporting

- 8.1 The Supplier shall:
- 8.1.1 monitor the delivery of assurance activities;
 - 8.1.2 maintain and update the Security Management Plan in accordance with Paragraph 5;
 - 8.1.3 agree a document which presents the residual security risks to inform RECCo's decision to give approval to the Supplier to Process and transit RECCo Data;
 - 8.1.4 monitor security risk impacting upon the operation of the Service;
 - 8.1.5 report Breaches of Security in accordance with the approved Incident Management Process;
 - 8.1.6 agree with RECCo the frequency and nature of the security reports to be prepared and submitted by the Supplier to RECCo within 20 Working Days of Effective Date.

9. Malicious Software

- 9.1 The Supplier shall install and maintain Anti-Malicious Software or procure that Anti-Malicious Software is installed and maintained on any part of the Information Management System which may Process RECCo Data and ensure that such Anti-Malicious Software is configured to perform automatic software and definition updates as well as regular scans of the Information Management System to check for, prevent the introduction of Malicious Software or where Malicious Software has been introduced into the Information Management System, to identify, contain the spread of, and minimise the impact of Malicious Software.
- 9.2 If Malicious Software is found, the parties shall cooperate to reduce the effect

of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of RECCo Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.

9.3 Any cost arising out of the actions of the parties taken in compliance with the provisions of Paragraph 9.2 shall be borne by the parties as follows:

9.3.1 by the Supplier where the Malicious Software originates from:

- (a) the Supplier Software;
- (b) the Third Party Software supplied by the Supplier; or
- (c) RECCo Data whilst RECCo Data is or was under the control of the Supplier,

unless, in the case of RECCo Data only, the Supplier can demonstrate that such Malicious Software was present in RECCo Data and not quarantined or otherwise identified by RECCo when RECCo provided RECCo Data to the Supplier; and

9.3.2 by RECCo, in any other circumstance.

10. Breach of Security

10.1 If either party becomes aware of a Breach of Security it shall notify the other in accordance with the Incident Management Process.

10.2 The Incident Management Process shall, as a minimum, require the Supplier to do the following upon it becoming aware of a Breach of Security or attempted Breach of Security:

10.2.1 Immediately take all reasonable steps necessary to:

- (a) minimise the extent of actual or potential harm caused by such Breach of Security;
- (b) remedy such Breach of Security to the extent possible;
- (c) apply a tested mitigation against any such Breach of Security; and
- (d) prevent a further Breach of Security in the future which exploits the same root cause failure;

10.2.2 as soon as reasonably practicable and, in any event, within 2 Working Days, following the Breach of Security or attempted Breach of Security, provide to RECCo full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by RECCo.

10.3 In the event that any action is taken in response to a Breach of Security or attempted Breach of Security as a result of non-compliance by the Supplier, its Sub-contractors and/or all or any part of the Information Management

System with this Contract, then such remedial action shall be completed at no additional cost to RECCo.

- 10.4 If the Supplier fails to comply with its obligations set out in this Paragraph 10, such failure shall constitute a material Default, which if not remedied to the satisfaction of RECCo, shall permit RECCo to terminate this Contract in accordance with Clause 31.1.2 with immediate effect by issuing a Termination Notice to the Supplier.

Annex 1: Security Requirements

1. End User Devices

- 1.1 The Supplier must manage, and must ensure that all Sub-contractors manage, all end-user devices used by the Supplier on which RECCo Data is Processed in accordance the following requirements:
 - 1.1.1 the operating system and any applications that Process or have access to RECCo Data must be in current support by the vendor, or the relevant community in the case of Open Source operating systems or applications;
 - 1.1.2 users must authenticate before gaining access;
 - 1.1.3 all RECCo Data must be encrypted using an encryption tool agreed to by RECCo. Agreement by RECCo of the encryption tool shall not relieve the Supplier of its obligations under this Schedule;
 - 1.1.4 the end-user device must lock and require any user to re-authenticate after a period of time that is proportionate to the risk environment, during which the end-user device is inactive;
 - 1.1.5 the end-user device must be managed in a way that allows for the application of technical policies and controls over applications that have access to RECCo Data;
 - 1.1.6 the Supplier or Sub-contractor, as applicable, can, without physical access to the end-user device, remove or make inaccessible all RECCo Data on the device and prevent any user or group of users from accessing the device;
 - 1.1.7 all end-user devices are within in the scope of any current Cyber Essentials Plus certificate held by the Supplier, or any ISO/IEC 27001 (at least ISO/IEC 27001:2022) certification issued by a UKAS-approved certification body, where the scope of that certification includes the Services.
- 1.2 The Supplier must comply, and ensure that all Sub-contractors comply, with the recommendations in NCSC Device Guidance, as updated, amended or replaced from time to time, as if those recommendations were incorporated as specific obligations under this Agreement.
- 1.3 Where there any conflict between the requirements of this Schedule 5 (*Security Management*) and the requirements of the NCSC Device Guidance, the requirements of this Schedule will take precedence.

2. Encryption

- 2.1 The Supplier must ensure, and must ensure that all Sub-contractors ensure, that RECCo Data is encrypted:
 - 2.1.1 when stored at any time when no operation is being performed on it;
and

- 2.1.2 when transmitted.
- 2.2 Where the Supplier, or a Sub-contractor, cannot encrypt RECCo Data the Supplier must:
 - 2.2.1 immediately inform RECCo of the subset or subsets of RECCo Data it cannot encrypt and the circumstances in which and the reasons why it cannot do so;
 - 2.2.2 provide details of the protective measures the Supplier or Sub-contractor (as applicable) proposes to take to provide equivalent protection to RECCo as encryption; and
 - 2.2.3 provide RECCo with such information relating to RECCo Data concerned, the reasons why that RECCo Data cannot be encrypted and the proposed protective measures as RECCo may require.
- 2.3 RECCo, the Supplier and, where RECCo requires, any relevant Sub-contractor shall meet to agree appropriate protective measures for the unencrypted RECCo Data. Agreement by RECCo of the appropriate protective measures shall not relieve the Supplier of its obligations under this Schedule
- 2.4 Where RECCo and Supplier reach agreement, the Supplier must update the Security Management Plan to include:
 - 2.4.1 the subset or subsets of RECCo Data not encrypted and the circumstances in which that will occur; and
 - 2.4.2 the protective measure that the Supplier and/or Sub-contractor will put in place in respect of the unencrypted RECCo Data.
- 2.5 Where RECCo and Supplier do not reach agreement within 40 Working Days of the date on which the Supplier first notified RECCo that it could not encrypt certain RECCo Data, either party may refer the matter to be determined in accordance with the Dispute Resolution Procedure.

3. Personnel Security

- 3.1 All Supplier Personnel shall be subject to a pre-employment check before they may participate in the provision and or management of the Services. Such pre-employment checks must include all pre-employment checks including: verification of the individual's identity; verification of the individual's nationality and immigration status; and, verification of the individual's employment history; verification of the individual's criminal record.
- 3.2 RECCo and the Supplier shall review the roles and responsibilities of the Supplier Personnel who will be involved in the management and/or provision of the Services in order to enable RECCo to determine which roles require additional vetting. Roles which are likely to require additional vetting include system administrators whose role would provide those individuals with privileged access to IT systems which Process RECCo Data.

- 3.3 The Supplier shall not permit Supplier Personnel who fail the security checks required by Paragraphs 4.1 and 4.2 to be involved in the management and/or provision of the Services except where RECCo has expressly agreed in writing to the involvement of the named individual in the management and/or provision of the Services.
- 3.4 The Supplier shall ensure that Supplier Personnel are only granted such access to RECCo Data as is necessary to enable the Supplier Personnel to perform their role and to fulfil their responsibilities.
- 3.5 The Supplier shall ensure that Supplier Personnel who no longer require access to RECCo Data (e.g. they cease to be employed by the Supplier or any of its Sub-contractors), have their rights to access RECCo Data revoked within 1 Working Day.
- 3.6 The Supplier shall ensure that Supplier Staff that have access to the Sites, the IT Environment or RECCo Data receive regular training on security awareness that reflects the degree of access those individuals have to the Sites, the IT Environment or RECCo Data.
- 3.7 The Supplier shall ensure that the training provided to Supplier Staff under Paragraph 4.6 includes training on the identification and reporting fraudulent communications intended to induce individuals to disclose Personal Data or any other information that could be used, including in combination with other Personal Data or information, or with other techniques, to facilitate unauthorised access to the Sites, the IT Environment or RECCo Data (“phishing”).

4. Identity, Authentication and Access Control

- 4.1 The Supplier shall operate an access control regime to ensure:
 - 4.1.1 all users and administrators of the Supplier System are uniquely identified and authenticated when accessing or administering the Services; and
 - 4.1.2 all persons who access the Sites are identified and authenticated before they are allowed access to the Sites.
- 4.2 The Supplier shall apply the ‘principle of least privilege’ when allowing persons access to the Supplier System and Sites so that such persons are allowed access only to those parts of the Sites and the Supplier System they require.
- 4.3 The Supplier shall retain records of access to the Sites and to the Supplier System and shall make such record available to RECCo on request.

5. Data Destruction or Deletion

- 5.1 The Supplier shall:
 - 5.1.1 prior to securely sanitising any RECCo Data or when requested the Supplier shall provide RECCo with all RECCo Data in an agreed format provided it is secure and readable;

- 5.1.2 have documented processes to ensure the availability of RECCo Data in the event of the Supplier ceasing to trade;
- 5.1.3 securely erase in a manner agreed with RECCo any or all RECCo Data held by the Supplier when requested to do so by RECCo and certify to RECCo that it has done so unless and to the extent required by Law to retain it other than in relation to RECCo Data which is owned or licenced by the Supplier or in respect of which the Parties are either Independent Controllers or Joint Controllers;
- 5.1.4 securely destroy in a manner agreed with RECCo all media that has held RECCo Data at the end of life of that media in accordance with any specific requirements in this Contract and, in the absence of any such requirements, as agreed by RECCo other than in relation to RECCo Data which is owned or licenced by the Supplier or in respect of which the Parties are either Independent Controllers or Joint Controllers; and
- 5.1.5 implement processes which address the CPNI and NCSC guidance on secure sanitisation.

6. Audit and Protective Monitoring

- 6.1 The Supplier shall collect audit records which relate to security events in the Information Management System or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include regular reports and alerts setting out details of access by users of the Information Management System, to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of RECCo Data.
- 6.2 The Supplier and RECCo shall work together to establish any additional audit and monitoring requirements for the Information Management System.
- 6.3 The retention periods for audit records and event logs must be agreed with RECCo and documented in the Security Management Plan.

7. Location of RECCo Data

- 7.1 The Supplier shall not and shall procure that none of its Sub-contractors Process RECCo Data outside the UK without the prior written consent of RECCo, which may be subject to conditions.

8. Vulnerabilities and Corrective Action

- 8.1 RECCo and the Supplier acknowledge that from time to time vulnerabilities in the Information Management System will be discovered which unless mitigated will present an unacceptable risk to RECCo Data.
- 8.2 The severity of vulnerabilities for COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the Security

Management Plan and using the appropriate vulnerability scoring systems including:

- 8.2.1 the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST at <http://nvd.nist.gov/cvss.cfm>); and
- 8.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.
- 8.3 Subject to Paragraph 9.4, the Supplier shall procure the application of security patches to vulnerabilities in the Information Management System within:
 - 8.3.1 seven (7) days after the public release of patches for those vulnerabilities categorised as 'Critical';
 - 8.3.2 thirty (30) days after the public release of patches for those vulnerabilities categorised as 'Important'; and
 - 8.3.3 sixty (60) days after the public release of patches for those vulnerabilities categorised as 'Other'.
- 8.4 The timescales for applying patches to vulnerabilities in the Information Management System set out in Paragraph 9.3 shall be extended where:
 - 8.4.1 the Supplier can demonstrate that a vulnerability in the Information Management System is not exploitable within the context of the Services (e.g. because it resides in a Software component which is not involved in running in the Services) provided such vulnerabilities shall be remedied by the Supplier within the timescales set out in Paragraph 9.3 if the vulnerability becomes exploitable within the context of the Services;
 - 8.4.2 the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of five (5) days, provided the Supplier had followed and continues to follow the security patch test plan agreed with RECCo; or
 - 8.4.3 RECCo agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the Security Management Plan.
- 8.5 The Security Management Plan shall include provisions for major version upgrades of all COTS Software to be kept up to date such that all COTS Software are always in mainstream support throughout the Term unless otherwise agreed by RECCo in writing. All COTS Software should be no more than N-1 versions behind the latest software release.
- 8.6 If the Supplier fails to patch vulnerabilities in the Information Management System in accordance with Paragraph 9.3, such failure shall constitute a material Default and RECCo may by terminate this Contract with immediate

effect by issuing a Termination Notice to the Supplier in accordance with Clause 32.1.2.

9. Secure Architecture

9.1 The Supplier shall design the Information Management System in accordance with:

9.1.1 the NCSC “Security Design Principles for Digital Services”, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/security-design-principles-digital-services-main>;

9.1.2 the NCSC “Bulk Data Principles”, a copy of which can be found at <https://www.ncsc.gov.uk/guidance/protecting-bulk-personal-data-main>; and

9.1.3 the NSCS “Cloud Security Principles”, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles> and which are summarised below:

- (a) “Cloud Security Principle 1: data in transit protection” which, amongst other matters, requires that user data transiting networks should be adequately protected against tampering and eavesdropping;
- (b) “Cloud Security Principle 2: asset protection and resilience” which, amongst other matters, requires that user data, and the assets storing or processing it, should be protected against physical tampering, loss, damage or seizure;
- (c) “Cloud Security Principle 3: separation between users” which, amongst other matters, requires that a malicious or compromised user of the service should not be able to affect the service or data of another;
- (d) “Cloud Security Principle 4: governance framework” which, amongst other matters, requires that the Supplier should have a security governance framework which coordinates and directs its management of the Services and information within it;
- (e) “Cloud Security Principle 5: operational security” which, amongst other matters, requires that the Services need to be operated and managed securely in order to impede, detect or prevent a Breach of Security;
- (f) “Cloud Security Principle 6: personnel security” which, amongst other matters, requires that where Supplier Personnel have access to RECCo Data and/or RECCo System that those personnel be subject to appropriate security screening and regular security training;
- (g) “Cloud Security Principle 7: secure development” which, amongst other matters, requires that the Services be designed

and developed to identify and mitigate threats to their security;

- (h) “Cloud Security Principle 8: supply chain security” which, amongst other matters, requires the Supplier to ensure that appropriate security controls are in place with its Sub-contractors and other suppliers;
- (i) “Cloud Security Principle 9: secure user management” which, amongst other matters, requires the Supplier to make the tools available for RECCo to securely manage RECCo’s use of the Service;
- (j) “Cloud Security Principle 10: identity and authentication” which, amongst other matters, requires the Supplier to implement appropriate controls in order to ensure that access to Service interfaces is constrained to authenticated and authorised individuals;
- (k) “Cloud Security Principle 11: external interface protection” which, amongst other matters, requires that all external or less trusted interfaces with the Services should be identified and appropriately defended;
- (l) “Cloud Security Principle 12: secure service administration” which, amongst other matters, requires that any ICT system which is used for administration of a cloud service will have highly privileged access to that service;
- (m) “Cloud Security Principle 13: audit information for users” which, amongst other matters, requires the Supplier to be able to provide RECCo with the audit records it needs to monitor access to the Service and RECCo Data held by the Supplier and/or its Sub-contractors; and
- (n) “Cloud Security Principle 14: secure use of the service” which, amongst other matters, requires the Supplier to educate Supplier Personnel on the safe and secure use of the Information Management System.

9.2 The Supplier shall maintain an inventory of the Information Management System.

Annex 2: Security Requirements for Sub-Contractors

1. Application of Annex 2

- 1.1 This Annex 2 applies to all Sub-contractors that Process RECCo Data.
- 1.2 The Supplier must:
 - 1.2.1 ensure that those Sub-contractors comply with the provisions of this Annex 2;
 - 1.2.2 keep sufficient records to demonstrate that compliance to RECCo; and
 - 1.2.3 ensure that its Implementation Plan includes Deliverable Items, Milestones and Milestone Dates that relate to the design, implementation and management of any systems used by Sub-contractors to Process RECCo Data.

2. Designing and managing secure solutions

- 2.1 The Sub-contractor shall implement their solution(s) to mitigate the security risks in accordance with the NCSC's Cyber Security Design Principles <https://www.ncsc.gov.uk/collection/cyber-security-design-principles>.
- 2.2 The Sub-contractor must assess their systems against the NCSC Cloud Security Principles: <https://www.ncsc.gov.uk/collection/cloud-security?curPage=/collection/cloud-security/implementing-the-cloud-security-principles> at their own cost and expense to demonstrate that the people, process, technical and physical controls have been delivered in an effective way. The Sub-contractor must document that assessment and make that documentation available to RECCo on RECCo's request.

3. Data Processing, Storage, Management and Destruction

- 3.1 The Sub-contractor must not Process any RECCo Data outside the UK. RECCo may permit the Sub-contractor to Process RECCo Data outside the UK and may impose conditions on that permission, with which the Sub-contractor must comply. Any permission must be in writing to be effective.
- 3.2 The Sub-contractor must when requested to do so by RECCo:
 - 3.2.1 securely destroy RECCo Data only on Sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2022);
 - 3.2.2 satisfy RECCo that their data destruction/deletion practices comply with UK GDPR requirements and follows all relevant NCSC guidance; and
 - 3.2.3 maintain an asset register of all RECCo supplied information, data and equipment to ensure RECCo assets are returned and/or deleted.

4. Personnel Security

- 4.1 The Sub-contractor must perform appropriate checks on their staff before they may participate in the provision and or management of the Services. Those checks must include all pre-employment checks including: verification of the individual's identity; verification of the individual's nationality and immigration status; verification of the individual's employment history; and verification of the individual's criminal record.
- 4.2 The Sub-contractor must, if RECCo requires, at any time, ensure that one or more of the Sub-contractor's staff obtains Security Check clearance in order to Process RECCo Data containing Personal Data above certain volumes specified by RECCo, or containing Special Category Personal Data.
- 4.3 Any Sub-contractor staff who will, when performing the Services, have access to a person under the age of 18 years must undergo Disclosure and Barring Service checks.

5. End User Devices

- 5.1 The Supplier must manage, and must ensure that all Sub-contractors manage, all end-user devices used by the Supplier on which RECCo Data is Processed in accordance the following requirements:
 - 5.1.1 the operating system and any applications that Process or have access to RECCo Data must be in current support by the vendor, or the relevant community in the case of Open Source operating systems or applications;
 - 5.1.2 users must authenticate before gaining access;
 - 5.1.3 all RECCo Data must be encrypted using an encryption tool agreed to by RECCo;
 - 5.1.4 the end-user device must lock and require any user to re-authenticate after a period of time that is proportionate to the risk environment, during which the end-user device is inactive;
 - 5.1.5 the end-user device must be managed in a way that allows for the application of technical policies and controls over applications that have access to RECCo Data;
 - 5.1.6 the Supplier or Sub-contractor, as applicable, can, without physical access to the end-user device, remove or make inaccessible all RECCo Data on the device and prevent any user or group of users from accessing the device;
 - 5.1.7 all end-user devices are within in the scope of any current Cyber Essentials Plus certificate held by the Supplier, or any ISO/IEC 27001 (at least ISO/IEC 27001:2022) certification issued by a UKAS-approved certification body, where the scope of that certification includes the Services.

- 5.2 The Supplier must comply, and ensure that all Sub-contractors comply, with the recommendations in NCSC Device Guidance, as updated, amended or replaced from time to time, as if those recommendations were incorporated as specific obligations under this Agreement.
- 5.3 Where there any conflict between the requirements of this Schedule 5 (*Security Management*) and the requirements of the NCSC Device Guidance, the requirements of this Schedule will take precedence.

6. Encryption

- 6.1 The Supplier must ensure, and must ensure that all Sub-contractors ensure, that RECCo Data is encrypted:
 - 6.1.1 when stored at any time when no operation is being performed on it; and
 - 6.1.2 when transmitted.
- 6.2 Where the Supplier, or a Sub-contractor, cannot encrypt RECCo Data the Supplier must:
 - 6.2.1 immediately inform RECCo of the subset or subsets of RECCo Data it cannot encrypt and the circumstances in which and the reasons why it cannot do so;
 - 6.2.2 provide details of the protective measures the Supplier or Sub-contractor (as applicable) proposes to take to provide equivalent protection to RECCo as encryption; and
 - 6.2.3 provide RECCo with such information relating to RECCo Data concerned, the reasons why that RECCo Data cannot be encrypted and the proposed protective measures as RECCo may require.
- 6.3 RECCo, the Supplier and, where RECCo requires, any relevant Sub-contractor shall meet to agree appropriate protective measures for the unencrypted RECCo Data.
- 6.4 Where RECCo and Supplier reach agreement, the Supplier must update the Security Management Plan to include:
 - 6.4.1 the subset or subsets of RECCo Data not encrypted and the circumstances in which that will occur; and
 - 6.4.2 the protective measure that the Supplier and/or Sub-contractor will put in place in respect of the unencrypted RECCo Data.
- 6.5 Where RECCo and Supplier do not reach agreement within 40 Working Days of the date on which the Supplier first notified RECCo that it could not encrypt certain RECCo Data, either party may refer the matter to be determined in accordance with the Dispute Resolution Procedure.

7. Patching and Vulnerability Scanning

- 7.1 The Sub-contractor must proactively monitor supplier vulnerability websites and ensure all necessary patches and upgrades are applied to maintain security, integrity and availability in accordance with the NCSC Cloud Security Principles.

8. Third Party Sub-contractors

- 8.1 The Sub-contractor must not transmit or disseminate RECCo Data to any other person unless specifically authorised by RECCo. Such authorisation must be in writing to be effective and may be subject to conditions.
- 8.2 The Sub-contractor must not, when performing any part of the Services, use any software to Process RECCo Data where the licence terms of that software purport to grant the licensor rights to Progress RECCo Data greater than those rights strictly necessary for the use of the software.

Annex 3: Security Management Plan Template

Security Management Plan Template

[Project/Service and Supplier Name]

1. Executive Summary

[This section should contain a brief summary of the business context of the system, any key IA controls, the assurance work done, any off-shoring considerations and any significant residual risks that need acceptance.]

2. System Description

2.1 Background

[A short description of the project/product/system. Describe its purpose, functionality, aim and scope.]

2.2 Organisational Ownership/Structure

[Who owns the system and operates the system and the organisational governance structure. This should include how any ongoing security management is integrated into the project governance e.g. how a Security Working Group reports to the project board.]

2.3 Information assets and flows

[The information assets processed by the system which should include a simple high level diagram on one page. Include a list of the type and volumes of data that will be processed, managed and stored within the supplier system. If personal data, please include the fields used such as name, address, department DOB, NI number etc.]

2.4 System Architecture

[A description of the physical system architecture, to include the system management. A diagram will be needed here]

2.5 Users

[A brief description of the system users, to include RECCo users, Approved Sub-Licensee users, Other Supplier users, End Users as well as any service provider users and system managers. If relevant, security clearance level requirements should be included.]

2.6 Locations

[Where the data assets are stored and managed from. If any locations hold independent security certifications (e.g. ISO27001 (at least ISO/IEC 27001:2022) these should be noted. Any off-shoring considerations should be detailed.]

2.7 Test and Development Systems

[Include information about any test and development systems, their locations and whether they contain live system data.]

2.8 Key roles and responsibilities

[A brief description of the lead security roles such as that of the SIRO, IAO, Security manager, Accreditor]

3. Risk Assessment

3.1 Assurance Scope

[This section describes the scope of the Assurance for the system. The scope of the assurance assessment should be clearly indicated, with components of the architecture upon which reliance is placed but assurance will not be done clearly shown e.g. a cloud hosting service. A logical diagram should be used along with a brief description of the components.]

3.2 Risk appetite

[A risk appetite should be agreed with the SRO and included here.]

3.3 Business impact assessment

[A description of the information assets and the impact of their loss or corruption (e.g. large amounts of personal data the loss of which would be severely damaging to individuals, embarrassing to RECCo, and make RECCo liable to ICO investigations) in business terms should be included. This section should cover the impact on loss of confidentiality, integrity and availability of the assets. The format of this assessment may be dependent on the risk assessment method chosen.]

3.4 Risk assessment

[The content of this section will depend on the risk assessment methodology chosen. Experts on the system and business process should have been involved in the risk assessment to ensure the formal risk methodology used has not missed out any risks. The example table below should be used as the format to identify the risks and document the controls used to mitigate those risks.]

Risk ID	Inherent risk	Inherent risk level	Vulnerability	Controls	Residual risk level
R1	Internet attackers could hack the system.	Medium	The service systems are exposed to the internet via the web portal.	C1: Internet-facing firewalls C2: Internet-facing IP whitelist C3: System hardening C4: Protective monitoring	Very low

Risk ID	Inherent risk	Inherent risk level	Vulnerability	Controls	Residual risk level
				C5: Application access control C16: Anti-virus for incoming files C54: Files deleted when processed C59: Removal of departmental identifier	
R2	Remote attackers could intercept or disrupt information crossing the internet.	Medium	File sharing with organisations across the internet.	C9: TLS communications C10: PGP file-sharing C18: Certificate pinning	Very low
R3	Internal users could maliciously or accidentally alter bank details.	Medium-High	Users bank details can be altered as part of the normal business function.	C12. System administrators hold SC clearance. C13. All changes to user information are logged and audited. C14. Letters are automatically sent to users' home addresses when bank details are altered. C15. Staff awareness training	Low
R4	Remote Attackers could execute a Denial of Service Attack	Medium	Services cannot be used	C16. Rate Limiting	Medium
R5	Remote Attackers could take over a user's device	Low	Attacker has access to data the user can see	C17: Content Security Policy	Low
R6	Secrets exposed in program code	Low	Attacker can gain full access to system	C19: Static Analysis Security Testing	Low

Risk ID	Inherent risk	Inherent risk level	Vulnerability	Controls	Residual risk level
R7	Remote attackers could exploit a 'Ghost' API	Low	Redundant APIs that are still available but not used can be used by hackers to gain access to a service	C4: Protective monitoring C20: API Inventory Management	Low

3.5 Controls

[The controls listed above to mitigate the risks identified should be detailed. There should be a description of each control, further information and configuration details where relevant, and an assessment of the implementation status of, and assurance in, the control. A sample layout is included below.]

ID	Control title	Control description	Further information and assurance status
C1	Internet-facing firewalls	Internet-facing firewalls are in place between the internet and the system', which restrict access from the internet to the required ports only.	Assured via ITHC firewall rule check
C2	Internet-facing IP whitelist	An IP whitelist is in place for all access from the internet.	Assured via ITHC
C15	Staff awareness training	All staff must undertake annual security awareness training and this process is audited and monitored by line managers.	Assured as part of ISO/IEC 27001 (at least ISO/IEC 27001:2022) certification
C16	Rate limiting	Rate limiting is in place at the systems ingress points	API Management Policy
C17	Content Security Policy	Content security policy implemented for Web applications	Web page vulnerability scanning
C18	Certificate pinning	Use of web pages restricted to more recent browser versions	Restriction on permitted browsers – Only allow browser versions that support certificate pinning
C19	Secure Coding	Code is subject to Static Analysis Security Testing (SAST)	Assured as part of ISO/IEC 27001 (at least ISO/IEC 27001:2022) certification and SMP

ID	Control title	Control description	Further information and assurance status
C20	API Inventory Management	An inventory of APIs is maintained making it easier to detect ghost APIs used to gain access to systems	Assured as part of ISO/IEC 27001 (at least ISO/IEC 27001:2022) certification

3.6 Residual risks and actions

[A summary of the residual risks which are likely to be above the risk appetite stated after all controls have been applied and verified should be listed with actions and timescales included.]

4. In-service controls

4.1 [This section should describe the controls relating to the information lifecycle, including development, testing, in-service, termination and on-going risk management and accreditation assurance. Details of any formal assurance requirements specified in the contract such as security CHECK testing or maintained ISO/IEC 27001 (at least ISO/IEC 27001:2022) certification should be included. This section should include at least:

4.1.1 information risk management and timescales and triggers for a review;

4.1.2 contractual patching requirements and timescales for the different priorities of patch;

4.1.3 protective monitoring arrangements to include how anomalous behaviour is identified and acted upon as well as how logging and auditing of user activity is done;

4.1.4 configuration and change management;

4.1.5 incident management;

4.1.6 vulnerability management;

4.1.7 user access management; and

4.1.8 data sanitisation and disposal.]

5. Security Operating Procedures (SyOPs)

5.1 [If needed any SyOps requirements should be included and referenced here.]

6. Major Hardware and Software and end of support dates

6.1 [This should be a table which lists the end of support dates for hardware and software products and components. An example table is shown below.]

Name	Version	End of mainstream Support/ Extended Support	Notes/RAG Status
Server Host	HP XXXX	Feb 2020/ March 2022	

7. Incident Management Process

7.1 [The Suppliers' process, as agreed with RECCo, should be included here. It must as a minimum include the protocol for how and when incidents will be reported to RECCo and the process that will be undertaken to mitigate the incidents and investigate the root cause.]

8. Security Requirements for User Organisations

8.1 [Any security requirements for connecting organisations or departments should be included or referenced here.]

9. API and Services Inventory

[The register of all points of ingress and egress, physical, virtual, container and serverless components, network configuration, data stores, key stores, secret stores, backups, user roles and accounts, 3rd party services and technologies.]

10. Required Changes Register

10.1 [The table below shows the headings for the Required Changes Register which should be maintained and used to update the contents of this document at least annually.]

Ref	Section	Change	Agreed With	Date agreed	Documentation update	Status

11. Sub-contractors

11.1 [This should include a table which shows for each Sub-contractor their name, the function that they are performing, the data and data volume being processed, the location, and their certification status]

12. Annex A. ISO/IEC 27001 (at least ISO/IEC 27001:2022) and/or Cyber Essential Plus certificates

12.1 [Any certifications relied upon should have their certificates included]

13. Annex B. Cloud Security Principles assessment

13.1 [A spreadsheet may be attached]

14. Annex C. Protecting Bulk Data assessment if required by RECCo/ Customer

14.1 [A spreadsheet may be attached]

15. Annex D. Latest ITHC report and Remediation Action Plan

Schedule 6: Insurance Requirements

1. Obligation to Maintain Insurances

- 1.1 Without prejudice to its obligations to the RECCo under this Contract, including its indemnity and liability obligations, the Supplier shall for the periods specified in this Schedule take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 and any other insurances as may be required by applicable Law (together the **"Insurances"**). The Supplier shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are:
 - 1.3.1 of good financial standing;
 - 1.3.2 appropriately regulated;
 - 1.3.3 regulated by the applicable regulatory body and is in good standing with that regulator; and
 - 1.3.4 except in the case of any Insurances provided by an Affiliate of the Supplier, of good repute in the international insurance market.
- 1.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the RECCo shall be indemnified in respect of claims made against the RECCo in respect of death or bodily injury or third party property damage arising out of or in connection with the Contract and for which the Supplier is legally liable.

2. General Obligations

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

slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3. Failure to Insure

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 3.2 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the RECCo may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and the RECCo shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

4. Evidence of Insurances

- 4.1 The Supplier shall upon the Effective Date and within 15 Working Days after the renewal or replacement of each of the Insurances, provide evidence, in a form satisfactory to the RECCo, that the Insurances are in force and effect and meet in full the requirements of this Schedule. Receipt of such evidence by the RECCo shall not in itself constitute acceptance by the RECCo or relieve the Supplier of any of its liabilities and obligations under this Contract.

5. Insurance for the Required Amount

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

6. Cancellation

- 6.1 Subject to Paragraph 7.2, the Supplier shall notify the RECCo in writing at least 5 Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 6.2 Without prejudice to the Supplier's obligations under Paragraph 4, Paragraph 7.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

7. Insurance Claims, Premiums and Deductibles

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Contract for which it may be entitled to claim under any of the Insurances. In the event that the RECCo receives a claim relating to or arising out of the Services and/or this Contract, the Supplier shall co-operate with RECCo and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.
- 7.2 The Supplier shall maintain a register of all claims under the Insurances in connection with this Contract and shall allow the RECCo to review such register at any time.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the RECCo any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

8. Required Insurances

- 8.1 The Supplier shall hold for the Term and a period of six (6) years following termination or expiry of this Agreement:
 - 8.1.1 Public and products liability insurance with a limit of indemnity of not less than £10,000,000 (ten million Pounds Sterling) for each claim and in the aggregate in respect of products liability;
 - 8.1.2 Employer's liability insurance in respect of Suppliers Personnel in accordance with any legal requirement for the time being in force;
 - 8.1.3 Professional indemnity insurance with a limit of indemnity of not less than £10,000,000 (ten million Pounds Sterling) for each claim and in the aggregate; and
 - 8.1.4 Cyber insurance with a limit of indemnity of not less than £5,000,000 (five million Pounds Sterling) for each claim and in the aggregate.
- 8.2 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Agreement.

9. Insurance Claim Notification

- 9.1 Except where RECCo is the claimant party, the Supplier shall give the RECCo notice within 20 Working Days after any insurance claim in excess of £100,000 relating to or arising out of the provision of the Services or this Contract on any of the Insurances or which, but for the application of the

applicable policy excess, would be made on any of the Insurances and (if required by the RECCo) full details of the incident giving rise to the claim.

Schedule 7: RECCo Responsibilities

1. Introduction

- 1.1 The responsibilities of the RECCo set out in this Schedule shall constitute the RECCo Responsibilities under this Contract. Any obligations of the RECCo in Schedule 2 (*Services Description*) and Schedule 8 (*Supplier Solution*) shall not be RECCo Responsibilities and RECCo shall have no obligation to perform any such obligations unless they are specifically stated to be “RECCo Responsibilities” and cross referenced in the table in Paragraph 3.
- 1.2 The responsibilities specified within this Schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.

2. General Obligations

- 2.1 The RECCo shall:
 - 2.1.1 perform those obligations of the RECCo which are set out in the Clauses of this Contract and the Paragraphs of the Schedules (except Schedule 2 (*Services Description*) and Schedule 8 (*Supplier Solution*));
 - 2.1.2 use its reasonable endeavours to provide the Supplier with access to appropriate members of the RECCo’s staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and the Termination Assistance Period;
 - 2.1.3 provide sufficient and suitably qualified staff to fulfil the RECCo’s roles and duties under this Contract;
 - 2.1.4 use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Contract provided that such documentation, data and/or information is available to the RECCo and is authorised for release by the RECCo; and
 - 2.1.5 procure for the Supplier such agreed access and use of the RECCo Software and RECCo System as is reasonably required for the Supplier to comply with its obligations under this Contract.

3. Specific Obligations

- 3.1 The RECCo shall, in relation to this Contract perform the RECCo’s responsibilities identified as such in this Contract the details of which are set out below:

Document	Location (Paragraph)
[insert Schedule details here]	[Refer to specific Paragraphs here]

Schedule 8: Supplier Solutions

[To be completed prior to contract signature]

Schedule 9: Commercially Sensitive Information

[To be completed at contract signature]

Schedule 10: Notified Key Sub-Contractors

[To be completed prior to contract signature]

Schedule 11: Third Party Contracts

[To be completed at contract award]

Schedule 12: Software

1. The Software

- 1.1 The Software below is licensed to RECCo in accordance with Clause 16 (*Intellectual Property Rights*) and Schedule 32 (*Intellectual Property Rights*).
- 1.2 The Parties agree that they will update this Schedule regularly, and in any event no less than every 6 (six) Months from the Effective Date, to record any Supplier Software or Third Party Software subsequently licensed by the Supplier or third parties for the purposes of the delivery of the Services.

2. Supplier Software

- 2.1 The Supplier Software includes the following items:

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

3. Third Party Software

3.1 The Third Party Software shall include the following items:

Third Party Software	Supplier	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non-COTS)	Term/Expiry

4. Third Party Data

4.1 The Third Party Data shall include the following items:

Third Party Data	Supplier	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non-COTS)	Term/Expiry

5. Excluded Third Party Software

5.1 The Excluded Third Party Software shall include the following items:

Third Party Software	Supplier	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non-COTS)	Term/Expiry

Annex 1: Form Of Confidentiality Undertaking

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on **[date]**

BETWEEN:

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

WHEREAS:

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

IT IS AGREED as follows:

1. Interpretation

- 1.1 In this Agreement, unless the context otherwise requires:

“Confidential Information”

means:

- (a) Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the RECCo to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:
 - (i) the Supplier; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;
- (b) the source code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, relevant design and development

information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation supplied by the Supplier to the RECCo pursuant to or in connection with the Sub-licence;

- (c) other Information provided by the RECCo pursuant to this Agreement to the Sub-licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub-licensee's attention or into the Sub-licensee's possession in connection with the Sub-licence; and
- (a) Information derived from any of the above, but not including any Information that:
 - (b) was in the possession of the Sub-licensee without obligation of confidentiality prior to its disclosure by the RECCo;
 - (c) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
 - (d) was independently developed without access to the Information;

“Information”

means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

“Sub-licence”

has the meaning given to that expression in recital 0 to this Agreement.

1.2 In this Agreement:

- 1.2.1 a reference to any gender includes a reference to other genders;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 the words “include” and cognate expressions shall be construed as

if they were immediately followed by the words “without limitation”;

- 1.2.4 references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;
- 1.2.5 headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- 1.2.6 references to Clauses are to clauses of this Agreement.

2. Confidentiality Obligations

- 2.1 In consideration of the RECCo entering into the Sub-licence, the Sub-licensee shall:
 - 2.1.1 treat all Confidential Information as secret and confidential;
 - 2.1.2 have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
 - 2.1.3 not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Agreement;
 - 2.1.4 not transfer any of the Confidential Information outside the United Kingdom;
 - 2.1.5 not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;
 - 2.1.6 immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
 - 2.1.7 upon the expiry or termination of the Sub-licence:
 - (a) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
 - (b) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub-licensee) from any computer, word processor, voicemail system or any other device; and
 - (c) make no further use of any Confidential Information.

3. Permitted Disclosures

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

4. General

- 4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
 - 4.2.1 to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;
 - 4.2.2 to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
 - 4.2.3 as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub-licensee acknowledges and agrees that damages alone may not be

an adequate remedy for any breach by the Sub-licensee of any of the provisions of this Agreement. Accordingly, the Sub-licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.

- 4.5 The maximum liability of the Sub-licensee to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

5. Notices

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

5.2 Any Notice:

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

[Address]

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

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

[Name of Organisation]

[Address]

Attention: []

6. Governing law

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

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

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

For and on behalf of [name of Supplier]

Signature:

Date:

Name:

Position:

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

Signature:

Date:

Name:

Position:

Schedule 13: Implementation Plan

1. Introduction

- 1.1 This Schedule:
 - 1.1.1 defines the process for the preparation and implementation of the Outline Implementation Plan and Detailed Implementation Plan; and
 - 1.1.2 identifies the Milestones (and associated Deliverables) including the Milestones which trigger payment to the Supplier of the applicable Milestone Payments following the issue of the applicable Milestone Achievement Certificate.

2. Outline Implementation Plan

- 2.1 The Outline Implementation Plan is set out in Annex A.
- 2.2 All changes to the Outline Implementation Plan shall be subject to the Change Control Procedure provided that the Supplier shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise (except in accordance with Clause 29 (RECCo Cause and Other Supplier Cause)).

3. Approval of the Detailed Implementation Plan

- 3.1 The Supplier shall submit a draft of the Detailed Implementation Plan to RECCo for approval within 20 Working Days of the Effective Date.
- 3.2 The Supplier shall ensure that the draft Detailed Implementation Plan:
 - 3.2.1 incorporates all of the Milestones and Milestone Dates set out in the Outline Implementation Plan;
 - 3.2.2 includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones:
 - (a) the completion of each design document;
 - (b) the completion of the build phase;
 - (c) the completion of any Testing to be undertaken in accordance with Schedule 14 (*Testing Procedures*); and
 - (d) training and roll-out activities;
 - 3.2.3 clearly outlines all the steps required to implement the Milestones to be achieved during the programme, together with a high-level plan for the rest of the programme, in conformity with the RECCo Requirements;
 - 3.2.4 clearly outlines the required roles and responsibilities of both Parties, including staffing requirements; and

- 3.2.5 is produced using a software tool as specified or agreed by RECCo.
- 3.3 Prior to the submission of the draft Detailed Implementation Plan to RECCo in accordance with Paragraph 3.1, RECCo shall have the right:
 - 3.3.1 to review any documentation produced by the Supplier in relation to the development of the Detailed Implementation Plan, including:
 - (a) details of the Supplier's intended approach to the Detailed Implementation Plan and its development;
 - (b) copies of any drafts of the Detailed Implementation Plan produced by the Supplier; and
 - (c) any other work in progress in relation to the Detailed Implementation Plan; and
 - 3.3.2 to require the Supplier to include any reasonable changes or provisions in the Detailed Implementation Plan.
- 3.4 Following receipt of the draft Detailed Implementation Plan from the Supplier, RECCo shall:
 - 3.4.1 review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and
 - 3.4.2 notify the Supplier in writing that it approves or rejects the draft Detailed Implementation Plan no later than 20 Working Days after the date on which the draft Detailed Implementation Plan is first delivered to RECCo.
- 3.5 If RECCo rejects the draft Detailed Implementation Plan:
 - 3.5.1 RECCo shall inform the Supplier in writing of its reasons for its rejection; and
 - 3.5.2 the Supplier shall then revise the draft Detailed Implementation Plan (taking reasonable account of RECCo's comments) and shall re-submit a revised draft Detailed Implementation Plan to RECCo for RECCo's approval within 20 Working Days of the date of RECCo's notice of rejection. The provisions of Paragraph 3.4 and this Paragraph 3.5 shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 3.6 If RECCo approves the draft Detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of RECCo's notice of approval.
- 4. Updates to And Maintenance of the Detailed Implementation Plan**
 - 4.1 Following the approval of the Detailed Implementation Plan by RECCo:
 - 4.1.1 the Supplier shall submit a revised Detailed Implementation Plan to

RECCo every 3 months starting 3 months from the Effective Date;

- 4.1.2 without prejudice to Paragraph 4.1.1, RECCo shall be entitled to request a revised Detailed Implementation Plan at any time by giving written notice to the Supplier and the Supplier shall submit a draft revised Detailed Implementation Plan to RECCo within 20 Working Days of receiving such a request from RECCo (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure);
 - 4.1.3 any revised Detailed Implementation Plan shall (subject to Paragraph 4.2) be submitted by the Supplier for approval in accordance with the procedure set out in Paragraph 3; and
 - 4.1.4 the Supplier's performance against the Implementation Plan shall be monitored at meetings of the Service Management Board (as defined in Schedule 21 (*Governance*)). In preparation for such meetings, the current Detailed Implementation Plan shall be provided by the Supplier to RECCo not less than 5 Working Days in advance of each meeting of the Service Management Board.
- 4.2 Save for any amendments which are of a type identified and notified by RECCo (at RECCo's discretion) to the Supplier in writing as not requiring approval, any material amendments to the Detailed Implementation Plan shall be subject to the Change Control Procedure provided that:
- 4.2.1 any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments; and
 - 4.2.2 in no circumstances shall the Supplier be entitled to alter or request an alteration to any Milestone Date except in accordance with Clause 29 (Authority RECCo Cause and Other Supplier Cause).
- 4.3 Any proposed amendments to the Detailed Implementation Plan shall not come into force until they have been approved in writing by RECCo.

Annex A: Outline Implementation Plan

To be agreed with Service Provider and included at point of contract.

Milestone	Deliverables (bulleted list showing all Deliverables (and associated tasks) required for each Milestone)	Duration (Working Days)	Milestone Date	RECCo Responsibilities (if applicable)	Link to ATP/CPP

SCHEDULE 14

TESTING PROCEDURES

TESTING PROCEDURES

1

DEFINITIONS

In this Schedule, the following definitions shall apply:

"Component"	any constituent parts of the infrastructure for a Service, hardware or Software;
"Test"	Has the meaning given in Schedule 1 (Definitions);
"Test Certificate"	a certificate materially in the form of the document contained in Annex 2 issued by RECCo when Test Evidence has shown that a Deliverable has satisfied its relevant Test Success Criteria;
"Test Evidence"	In relation to Test Success Criteria, means the corresponding evidence that the Test has met the expected Test Success Criteria;
"Test Phase"	a period of time or sequence of activities identified as a 'Test Phase' in the Test Strategy;
"Test Issue"	Any Defect in or variance or non-conformity of a Deliverable from its requirements (such requirements being set out in the relevant Test Success Criteria);
"Test Plan"	a plan: (a) for the Testing of Deliverables; and (b) setting out other agreed criteria related to the achievement of Milestones, (c) a Schedule for testing as described further in Paragraph 6;
"Test Exit Reports"	the reports to be produced by the Supplier setting out the results of Testing and progress against Test Plans.
"Test Specification"	the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph 8;
"Test Strategy"	a strategy for the conduct of Testing as described further in Paragraph 5;
"Test Success Criteria"	in relation to a Test, the test success criteria for that Test as referred to in Paragraph 7;
"Test Witness"	any person appointed by RECCo pursuant to Paragraph 11
"Testing Procedures"	the applicable testing procedures and Test Success Criteria set out in this Schedule.

2 NOT USED

3 RISK

3.1 The issue of a Test Certificate, a Milestone Achievement Certificate and/or a conditional Milestone Achievement Certificate shall not:

- (a) operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy RECCo's requirements for that Deliverable or Milestone; or
- (b) affect RECCo's right subsequently to reject:
 - (i) all or any element of the Deliverables to which a Test Certificate relates; or
 - (i) any Milestone to which the Milestone Achievement Certificate relates,

in each case where the issue of a Test Certificate, Milestone Achievement Certificate or conditional Milestone Achievement Certificate was based on information provided by the Supplier, which was materially incorrect or misleading and which, had RECCo known the correct information at the time of such issue, would have resulted in RECCo not issuing the Test Certificate, Milestone Achievement Certificate or conditional Milestone Achievement Certificate.

3.2 Notwithstanding the issuing of any Milestone Achievement Certificate (including the Milestone Achievement Certificate in respect of RECCo's Authority to Proceed), the Supplier shall remain solely responsible for ensuring that:

- (a) the Supplier Solution as designed and developed meets RECCo Requirements;
- (b) the Services are implemented in accordance with this Agreement; and
- (c) each Target Performance Level is met from the relevant Operational Service Commencement Date.

4 TESTING OVERVIEW

4.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, the Test Plans and the Test Specifications.

4.2 The Supplier shall not submit any Deliverable for Testing:

- (a) unless the Supplier is confident that it will satisfy the relevant Test Success Criteria;
- (b) until RECCo has issued a Test Certificate in respect of any prior, dependant Deliverable(s); and
- (c) until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).

4.3 The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the

commencement of Testing in respect of the relevant Deliverable.

- 4.4 Prior to the issue of a Test Certificate, RECCo shall be entitled to review and verify the relevant Test Evidence and Test Exit Reports.
- 4.5 Any Disputes between RECCo and the Supplier regarding Testing shall be referred to the Dispute Resolution Procedure using the Expedited Dispute Timetable.

5 TEST STRATEGY

5.1 The Supplier shall develop the final Test Strategy in line with the Outline Implementation Plan (or such other period as the Parties may agree in writing) after the Effective Date.

5.2. The final Test Strategy should include:

- (a) an overview of how Testing will be conducted in accordance with the Implementation Plan; to include all end-to-end test phases in scope to deliver the RECCo functional, non-functional, operational and service readiness requirements.
- (b) the process to be used to capture and record Test results and the categorisation of Test Issues;
- (c) the method for mapping the expected Test results to the Test Success Criteria;
- (d) the procedure to be followed if a Deliverable fails to satisfy the Test Success Criteria or produces unexpected results, including a procedure for the resolution of Test Issues;
- (e) the procedure to be followed to sign off each Test;
- (f) the process for the production and maintenance of Test Reports and reporting, including templates for the Test Reports and the Test Issue Management Log, and a sample plan for the resolution of Test Issues;
- (g) the names and contact details of RECCo's and the Supplier's Test representatives;
- (h) a high level identification of the resources required for Testing, including infrastructure, personnel and RECCo and/or third party involvement in the conduct of the Tests;
- (i) the technical environments required to support the Tests; and
- (j) the procedure for managing the configuration of the Test environments and test data.

6 TEST PLANS

- 6.1. The Supplier shall develop Test Plans and submit these for the approval of RECCo as soon as practicable but in any case, no later than 20 Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start date for the relevant Testing (as specified in the Implementation Plan).

8.1 Each Test Plan shall include as a minimum:

- 8.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being tested and, for each Test, the specific Test Success Criteria to be satisfied;
- 8.1 a detailed procedure for the Tests to be carried out, including:
 - (a) the timetable for the Tests, including start and end dates;
 - (b) the Testing mechanism;
 - (c) dates and methods by which RECCo can inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;
 - (d) the mechanism for ensuring the quality, completeness and relevance of the Tests;
 - (e) the format and an example of Test progress reports and the process with which RECCo accesses daily Test schedules;
 - (f) the process which RECCo will use to review Test Issues and the Supplier's progress in resolving these in a timely basis;
 - (g) the Test Schedule;
 - (h) the re-Test procedure, the timetable and the resources which would be required for re-Testing; and
- 8.1 the process for escalating Test Issues from a re-test situation to the taking of specific remedial action to resolve the Test Issue.

7 TEST SUCCESS CRITERIA

The Test Success Criteria for each Test and or Test Phase that must be achieved for the Supplier to achieve a Milestone will be set out and agreed between RECCo and the Supplier as part of the agreement of the Test Strategy.

8 TEST SPECIFICATION

Following approval of a Test Plan, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least 10 Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start of the relevant Testing (as specified in the Implementation Plan).

8.1 Each Test Specification shall include as a minimum:

- 8.1.1 Test scenarios / scripts / data (as detailed in the test strategy);
- 8.1.2 Test pre-requisites and the mechanism for measuring them; and

8.2 expected Test results, including:

8.2.1 a mechanism to be used to capture and record Test results; and

8.2.2 a method to process the Test results to establish their content.

9 TESTING

The Supplier shall manage the progress of Testing in accordance with the Test Strategy and relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with Paragraph 11.

10 TEST ISSUES

Where a Test Report identifies an unresolved Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 or as otherwise agreed in the Test Strategy. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

11 TEST WITNESSING/TEST EVIDENCE

RECCo may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by RECCo, each of whom shall have appropriate skills to fulfil the role of a Test Witness. RECCo may, in its sole discretion, verify Test Evidence and the Test Exit Report to confirm that the Deliverable(s) have met the Success Criteria.

12 OUTCOME OF TESTING

At the completion of each Test (as identified and documented in the Test Strategy), the Supplier shall deliver to RECCo a Test Exit Report.

RECCo shall issue a Test Certificate as soon as reasonably practicable when the Test Evidence demonstrates that the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.

13 ISSUE OF MILESTONE ACHIEVEMENT CERTIFICATE

13.1 RECCo shall issue a Milestone Achievement Certificate in respect of a given Milestone as soon as is reasonably practicable following:

- (a) the issuing by RECCo of Test Certificates and/or conditional Test Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and
- (b) performance by the Supplier to the reasonable satisfaction of RECCo of any other tasks identified in the Contract as associated with that Milestone (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).

13.2 The grant of a Milestone Achievement Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of Schedule 15 (Charges and Invoicing).

ANNEX 1: TEST ISSUES – SEVERITY LEVELS

- 1 Severity Level 1 Test Issue: a Test Issue that causes non-recoverable conditions, e.g. it is not possible to continue using a Component, a Component crashes, there is database or file corruption, or data loss;
- 2 Severity Level 2 Test Issue: a Test Issue for which, as reasonably determined by RECCo, there is no practicable workaround available, and which:
 - (a) causes a Component to become unusable;
 - (b) causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
 - (c) has an adverse impact on any other Component(s) or any other area of the Services;
- 3 Severity Level 3 Test Issue: a Test Issue which:
 - 3.1 causes a Component to become unusable;
 - 3.2 causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
 - 3.3 has an impact on any other Component(s) or any other area of the Services;

 but for which, as reasonably determined by RECCo, there is a practicable
 workaround available;
- 4 Severity Level 4 Test Issue: a Test Issue which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Services; and
- 5 Severity Level 5 Test Issue: a Test Issue that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Services.

ANNEX 2: TEST CERTIFICATE

To: [NAME OF SUPPLIER]

FROM: Retail Energy Code Company Limited

[Date]

Dear Sirs,

TEST CERTIFICATE

Deliverables: [insert description of Deliverables]

We refer to the agreement (the "Contract") relating to the provision of the Services between Retail Energy Code Company Limited ("RECCo") and [name of Supplier] (the "Supplier") dated [date].

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (Definitions) or Schedule 14 (Testing Procedures) of the Contract.

[We confirm that the Deliverables listed above have been tested successfully in accordance with the Test Plan relevant to those Deliverables.]

OR

[This Test Certificate is issued pursuant to Paragraph 13.1 of Schedule 14 (Testing Procedures) of the Contract on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

*delete as appropriate

Yours faithfully [Name]

[Position]

acting on behalf of Retail Energy Code Company Limited

ANNEX 3: MILESTONE ACHIEVEMENT CERTIFICATE

To: [NAME OF SUPPLIER]

FROM: Retail Energy Code Company Limited

[Date]

Dear Sirs,

MILESTONE ACHIEVEMENT CERTIFICATE

Milestone: [insert description of Milestone]

We refer to the agreement (the "Contract") relating to the provision of the Services between Retail Energy Code Company Limited ("RECCo") and [name of Supplier] (the "Supplier") dated [date].

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (Definitions) or Schedule 14 (Testing Procedures) of the Contract.

[We confirm that all the Deliverables relating to Milestone [number] have been tested successfully in accordance with the Test Plan relevant to this Milestone [or that a conditional Test Certificate has been issued in respect of those Deliverables that have not satisfied the relevant Test Success Criteria.]]*

OR

[This Milestone Achievement Certificate is granted pursuant to Paragraph 13.1 of Schedule 12 (Testing Procedures) of the Agreement on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with the provisions of Schedule 15 (Charges and Invoicing)]*

*delete as appropriate

Yours faithfully

[Name]

[Position]

acting on behalf of Retail Energy Code Company Limited

Schedule 15

Charges and Invoicing

CHARGES AND INVOICING

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Change Request Volume”	means the annual threshold for REC changes set out in Table 4 of Annex 1;
“Delay Payment Rate”	has the meaning given in Paragraph 1.1 of Part C;
“Indexation” and “Index”	the adjustment of an amount or sum in accordance with Paragraph 4 of Part C; and
“Person Day”	7.5 Person Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day.

PART A: PRICING

1 APPLICABLE PRICING MECHANISM

- 1.1 Milestone Payments, Service Charges and day rates are set out in Annex 1.

2 TIME AND MATERIALS MILESTONE PAYMENTS OR SERVICE CHARGES

- 2.1 Where a Milestone Payment or Service Charge (as applicable) is to be calculated by reference to a time and materials pricing mechanism the day rates set out in Table 1 of Annex 1 shall be used to calculate the relevant Charges, provided that the Supplier (or its Sub-contractor) shall not be entitled to include any uplift for risks or contingencies within its day rates.

3 FIXED PRICE MILESTONE PAYMENTS OR SERVICE CHARGES

- 3.1 Where a Milestone Payment or Service Charge is to be calculated by reference to a fixed price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Table 2 for Milestone Payments and Table 3 for Service Charges of Annex 1.

4 REIMBURSEABLE EXPENSES

- 4.1 Except where expressly agreed by RECCo, the Charges shall include all costs and expenses relating to the Deliverables, the Services and/or the Supplier's performance of its obligations under this Agreement and no further amounts shall be payable by RECCo to the Supplier in respect of such performance, including in respect of matters such as:
- (a) any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document and report reproduction, shipping, desktop and office equipment costs required by the Supplier Personnel, including network or data interchange costs or other telecommunications charges; or
 - (b) any amount for any services provided or costs incurred by the Supplier prior to the Effective Date.

PART B: CHARGING MECHANISMS

1 MILESTONE PAYMENTS

- 1.1 Subject to the provisions of Paragraph 1.3 of Part C in relation to the deduction of Delay Payments, on the Achievement of a Milestone the Supplier shall be entitled to invoice RECCo for the Milestone Payment associated with that Milestone.
- 1.2 Each invoice relating to a Milestone Payment shall be supported by a Milestone Achievement Certificate.
- 1.3 The circumstances in which a Milestone will be considered to have been achieved are set out in Schedule 6.2 Testing Procedures. Payment will be made to the Service Provider in accordance with Part B of this Schedule.

2 SERVICE CHARGES

- 2.1 Service Charges shall be invoiced by the Supplier for each Service Period in arrears in accordance with the requirements of Part D.
- 2.2 Any Service Credits that accrue during a Service Period shall be deducted from the Service Charges payable for the next following Service Period. An invoice for a Service Charge shall not be payable by RECCo unless all adjustments (including Service Credits) relating to the Service Charges for the immediately preceding Service Period have been agreed.

3 OPTIONAL SERVICES

- 3.1 If RECCo gives notice pursuant to Clause 5.14 (Optional Services) that it requires the Supplier to provide any or all of the Optional Services the Service Charges for the relevant Optional Services shall be use the relevant rates and prices specified in Annex 1.

4 PERFORMANCE INCENTIVE BONUS

- 4.1 Where the Supplier has accrued Performance Incentive Points in any Service Period a Performance Incentive Bonus will be calculated in accordance with Part C.
- 4.2 Any Performance Incentive Bonus charges that accrue and have been agreed by the Service Management Group as accruing, during a Service Period shall be added to the Service Charges payable for the next following Service Period.

PART C: ADJUSTMENTS TO THE CHARGES

1 DELAY PAYMENTS

- 1.1 If a Key Milestone has not been Achieved on or before the relevant Milestone Date, the Supplier shall pay a Delay Payment to RECCo in respect of that Key Milestone. Delay Payments shall accrue at the daily rate (the "Delay Payment Rate") determined in accordance with Paragraph 1.2 from (but excluding) the relevant Milestone Date to the date on which the Key Milestone is Achieved on a daily basis, with any part day's Delay counting as a day. The Delay Payment cannot be a negative number.

- 1.2 Where a Delay Payment is payable in respect of a Key Milestone, the Delay Payment Rate shall be calculated by:

$$\text{DPR} = (\text{MV} / \text{MWD}) * (\text{LWD} - \text{RD})$$

Where:

DPR is Delay Payment Rate

MV is Milestone Value

MWD is total number of Working Days that comprise the Milestone

LWD is total number of Working Days which the milestone is late

RD is the total number of Working Days attributable to a delay by RECCo in performing its obligations in relation to a Test (where such delay was not caused by the Supplier's acts or omissions and which delay exceeds the time allocated to RECCo for such obligations in the Test Strategy or in Schedule 6.2 (Testing))

- 1.3 Any amounts paid to RECCo pursuant to Paragraph 1.1 shall not be refundable to the Supplier in any circumstances.
- 1.4 The Parties agree that Delay Payments calculated in accordance with the applicable Delay Payment Rates are in each case a genuine pre-estimate of the Losses which RECCo will incur as a result of any failure by the Supplier to Achieve the relevant Key Milestone by the Milestone Date. Delay Payment Rates are stated exclusive of VAT.
- 1.5 The Delay Payment in respect of a Key Milestone shall be shown as a deduction from the amount due from RECCo to the Supplier in the next invoice due to be issued by the Supplier after the date on which the relevant Key Milestone is Achieved. If the relevant Key Milestone is not Achieved by the end of the following quarter and no invoice is due to be issued by the Supplier within 10 Working Days of expiry of month, then the Supplier shall within 10 Working Days of expiry of the month:
- (a) issue a credit note to RECCo in respect of the total amount of the Delay Payment in respect of the Key Milestone (net of any payment made in respect of the Key Milestone pursuant to Paragraph 1.3); and
 - (b) pay to RECCo as a debt a sum equal to the total amount of the Delay Payment in respect of the Key Milestone together with interest on such amount at the

applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment, whether before or after judgment.

2 SERVICE CREDITS

2.1 Service Credits shall be calculated by reference to the number of Service Points accrued in any one Service Period pursuant to the provisions of Schedule 2.2 (Performance Levels).

2.2 For each Service Period:

- (a) the Service Points accrued shall be converted to a percentage deduction from the Service Charges for the relevant Service Period on the following basis for each class of performance measure; and
- (b) Service Credits payable for such Service Period for each class of performance measure shall not exceed 5% of quarterly service charges for Quantitative Key Performance Indicator KPI-1 (as set out in Annex 1 of Schedule 3), 5% of monthly service charges for Quantitative Key Performance Indicators KPI-2-KPI-13 inclusive (as set out in Annex 1 of Schedule 3), and 5% of annual charges for Stakeholder Satisfaction Survey qualitative targets as set out in Annex 1 of Schedule 3.
- (c) For the avoidance of doubt the aggregate value of Service Credits payable in a quarter for Quantitative Key Performance Indicator KPI 1-13 shall not exceed 5% of quarterly service charges. For the avoidance of doubt the 5% cap for KPIs 1-13 does not include the service credits payable in relation to the Annual Survey.

Quantitative Key Performance Indicators

Performance	Service Points	Service Credits (% of total Services Charges payable for the relevant Service Period (prior to deduction of applicable Service Credits).
Target Performance Level	0	None
Minor KPI Failure	1	0.5%
Serious KPI Failure	2	1.5%
Severe KPI Failure	3	3.5%
KPI Threshold	4	5%

Annual Stakeholder Satisfaction Survey

Performance Level	Level	Service Points	Service Credits (% of total Services Charges payable for the relevant Service Period (prior to deduction of applicable Service Credits)).
Target Performance Level	$\geq 7.50/10$ average score across aggregate of all questions	0	None
Minor KPI Failure	7.00-7.49/10 average score across aggregate of all questions	1	1%
Serious KPI Failure	6.50-6.99/10 average score across aggregate of all questions	2	2.5%
Severe KPI Failure	6.00-6.49/10 average score across aggregate of all questions	3	4%
KPI Service Threshold	$\leq 6.00/10$ average score across aggregate of all questions	4	5%

- 2.3 Where the number of Service Points is not a whole number as a result of the application of the multiplier for Repeat KPI Failures in Paragraph 3 of Schedule 2.2 (Performance Levels), the Service Credits applicable to the Service Points shall be the average of the Service Credits applicable if the Service Points was rounded down to the nearest whole number and the Service Credits applicable if the Service Points were rounded up to the nearest whole number. By way of example, where the application of the multiplier results in Service Points of 1.5 for Quantitative Key Performance Indicators, the applicable Service Credits would be calculated as:

$$(0.5\% + 1.5\%)/2 = 1.0\%$$

- 2.4 The liability of the Supplier in respect of Service Credits shall be subject to Clause 23.5) (Financial and other Limits) provided that, for the avoidance of doubt, the operation of the Service Credit Cap shall not affect the continued accrual of Service Points in excess of such financial limit in accordance with the provisions of Schedule 2.2 (Performance Levels) and further provided that such excess of Service Points accruing in any Service Period shall not be carried forward to the subsequent Service Period.
- 2.5 Service Credits are a reduction of the Service Charges payable in respect of the relevant Services to reflect the reduced value of the Services received and are stated exclusive of VAT.
- 2.6 Service Credits shall be shown as a deduction from the amount due from RECCo to the Supplier in the invoice for the Service Period immediately succeeding the Service Period to which they relate.

3 PERFORMANCE INCENTIVE BONUS CALCULATION

- 3.1 Performance Incentive Bonus charges are capped at 5% for any Service Period for each category of applicable Key Performance Indicators.

Quantitative Key Performance Indicators:

- 3.2 Performance Incentive Bonus is capped at 5% of monthly Services Period Service Charges across all qualifying Quantitative Key Performance Indicators (APDEX Scoring and CSAT).

Performance Incentive Points accrued for Service Period across all qualifying Quantitative Key Performance Indicators	Performance Incentive Bonus (% of total Services Charges payable for the relevant Service Period (prior to deduction of applicable Service Credits)).
1	0.5%
2	1.5%
3	3.5%
4	5%

Annual Stakeholder Satisfaction Survey

- 3.3 Performance Incentive Bonus is capped at 5% of annual Service Period Service Charges.

3.4

Performance Incentive Points accrued for Service Period across all qualifying Quantitative Key Performance Indicators	Performance Incentive Bonus (% of total Services Charges payable for the relevant Service Period (prior to deduction of applicable Service Credits)).
1	0.5%
2	1.5%
3	3.5%
4	5%

4 INDEXATION

- 4.1 With effect from the commencement of any Extension Period or Further Extension period post the expiry of the term immediately prior (e.g. the Initial Term for any Extension Period), any amounts or sums in this Agreement which are expressed to be “**subject to Indexation**” shall be adjusted in accordance with the provisions of this

Paragraph 4 to reflect the effects of inflation. For the avoidance of doubt, the percentages expressed in the fourth column of each table in Paragraph 2.2 above shall not be subject to Indexation.

4.2 Where Indexation applies, the relevant adjustment shall be:

- (a) applied on the first day of the calendar month following the commencement of the Extension Period or Further Extension Term and on each subsequent anniversary date (each such date an “**adjustment date**”); and
- (b) determined by multiplying the relevant amount or sum by the percentage increase or changes in the Consumer Price Index published for the 12 months immediately preceding the relevant adjustment date.

4.3 Except as set out in this Paragraph 4, neither the Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-contractors of the performance of their obligations.

5 **OPTIONAL SERVICES**

5.1 The Optional Services as set out in Table 4 in Annex 1.

6 **CHANGES TO CHARGES**

6.1 Any Changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 22 Change Control Procedure.

PART D: INVOICING AND PAYMENT TERMS

1 SUPPLIER INVOICES

1.1 The Supplier shall ensure that each invoice contains the following information:

- (a) the date of the invoice;
- (b) a unique invoice number;
- (c) the Service Period or other period(s) to which the relevant Charge(s) relate;
- (d) the reference number of the work order or change request or purchase order to which it relates (if any);
- (e) a description of the Services;
- (f) any payments due in respect of Achievement of a Milestone, including the Milestone Achievement Certificate number for each relevant Milestone;
- (g) the total Charges gross and net of any applicable deductions any VAT or other sales tax payable in respect of each of the same;
- (h) details of any Service Credits or Delay Payments or similar deductions that shall apply to the Charges detailed on the invoice;
- (i) details of any Performance Incentive Bonus charges that shall apply to the Charges detailed on the invoice;
- (j) reference to any reports required by RECCo in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by RECCo, then to any such reports as are validated by RECCo in respect of the Services);
- (k) a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;
- (l) the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and
- (m) where the Services have been structured into separate Service lines, the information at (a) to (l) of this paragraph 1.2 shall be broken down in each invoice per Service line.

1.2 The Supplier shall invoice RECCo in respect of Services in accordance with the requirements of Part B. Each invoice shall where necessary be accompanied by supporting documentation to enable the Charges to be validated. Any Charges which cannot be validated will be withheld for payment pending receipt of sufficient supporting documentation from the Supplier to enable their validation. .

- 1.3 The Supplier shall submit all invoices and Supporting Documentation to finance@retailenergycode.co.uk with a copy (again including any Supporting Documentation) to such other person and at such place as RECCo may notify to the Supplier from time to time.
- 1.4 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by RECCo in writing.
- 1.5 RECCo shall regard an invoice as valid only if it complies with the provisions of this Part D. Where any invoice does not conform to RECCo's requirements set out in this Part D, RECCo shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.
- 1.6 If RECCo fails to consider and verify an invoice in accordance with paragraphs 1.2 and 1.5, the invoice shall be regarded as valid and undisputed for the purpose of paragraph 2.1 after a reasonable time has passed.

2 PAYMENT TERMS

- 2.1 Subject to the relevant provisions of this Schedule, RECCo shall make payment to the Supplier within 30 days of the date of Supplier's invoice or 14 Working Days of the date of RECCo's receipt of the Supplier's invoice, whichever is later, provided in each case that the invoice is valid and undisputed.
- 2.2 Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.

1 **TABLE 1: SUPPLIER PERSONNEL RATE CARD FOR CALCULATION OF**
TIME AND MATERIALS CHARGES

Charges in the above table relate to services which will be delivered through Change Control.

Note. Charges in the above Table 1 shall be subject to Indexation in accordance with Section 4.1 above.

[illegible]

3 **TABLE 3: SERVICE CHARGES**

	Year 1	Year 2	Year 3	Year 4	Year 5
	[dates]	[dates]	[dates]	[dates]	[dates]
Cost Category					
Cost Category					
Cost Category					
Cost Category					
Cost Category					
Cost Category					
Total	£[total]	£[total]	£[total]	£[total]	£[total]

Note. Charges in the final column of Table 3 shall be subject to Indexation in accordance with Section 4.1 above and such indexed charges will apply for the first year of the Extension Period and for each Further Extension Period.

Notwithstanding the above, it is agreed that the overall Service Charges for each year shall be billed based on the services charges for that year in twelve equal monthly instalments.

4 **TABLE 4: OPTIONAL SERVICES**

Costs which are to be applied if any Optional Services are delivered.

Optional Service	£	Note
Optional Service #1		
Optional Service #2		
Optional Service #3		
Optional Service #4		

[Note 1. Charges in the above Table 4 shall be subject to Indexation in accordance with Section 4.1 above.

Note 2. Charges in the above Table 4 shall not be subject to Indexation in accordance with Section 4.1 above.]

5 **NOT USED**

6 **PRICING ASSUMPTIONS**

[The Charges set out in in Table 3 above are based on the following pricing assumptions:]

SCHEDULE 16

PAYMENTS ON TERMINATION

PAYMENTS ON TERMINATION

1 TERMINATION PAYMENT BY RECCO

- 1.1 The Termination Payment payable pursuant to Clauses [31.1.1] (Termination by RECCo) and [32.4] (Payments by RECCo) shall be calculated as set out below.
- 1.2 Where termination occurs during the Mobilisation Period:
 - (a) Subject to Paragraph 2.2, the Supplier may recover any costs which have been incurred by it (or which are likely to be incurred by it) as a direct result of the termination, which have not already been recovered by the Supplier through Milestone Payments, and which are incurred under arrangements or agreements that are directly associated with this Contract.
 - (b) As a condition to recovery under Paragraph 2.1, the Supplier shall be required to demonstrate that it has incurred the costs and has and is using all reasonable endeavours to reduce any additional costs to be incurred and that such costs are unavoidable, proven, reasonable, and not capable of recovery and relate directly to the Services.
 - (c) In no instance shall the costs of termination exceed the value of the next Milestone Payment which would have become payable (but for termination).
- 1.3 Where termination occurs after the Mobilisation Period:
 - (a) The Supplier may only recover the charges which will fall due during the termination notice period as provided by RECCo in accordance with Clause [31.1.1].
 - (b) The Supplier shall not be entitled to any compensation for loss arising because of early termination.

2 FULL AND FINAL SETTLEMENT

- 2.1 Any Termination Payment paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the RECCo pursuant to Clause [31.1.1] (Termination by RECCo) or termination by the Supplier pursuant to Clauses [31.3.1 or 33.3.2] (Termination by the Supplier) (as applicable), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

3 INVOICING FOR THE PAYMENTS ON TERMINATION

- 3.1 All sums due under this Schedule shall be payable by RECCo to the Supplier in accordance with the payment terms set out in Schedule 15 (Charges and Invoicing).

4 SET OFF

- 4.1 RECCo shall be entitled to set off any outstanding liabilities of the Supplier against any amounts that are payable by it pursuant to this Schedule.

5 NO DOUBLE RECOVERY

- 5.1 If any amount payable under this Schedule (in whole or in part) relates to or arises from any Transferring Assets then, to the extent that RECCo makes any payments pursuant to Schedule 25 (*Exit Management*) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.
- 5.2 The value of the Termination Payment shall be reduced or extinguished to the extent that the Supplier has already received the Charges or the financial benefit of any other rights or remedy given under this Contract so that there is no double counting in calculating the relevant payment.
- 5.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

Schedule 19: Financial Reports and Audit Rights

1. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Audit Agents”	<ul style="list-style-type: none">(a) RECCo employees;(b) RECCo’s auditors;(c) any party appointed by RECCo to carry out audit or assurance or similar review functions; and(d) successors or assigns of any of the above;
“Financial Transparency Objectives”	has the meaning given in Paragraph 1 of Part A;
“Material Change”	<p>a Change which:</p> <ul style="list-style-type: none">(a) materially changes the profile of the Charges; or(b) varies the total Charges payable during the Term (as forecast in the latest Financial Model) by:<ul style="list-style-type: none">(i) 5% or more; or(ii) £1m or more;
“Onerous Contract”	a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it, as defined under International Accounting Standard 37;
“Onerous Contract Report”	means a report provided by the Supplier pursuant to Paragraph 3 of Part A to this Schedule;

Part A: Financial Transparency Objectives

1. Financial Transparency Objectives

- 1.1 The Supplier acknowledges that the provisions of this Schedule are designed (inter alia) to facilitate, and the Supplier shall co-operate with RECCo in order to achieve, the following objectives:

1.1.1 Understanding the Charges

- (a) for RECCo to understand any payment sought from it by the Supplier including an analysis of the costs in providing the Services;
- (b) for both Parties to be able to understand the Financial Model and to have confidence that these are based on justifiable numbers and represent value for money;

1.1.2 Agreeing the impact of Change

- (a) for both Parties to agree the quantitative impact of any Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Supplier's Charges;
- (b) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

1.1.3 Continuous improvement

- (a) for the Parties to challenge each other with ideas for efficiency and improvements; and
- (b) to enable RECCo to demonstrate that it is achieving value for money relative to current market prices,

(together the "**Financial Transparency Objectives**").

2. Not Used

3. Onerous Contracts

- 3.1 If the Supplier publicly designates the Contract as an Onerous Contract (including where the Supplier has identified the Contract as such in any published accounts or public reports and announcements), the Supplier shall promptly notify RECCo of the designation and shall prepare and deliver to RECCo within the timescales agreed by the Parties (an in any event, no later than 2 months following the publication of the designation) a draft Onerous Contract Report which includes the following:

- 3.1.1 An initial root cause analysis of the issues and circumstances which may have contributed to the Contract being designated as an Onerous Contract;
- 3.1.2 An initial risk analysis and impact assessment on the provision of the Services as a result of the Supplier's designation of the Contract as an Onerous Contract;
- 3.1.3 the measures which the Supplier intends to put in place to minimise and mitigate any adverse impact on the provision on the Services;

- 3.1.4 details of any other options which could be put in place to remove the designation of the Contract as an Onerous Contract and/or which could minimise and mitigate any adverse impact on the provision of the Services.
- 3.2 Following receipt of the Onerous Contract Report, RECCo shall review and comment on the report as soon as reasonably practicable and the Parties shall cooperate in good faith to agree the final form of the report, which shall be submitted to the [Programme Board], such final form report to be agreed no later than 1 month following RECCo's receipt of the draft Onerous Contract Report.
- 3.3 The [Programme Board] shall meet within 14 Working Days of the final Onerous Contract Report being agreed by the Parties to discuss the contents of the report; and the Parties shall procure the attendance at the meeting of any key participants where reasonably required.
- 3.4 The Supplier acknowledges and agrees that the report is submitted to RECCo on an information only basis and RECCo's receipt of and comments in relation to the report shall not be deemed to be an acceptance or rejection of the report nor shall it relieve the Supplier of any liability under this Contract. Any Changes to be agreed by the Parties pursuant to the report shall be subject to the Change Control Procedure.

Part B: Not Used

Part C: Audit Rights

1. Audit Rights

- 1.1 The Authority, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of 18 months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Contract, including for the following purposes:
- 1.1.1 to verify the accuracy of the Charges and any other amounts payable by RECCo under this Contract (and proposed or actual variations to such Charges and payments);
 - 1.1.2 to verify any pass through costs (including the amounts paid to all sub-contractors and any third party suppliers);
 - 1.1.3 to verify the Supplier's and each Key Sub-contractor's compliance with this Contract and applicable Law;
 - 1.1.4 to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances RECCo shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - 1.1.5 to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, and/or any Key Sub-contractors or their ability to perform the Services;
 - 1.1.6 to obtain such information as is necessary to fulfil RECCo's obligations to supply information for regulatory purposes to Ofgem;
 - 1.1.7 to carry out RECCo' internal and statutory audits and to prepare, examine and/or certify RECCo' annual reports and accounts;
 - 1.1.8 to verify the accuracy and completeness of any Management Information delivered or required by this Contract;
 - 1.1.9 to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
 - 1.1.10 to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
 - 1.1.11 to review the accuracy and completeness of the Registers;
 - 1.1.12 to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
 - 1.1.13 to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
 - 1.1.14 to review the Supplier's compliance with the Standards;
 - 1.1.15 to inspect RECCo's Assets, including RECCo's IPRs, equipment and facilities, for the purposes of ensuring that RECCo' Assets are secure and that any register of assets is up to date; and/or

- 1.1.16 to review the integrity, confidentiality and security of RECCo Data.
- 1.2 Except where an audit is imposed on RECCo by a regulatory body or where RECCo has reasonable grounds for believing that the Supplier has not complied with its obligations under this Contract, RECCo may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.
- 1.3 Nothing in this Contract shall prevent or restrict the rights of RECCo and/or its representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.
- 2. Conduct of Audits**
- 2.1 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that RECCo deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 2.2 Subject to RECCo's obligations of confidentiality, the Supplier shall on demand provide RECCo and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:
- 2.2.1 all information requested by RECCo within the permitted scope of the audit;
- 2.2.2 reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
- 2.2.3 access to the Supplier System; and
- 2.2.4 access to Supplier Personnel.
- 2.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.
- 2.4 RECCo shall use reasonable endeavours to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an audit.
- 2.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 2, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse RECCo for RECCo's reasonable costs incurred in connection with the audit.
- 3. Not Used**
- 4. Response to Audits**
- 4.1 If an audit undertaken pursuant to Paragraph 1 identifies that:
- 4.1.1 the Supplier has committed a Default, RECCo may (without prejudice to any rights and remedies RECCo may have) require the Supplier to correct

such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;

4.1.2 RECCo has overpaid any Charges, the Supplier shall pay to RECCo:

- (a) the amount overpaid;
- (b) interest on the amount overpaid at the applicable rate under the *Late Payment of Commercial Debts (Interest) Act 1998*, accruing on a daily basis from the date of overpayment by RECCo up to the date of repayment by the Supplier; and
- (c) the reasonable costs incurred by RECCo in undertaking the audit,

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

4.1.3 RECCo has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by RECCo.

Schedule 21

Governance

Schedule 21: Governance

1. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Group Member”	the initial persons appointed by RECCo and Supplier to the Groups as set out in Annex 1 and any replacements from time to time agreed by the Parties in accordance with Paragraph 3.2;
“Groups”	the Service Management Group and such other Groups as maybe convened from time to time and “Group” shall mean any of them;
“Representatives”	the individuals appointed by RECCo and the Supplier in accordance with Paragraph 2;

2. Management of the Services

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

3. Groups

Establishment and structure of the Groups

- 3.1 The Groups shall be established by RECCo for the purposes of this Contract on which both the Supplier and RECCo shall be represented.
- 3.2 In the event that either Party wishes to replace any of its appointed Group Members, that Party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each RECCo Group Member has at all times a counterpart Supplier Group Member of equivalent seniority and expertise.

Group meetings

- 3.3 Each Party shall ensure that its Group Members shall make all reasonable efforts to attend Group meetings at which that Group Member's attendance is required. If any Group Member is not able to attend a Group meeting, that person shall use all reasonable endeavours to ensure that:
- 3.3.1 a delegate attends the relevant Group meeting in his/her place who (wherever possible) is properly briefed and prepared; and

- 3.3.2 that they are debriefed by such delegate after the Group Meeting.
- 3.4 A chairperson shall be appointed by RECCo for each Group as identified in Annex 1. The chairperson shall be responsible for:
 - 3.4.1 scheduling Group meetings;
 - 3.4.2 setting the agenda for Group meetings and circulating to all attendees in advance of such meeting;
 - 3.4.3 chairing the Group meetings;
 - 3.4.4 monitoring the progress of any follow up tasks and activities agreed to be carried out following Group meetings;
 - 3.4.5 ensuring that minutes for Group meetings are recorded and disseminated electronically to the appropriate persons and to all Group meeting participants within seven Working Days after the Group meeting; and
 - 3.4.6 facilitating the process or procedure by which any decision agreed at any Group meeting is given effect in the appropriate manner.
- 3.5 Group meetings shall be quorate as long as at least two representatives from each Party are present.
- 3.6 The Parties shall ensure, as far as reasonably practicable, that all Groups shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that Group Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

4. Role of the Service Management Group

- 4.1 The Service Management Group shall be responsible for the executive management of the Services and shall:
 - 4.1.1 provide senior level guidance, leadership and strategy for the overall delivery of the Services;
 - 4.1.2 be accountable for comprehensive oversight of the Services and for the senior management of the operational relationship between the Parties;
 - 4.1.3 report on significant issues requiring decision and resolution and on progress against the high level Implementation Plan to the RECCo Board;
 - 4.1.4 receive reports on matters such as issues relating to delivery of existing Services and performance against Performance Indicators, progress against the Implementation Plan and possible future developments;
 - 4.1.5 review and report on service management (as included in the

performance monitoring report referenced in Paragraph 1.2 of Schedule 2.2), including KPI performance and contract management issues, co-ordination of individual projects and any integration issues;

- 4.1.6 deal with the prioritisation of resources and the appointment of Representatives on behalf of the Parties;
- 4.1.7 consider and resolve Disputes (including Disputes as to the cause of a Delay or the performance of the Services) in the first instance and if necessary escalate in accordance with the Dispute Resolution Process;
- 4.1.8 develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same;
- 4.1.9 ensure that this Contract is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by RECCo;
- 4.1.10 determine business strategy and provide guidance on policy matters which may impact on the implementation of the Services or on any Optional Services; and
- 4.1.11 on a quarterly basis, except during Mobilisation Period when they shall be on monthly basis, consider intra-Supplier relationships as set out in clause 6 of this schedule.

5. Contract Management Mechanisms

- 5.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Contract.
- 5.2 The Supplier shall develop, operate, maintain and amend, as agreed with RECCo, processes for:
 - 5.2.1 the identification and management of risks;
 - 5.2.2 the identification and management of issues; and
 - 5.2.3 monitoring and controlling project plans.
- 5.3 The Risk Register shall be updated by the Supplier and submitted for review by the Risk Management Group.

6. Annual Review

- 6.1 An annual review meeting shall be held throughout the Term on a date to be agreed between the Parties.
- 6.2 The meetings shall be attended by the Supplier Representative and the RECCo Representative and any other persons considered by RECCo

necessary for the review.

- 6.3 The meeting shall review the Annual Report, as defined in Schedule 2 Services Description.
- 6.4 The meeting shall review the Sustainability Reports, as defined in Schedule 4 Standards.

7. Agile Sprint Governance

- 7.1 RECCo may at its option elect that development work during the Operational Period is undertaken using agile methodologies, with iterative design and development, as defined in Schedule 8 (Supplier Solution). Where RECCo has elected to use agile methodology in relation to such development work agreed through the Change Control Procedure, this Paragraph 7 shall apply and governance of agile sprints will encompass the following elements:
 - 7.1.1 The Supplier will initiate each sprint cycle with a detailed planning session involving key stakeholders, including RECCo and (where applicable) Other Suppliers. During this session, goals, deliverables, and acceptance criteria for the sprint will be defined and documented. The sprint planning session will also outline the tasks and resources required, ensuring alignment with the overall project timeline. The sprint goals, deliverables and scope shall be subject to RECCo's prior written approval in advance of the sprint starting.
 - 7.1.2 Sprints will be time-boxed to a fixed duration, typically [two to four weeks]. The sprint duration will be agreed upon during the Mobilisation Period and will remain consistent to maintain a predictable delivery cadence.
 - 7.1.3 At the end of each sprint, the Supplier will conduct a review session to demonstrate the completed work to RECCo and other stakeholders. This session will include a relay review process, incorporating feedback from the stakeholder forum, which will meet at least once every month. Additionally, a retrospective meeting will be held to reflect on the sprint process, identify areas for improvement, and implement actionable changes for subsequent sprints.
 - 7.1.4 Sprints will be deemed to be complete following RECCo approval that the sprint goals and deliverables have been met.
- 7.2 Key roles within the agile framework will include:
 - (a) Scrum Master or equivalent (Supplier): Responsible for facilitating the agile process and removing impediments.
 - (b) Product Owner (RECCo): Responsible for approving the proposed prioritisation of the backlog and acceptance criteria, and ensuring alignment with project goals. The Product Owner will be embedded in the sprints to provide

continuous feedback and approvals.

- (c) Scrum Master or equivalent (Supplier): Responsible for facilitating the agile process and removing impediments. This includes proposing the sprint goals, deliverables and scope, prioritisation of the backlog and development of the acceptance criteria.
- (d) Development Team (Supplier): Responsible for delivering the sprint tasks.

7.3 The Supplier will document progress using agile artifacts such as sprint backlogs, task boards, and burndown charts. These artifacts will be accessible to RECCo and other stakeholders.

7.4 Continuous stakeholder engagement will be facilitated through regular sprint reviews, feedback loops, and monthly user groups. The Supplier will ensure that the digital solutions meet user needs and expectations, allowing for timely adjustments based on stakeholder feedback. RECCo, as the Product Owner, will approve the deliverables at the end of each sprint before proceeding to the next cycle.

Annex 1: Representation and Structure of Groups

Service Management Group

RECCo Members of Service Management Group	[] [Chairperson]
Supplier Members of Service Management Group	
Start Date for Service Management Group meetings	TBC
Frequency of Service Management Group meetings	Monthly
Location of Service Management Group meetings	Online meetings

Schedule 22: Change Control Procedure

1. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Agile Change”	Any Operational Change requested or made pursuant to the Agile process applicable to the development work relating to new Services or existing Services during the Implementation Period or the Operational Period excluding changes to the High-Level Outcomes and Milestones;
“RECCo Change Manager”	the person appointed to that position by RECCo from time to time and notified in writing to the Supplier or, if no person is notified, RECCo Representative;
“Change Request”	a written request for a Contract Change which shall be substantially in the form of Annex 1;
“Change Communication”	any Change Request, Impact Assessment, or other communication sent or required to be sent pursuant to this Schedule;
“Drafting Party”	the Party who prepares the draft Change Request and delivers it to the Receiving Party for its review and, if agreed, signature;
“Fast-track Change”	any Contract Change which the Parties agree to expedite in accordance with Paragraph 8;
“High-Level Outcome”	in relation to development through the Agile process, means an important result intended to be achieved through the development;
“Impact Assessment”	an assessment of a Change Request in accordance with Paragraph 5;
“Impact Assessment Estimate”	has the meaning given in Paragraph 4.3;
“Low Value Change”	An Operational Change where the value of the proposed of such Change over the remaining Term and any period for which Termination Services may be required does not exceed £[tbc] and the proposed Operational Change is not significant (as determined by RECCo acting reasonably)
“Receiving Party”	the Party which receives a proposed Change Authorisation Note for signature pursuant to Paragraph 6.2; and

“Supplier Change Manager”

the person appointed to that position by the Supplier from time to time and notified in writing to RECCo or, if no person is notified, the Supplier Representative.

2. General Principles of Change Control Procedure

- 2.1 This Schedule sets out the procedure for dealing with Changes.
- 2.2 Operational Changes shall be processed as follows:
 - 2.2.1 Operational Changes which are Agile Changes and not Low Value Changes shall be processed in accordance with Paragraph 2.5;
 - 2.2.2 Operational Changes which are Low Value Changes shall not be subject to the requirements of this Change Control Procedure and shall be agreed between the Parties on an ad hoc basis;
 - 2.2.3 All other Operational Changes shall be processed in accordance with Paragraph 9.
- 2.3 If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.
- 2.4 The Parties shall deal with Contract Change as follows:
 - 2.4.1 either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;
 - 2.4.2 unless this Contract otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 5 before the Contract Change can be either approved or implemented;
 - 2.4.3 RECCo shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;
 - 2.4.4 the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 6.3;
 - 2.4.5 save as otherwise provided in this Contract, no proposed Contract Change shall be implemented by the Supplier until the Change Request has been signed and issued by RECCo in accordance with Paragraph 6.2; and
 - 2.4.6 if a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.
- 2.5 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in Schedule 14 (*Testing Procedures*), and, where appropriate, the Change Request relating to such a Contract Change shall specify Milestones and/or a Key Milestone and Milestone Date(s) in respect of such Contract Change for

the purposes of such procedures.

- 2.6 Where a Change relates to development work relating to new Services or existing Services during the Operational Period, RECCo may determine that such development shall be implemented using a traditional 'waterfall' method of development or development using an 'Agile' process. Where RECCo determines that an Agile process shall be used for the development work:

- 2.6.1 the Agile process set out in, appended to or referenced by Schedule 21 (Governance) shall apply;
- 2.6.2 the cost of the Contract Change for the development work shall be on a fixed price basis provided that changes to the development requested by RECCo through the Agile process shall be chargeable in accordance with Paragraph 3.2;
- 2.6.3 Agile Changes shall not be subject to the Change Control Procedure.

- 2.7 Until a Change Request has been signed and issued in accordance with Paragraph 6.2, then:

- 2.7.1 unless RECCo expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Contract as if the proposed Contract Change did not apply; and
- 2.7.2 any discussions, negotiations or other communications which may take place between RECCo and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Contract.

- 2.8 RECCo may from time-to-time issue to the Supplier a copy of this Contract updated to reflect all Contract Changes agreed in the relevant Change Requests and annotated with a reference to the Change Requests pursuant to which the relevant Contract Changes were agreed.

3. Costs

- 3.1 Subject to Paragraph 3.3:

- 3.1.1 the costs of preparing each Change Request shall be borne by the Party making the Change Request; and
- 3.1.2 Subject to Paragraph 3.1.3(c), RECCo will not bear the costs incurred by the Supplier in undertaking an Impact Assessment and any such costs will not be included in the costs of any Change Request;
 - (a)
- 3.1.3 RECCo will bear the costs incurred by the Supplier in undertaking an Impact Assessment where:

- (a) the Impact Assessment relates to a proposed Contract Change; and
- (b) such proposed Contract Changes has not arisen as a result of a REC Change proposal or a REC Change; and
- (c) the work required to complete the Impact Assessment exceeds 2 Working Days; and
- (d) the Supplier has provided written details of such Impact Assessment costs to RECCo and RECCo has confirmed its approval of the same in writing.

3.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Schedule 15 (*Charges and Invoicing*). The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.

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

4. Change Request

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

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

4.3 If RECCo issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within ten (10) Working Days of the date of receiving the Change Request an estimate ("**Impact Assessment Estimate**") of the cost of preparing an Impact Assessment, subject to Paragraph 3.1 above, and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by RECCo within ten (10) Working Days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by RECCo.

4.4 If RECCo accepts an Impact Assessment Estimate prepared in compliance with Paragraph 3.1 above, then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to RECCo as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Supplier requires any clarification in

relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to RECCo and provided that sufficient information is received by RECCo to fully understand:

4.4.1 The nature of the request for clarification; and

4.4.2 The reasonable justification for the request;

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

5. Impact Assessment

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

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

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

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

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

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

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

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

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

5.1.8 demonstration of how the proposed Contract Change will deliver value for money for RECCo; and

- 5.1.9 such other information as RECCo may reasonably request in (or in response to) the Change Request.
- 5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the UK, in the event of the Personal Data being subject to UK GDPR, or the EU, in the event of the Personal Data being subject to EU GDPR, the preparation of the Impact Assessment shall also be subject to Clause 21 (*Protection of Personal Data*).
- 5.3 Subject to the provisions of Paragraph 5.4, RECCo shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Impact Assessment.
- 5.4 If RECCo receives a proposed Contract Change from the Supplier and RECCo reasonably considers that it requires further information, particularly to satisfy the requirement to demonstrate value for money, regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within 5 Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to RECCo within 10 Working Days of receiving such notification. At RECCo's discretion, the Parties may repeat the process described in this Paragraph 5.4 until RECCo is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.
- 5.5 The calculation of costs for the purposes of Paragraphs 5.1.4 and 5.1.5 shall:
 - 5.5.1 be based on the day rates or Optional Services charges, where applicable, as set out in Schedule 15 (Charges and Invoicing);
 - 5.5.2 facilitate the Financial Transparency Objectives;
 - 5.5.3 include estimated volumes of each type of resource to be employed and the applicable rate card;
 - 5.5.4 include full disclosure of any assumptions underlying such Impact Assessment;
 - 5.5.5 include evidence of any pass through cost of any assets required for the Change
 - 5.5.6 include evidence to demonstrate that the costs are economic and efficient and represent value for money; and
 - 5.5.7 include details of any new Sub-contracts necessary to accomplish the Change.

6. RECCo's Right of Approval

- 6.1 Within 15 Working Days of receiving the Impact Assessment from the Supplier or within 10 Working Days of receiving the further information that it may request pursuant to Paragraph 5.4, RECCo shall evaluate the Change Request and the Impact Assessment and shall do one of the following:

- 6.1.1 approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;
 - 6.1.2 in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. RECCo shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If RECCo does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
 - 6.1.3 if it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within 5 Working Days of such request. Subject to Paragraph 5.4, on receiving the modified Change Request and/or Impact Assessment, RECCo shall approve or reject the proposed Contract Change within 10 Working Days.
- 6.2 If RECCo approves the proposed Contract Change pursuant to Paragraph 6.1 and it has not been rejected by the Supplier in accordance with Paragraph 6.3, then it shall inform the Supplier and, unless otherwise directed by RECCo, the Supplier shall be the Drafting Party. Following receipt by the RECCo of the agreed Change Request, it shall sign it electronically and return to the Supplier for signature. Unless otherwise specified, on completion of both signatures the Change Request shall constitute a binding variation to this Contract.
- 6.3 If one Party does not sign the Change Request within 10 Working Days of receipt, then the Party which has signed the Change Request may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

7. Supplier's Right of Approval

- 7.1 Following an Impact Assessment, if:
- 7.1.1 the Supplier reasonably believes that any proposed Contract Change which is requested by RECCo would:
 - (a) materially and adversely affect the risks to the health and safety of any person; and/or
 - (b) require the Services to be performed in a way that infringes any Law; and/or
 - 7.1.2 the Supplier demonstrates to RECCo's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

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

8. Fast-Track Changes

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

8.2 If:

8.2.1 the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed 4 in any 12 month period; and

8.2.2 both Parties agree the value of the proposed Contract Change over the remaining Term and any period for which Termination Services may be required does not exceed £[tbc] and the proposed Contract Change is not significant (as determined by RECCo acting reasonably),

then the Parties shall confirm to each other in writing that they shall use the process set out in Paragraphs 4, 5, 6 and 6.3 but with reduced timescales, such that any period of 15 Working Days is reduced to 5 Working Days, any period of 10 Working Days is reduced to 2 Working Days and any period of 5 Working Days is reduced to 1 Working Day.

9. Operational Change Procedure

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

9.1.1 Have an impact on the High Level Objectives or Milestones;

9.1.2 have an impact on REC Parties and/or the business of RECCo;

9.1.3 require a change to this Contract;

9.1.4 have a direct impact on use of the Services; or

9.1.5 involve RECCo in paying any additional Charges or other costs.

9.2 RECCo may request an Operational Change by submitting a written request for Operational Change (“**RFOC**”) to the Supplier Representative.

9.3 The RFOC shall include the following details:

9.3.1 the proposed Operational Change; and

9.3.2 the time-scale for completion of the Operational Change.

- 9.4 The Supplier shall inform RECCo of any impact on the Services that may arise from the proposed Operational Change.
- 9.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify RECCo when the Operational Change is completed.

10. Communications

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

Annex 1: [Sample Change Request Form – RECCo is open to agreeing alternative formats etc]

<u>Section 1 - Change Summary</u>			
Title:			
CR No.:		Type of Change: (Tracking / Scope / Contractual / Operational)	
Contract:		Required by Date:	
Raised by:		Name:	
Date:		Action:	
Area(s) Impacted (Optional Field):		Supplier Reference No.:	
Assigned for Impact Assessment by:		Assigned for Impact Assessment to:	
Full description of requested Contract Change (including proposed changes to the wording of the contract):			
Details of any proposed alternative scenarios:			
Reasons for and Benefits & Disadvantages of Requested Contract Change:			
Proposed Cost:			
Name of requesting Change Owner:		Date of Request	
Section 2 – Impact Assessment			
Change Recipient			

Assessment of proposed change:			
Impacted Milestones / Enduring Service		Cost of Proposed Change:	
Details of IA to other RECCo service providers:			
Section 3 – Contract Change			
Detailed Description of Contract Change Accepted:			
Details of proposed one-off additional charges & means for determining these (e.g. Fixed Price Basis)			
Signed on behalf of RECCo:		Signed on behalf of the Supplier:	
Signature:		Signature:	
Name:		Name:	
Position:		Position:	
Date:		Date:	

Schedule 23: Dispute Resolution Procedure

1. Definitions

1.1 In this Schedule, the following definitions shall apply:

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

2. Dispute Notices

2.1 If a Dispute arises then:

- 2.1.1 RECCo Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
- 2.1.2 if such attempts are not successful within a reasonable period, not being longer than 20 Working Days, either Party may issue to the other a

Dispute Notice.

2.2 A Dispute Notice:

2.2.1 shall set out:

- (a) the material particulars of the Dispute;
- (b) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
- (c) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and

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

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

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

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

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

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

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

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

2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Contract and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.

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

3. Expedited Dispute Timetable

3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within 5 Working Days of the issue

of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of RECCo.

- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
- 3.2.1 in Paragraph 4.2.3, 10 Working Days;
 - 3.2.2 in Paragraph 5.2, 10 Working Days;
 - 3.2.3 in Paragraph 6.2, 5 Working Days; and
 - 3.2.4 in Paragraph 7.2, 10 Working Days.
- 3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within 2 Working Days after the deadline has passed, RECCo may set a revised deadline provided that it is no less than 5 Working Days before the end of the period of time specified in the applicable Paragraphs (or 2 Working Days in the case of Paragraph 6.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If RECCo fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

4. Commercial Negotiation

- 4.1 Following the service of a Dispute Notice, then, so long as RECCo has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, RECCo and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between RECCo's Representative and the Supplier's Representative.
- 4.2 If:
- 4.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;
 - 4.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this Paragraph 4; or
 - 4.2.3 the Parties have not settled the Dispute in accordance with Paragraph 4.1 within 30 Working Days of service of the Dispute Notice,

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

5. Mediation

- 5.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with the version of CEDR's Model Mediation Procedure which is current at the time the Mediation Notice is served (or such other version as the Parties may agree).

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

6. Expert Determination

- 6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an IT, accounting or financing nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 or, if applicable, mediation in accordance with Paragraph 5, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.
- 6.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 10 Working Days of the relevant request made pursuant to Paragraph 6.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:
- 6.2.1 if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);
 - 6.2.2 if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
 - 6.2.3 if the Dispute relates to a matter of a technical nature not falling within Paragraphs 6.2.1 or 6.2.2, on the instructions of the president (or equivalent) of:
 - (a) an appropriate body agreed between the Parties; or
 - (b) if the Parties do not reach agreement on the relevant body within 15 Working Days of the relevant request made pursuant to Paragraph 6.1, such body as may be specified by the President of the Law Society on application by either Party.
- 6.3 The Expert shall act on the following basis:
- 6.3.1 they shall act as an expert and not as an arbitrator and shall act fairly and impartially;
 - 6.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;

- 6.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 30 Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- 6.3.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within 20 Working Days of the Expert's determination being notified to the Parties;
- 6.3.5 the process shall be conducted in private and shall be confidential; and
- 6.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

7. Arbitration

- 7.1 Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 6, RECCo may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 7.5.
- 7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on RECCo of its intentions and RECCo shall have 15 Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such 15 Working Day period.
- 7.3 If RECCo serves a Counter Notice, then:
 - 7.3.1 if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 7.5 shall apply; or
 - 7.3.2 if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.
- 7.4 If RECCo does not serve a Counter Notice within the 15 Working Day period referred to in Paragraph 7.2, the Supplier may either commence arbitration proceedings in accordance with Paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.
- 7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 7.1 to 7.4:
 - 7.5.1 the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("**LCIA**") (subject to Paragraphs 7.5.5, 7.5.6 and 7.5.7);
 - 7.5.2 the arbitration shall be administered by the LCIA;
 - 7.5.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

- 7.5.4 if the Parties fail to agree the appointment of the arbitrator within 10 Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- 7.5.5 the chair of the arbitral tribunal shall be British;
- 7.5.6 the arbitration proceedings shall take place in London and in the English language; and
- 7.5.7 the seat of the arbitration shall be London.

8. Urgent Relief

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

9. Multi-Party Disputes

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

- 9.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the “**Multi-Party Dispute Resolution Board**”) comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:
- 9.6.1 RECCo;
 - 9.6.2 the Supplier;
 - 9.6.3 each Related Third Party involved in the Multi-Party Dispute; and
 - 9.6.4 any other representatives of any of the Parties and/or any Related Third Parties whom RECCo considers necessary,
- (together “**Multi-Party Dispute Representatives**”).
- 9.7 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:
- 9.7.1 the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
 - 9.7.2 the Multi-Party Dispute Resolution Board shall first meet within 10 Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within 5 Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by RECCo, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
 - 9.7.3 in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.
- 9.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within 25 Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:
- 9.8.1 either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case Paragraph 5 shall apply;
 - 9.8.2 either Party may request that the Multi-Party Dispute is referred to an expert in which case Paragraph 6 shall apply; and/or
 - 9.8.3 subject to Paragraph 9.9, Paragraph 7 shall apply to the Multi-Party Dispute,

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

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

Schedule 24: Reports and Records Provisions

1. Transparency Reports

- 1.1 Within three (3) months of the Effective Date the Supplier shall provide to RECCo for its approval (such approval not to be unreasonably withheld or delayed) draft reports in accordance with Annex 1 (once approved, the “**Transparency Reports**”).
- 1.2 RECCo will confirm its approval or rejection of any draft Transparency Report with [20] Working Days after receipt and if RECCo rejects any draft Transparency Report, the Supplier shall submit a revised version of the relevant report for further approval by RECCo within five (5) working days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by RECCo. If the Parties fail to agree on a draft Transparency Report RECCo shall determine what should be included.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to RECCo at the frequency referred to in Annex 1.
- 1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under Paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Contract.

2. Other Reports

- 2.1 RECCo may require any or all of the following reports:
 - 2.1.1 reports on Delays;
 - 2.1.2 reports relating to Testing and tests carried out under Schedule 5 (*Security Management*) and Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*);
 - 2.1.3 reports which the Supplier is required to supply as part of the Management Information;
 - 2.1.4 annual reports on the Insurances;
 - 2.1.5 security reports (as specified in Schedule 5 (*Security Management*)); and
 - 2.1.6 Force Majeure Event reports.

3. Records

- 3.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 1 and Annex 1 (together “**Records**”):
 - 3.1.1 in accordance with Good Industry Practice;
 - 3.1.2 in chronological order;
 - 3.1.3 in a form that is capable of audit; and
 - 3.1.4 at its own expense.
-

- 3.2 The Supplier shall make the Records available for inspection to RECCo or its Audit Agents, at the frequency and in accordance with any timescales expressed in this Contract or where no timescale is expressed then on request, subject to RECCo giving reasonable notice.
 - 3.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to RECCo.
 - 3.4 The Supplier shall, during the Term and a period of at least 7 years following the expiry or termination of this Contract, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.
 - 3.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least 7 years after the expiry or termination of this Contract.
-

Annex 1: Transparency Reports

Title	Content	Format	Frequency
(Performance)Performance Monitoring Report			
(Charges: for cost pass through charges)			
(Major sub-contractors)			
(Technical)			
(Performance management)			

Annex 2: Records to be Kept by the Supplier

The records to be kept by the Supplier are:

1. This Contract, its Schedules and all amendments to such documents.
2. All other documents which this Contract expressly requires to be prepared.
3. Records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel.
4. Notices, reports and other documentation submitted by any Expert.
5. All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and the underlying IT Environment and Supplier Equipment.
6. Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
7. All formal notices, reports or submissions made by the Supplier to RECCo Representative in connection with the provision of the Services.
8. All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.
9. Documents prepared by the Supplier in support of claims for the Charges.
10. Documents submitted by the Supplier pursuant to the Change Control Procedure.
11. Documents submitted by the Supplier pursuant to invocation by it or RECCo of the Dispute Resolution Procedure.
12. Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.
13. Invoices and records related to VAT sought to be recovered by the Supplier.
14. Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
15. All documents relating to the insurances to be maintained under this Contract and any claims made in respect of them.
16. All journals and audit trail data referred to in Schedule 5 (*Security Management*).
17. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Contract.

The records and information set out in Paragraphs 1 to 17 (inclusive) of this Annex 1 shall not include the Supplier's internal drafts of documents, Supplier's internal cost information, Supplier's internal correspondence and Supplier's correspondence with its professional advisers.

Annex 3: Examples of records to be provided by the Supplier to RECCo. This table is for guidance purposes only and for the avoidance of doubt does not take precedence over any individual reporting obligations or timescales set out elsewhere in the contract including the schedules.

Required Data	Initial Delivery Date	Update Requirement
Annual slavery and human trafficking report	Within twelve (12) months of Effective Date	Every twelve (12) months
Key Personnel	Effective Date	On replacement of Key Personnel
Notified Key Sub-Contractors	Effective Date	With each approved appointment or variation
Supply chain Transparency Reports	Within twelve (12) months of Effective Date	Every twelve (12) months
Performance Monitoring Report	Services Start Date	Within ten (10) Working Days of the end of each Service Period
Evidence of compliance with sustainability requirements	On reasonable request by RECCo, provided that such requests are limited to [2] per Contract Year	On reasonable request by RECCo, provided that such requests are limited to [2] per Contract Year
Sustainability Report	Within 3-months of anniversary of Effective Date	Every twelve (12) months
Security Management Plan	Within [20] Working Days of the Effective Date	Regular review and at least annually
Security certificates	Prior to receiving, storing or processing any RECCo Data	-
Core Information Management System diagram	The date specified in the Detailed Implementation Plan	Regular review and at least annually
Evidence of Insurances	Effective Date	Every twelve (12) months
Supplier Software and Third Party Software	Effective Date	No less than every 6 (six) Months from the Effective Date
Test Strategy	Within 20 Working Days of Effective Date	Upon update to the test strategy

Required Data	Initial Delivery Date	Update Requirement
Test Plan	20 prior Working Days of relevant test	Upon update to the test plan
Risk Register	Effective Date	At each quarterly Service Management Meeting
Exit Information	On reasonable notice given by RECCo at any point during the Term	Within 10 Working Days of RECCo's written request
Exit Plan	Within 3 months of the Effective Date	In the first month of each contract year; and Within 14 days if requested by RECCo following a Financial Distress Event Within 20 days after service of Termination Notice or 6 months prior to expiry of the Contract
Service Continuity Plan	Within 40 Working Days from the Effective Date	Sch 26, Para 7.1
Service Continuity Plan Review Report	Within 20 Working Days of the conclusion of each review of the Service Continuity Plan.	-
Reports on Data Subject Access Requests and other Personal Data related matters	As agreed with RECCo	As agreed with RECCo
Foreground IPR	As agreed with RECCo	Regularly - As agreed with RECCo

Schedule 25: Exit Management

1. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Emergency Exit”	any termination of this Contract which is a: <ul style="list-style-type: none">(a) termination of the whole or part of this Contract in accordance with Clause 31 (<i>Termination Rights</i>), except where the period of notice given under that Clause is greater than or equal to 6 months;(b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 31 (<i>Termination Rights</i>); or(c) wrongful termination or repudiation of this Contract by either Party;
“Exclusive Assets”	those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;
“Exit Information”	has the meaning given in Paragraph 3.1;
“Exit Manager”	the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties’ respective obligations under this Schedule;
“Net Book Value”	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to RECCo of the same date as this Contract;
“Non-Exclusive Assets”	those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Services but which are also used by the Supplier or Key Sub-contractor for other purposes of material value;
“Ordinary Exit”	any termination of the whole or any part of this Contract which occurs: <ul style="list-style-type: none">(a) pursuant to Clause 31 (<i>Termination Rights</i>) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or(b) as a result of the expiry of the Initial Term or any Extension Period or Further Extension Period;
“Transferable Assets”	those of the Exclusive Assets which are capable of legal transfer to RECCo;

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

“Transferring Contracts” has the meaning given in Paragraph 6.2.3.

2. Obligations During the Term to Facilitate Exit

2.1 During the Term, the Supplier shall:

2.1.1 create and maintain a register of all:

- (a) Assets created; and
- (b) Contracts with Key Subcontractors and other relevant agreements (including relevant software licences, maintenance and support agreements) exclusively required for the performance of the Services;

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

2.1.3 agree the format of the registers in respect of those items listed in 2.1.1 with RECCo as part of the process of agreeing the Exit Plan; and

2.1.4 at all times keep the registers up to date, if Assets, Key Sub-contracts or other relevant agreements are added to or removed from the Services.

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

2.3 Each Party shall appoint a person for the purposes of managing the Parties’ respective obligations under this Schedule and provide written notification of such appointment to the other Party within 3 months of the Effective Date provided that if a Party does not make such an appointment or provide such notice then that Party’s Representative shall be deemed to be appointed as its Exit Manager. The Supplier’s Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties’ Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Contract and all matters connected with this Schedule and each Party’s compliance with it.

3. Obligations to Assist on Re-tendering of Services

3.1 On reasonable notice at any point during the Term, the Supplier shall provide to RECCo and/or its potential Replacement Suppliers (subject to the potential

Replacement Suppliers entering into reasonable written confidentiality undertakings no less protective than those applicable to the Supplier's Confidential Information as set out in the Contract), the following material and information in order to facilitate the preparation by RECCo of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:

- 3.1.1 details of the Service(s);
- 3.1.2 a copy of the registers, updated by the Supplier up to the date of delivery of such registers;
- 3.1.3 an inventory of RECCo Data in the Supplier's possession or control;
- 3.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
- 3.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
- 3.1.6 to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Contract; and
- 3.1.7 such other material and information as RECCo shall reasonably require relating to the Services (excluding for the avoidance of doubt Supplier's internal drafts of documents, Supplier's internal financial data and cost information, Supplier's internal correspondence and Supplier's correspondence with its professional advisors,

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

- 3.2 The Supplier acknowledges that RECCo may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom RECCo is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that RECCo may not under this Paragraph 3.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).
- 3.3 The Supplier shall:
 - 3.3.1 notify RECCo within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with RECCo regarding such proposed material changes; and
 - 3.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from RECCo.
- 3.4 The Supplier may charge RECCo for its reasonable additional costs to the extent RECCo requests more than 4 updates in any 6 month period.
- 3.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
 - 3.5.1 prepare an informed offer for those Services; and

- 3.5.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).
- 3.6 Without prejudice to RECCo's rights in respect of any breach by Supplier of Paragraph 3 of this Schedule and with the exception of information relating to Transferring Supplier Employees required to be provided by the Supplier under the Contract, Supplier shall not be liable to any potential Replacement Supplier in respect of any Exit Information provided to that potential Replacement Supplier pursuant to this Paragraph 3.
- 4. Exit Plan**
- 4.1 The Supplier shall, within 3 months after the Effective Date, deliver to RECCo an Exit Plan which:
- 4.1.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to RECCo and/or its Replacement Supplier on the Partial Termination, expiry or termination of this Contract;
- 4.1.2 complies with the requirements set out in Paragraph 4.2; and
- 4.1.3 is otherwise reasonably satisfactory to RECCo.
- 4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.3 The Exit Plan shall set out, as a minimum:
- 4.3.1 how the Exit Information is obtained;
- 4.3.2 separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as RECCo shall require to enable RECCo or its sub-contractors to provide the Services;
- 4.3.3 a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Contract;
- 4.3.4 the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
- 4.3.5 the management structure to be employed during the Termination Assistance Period;
- 4.3.6 a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
- 4.3.7 how the Services will transfer to the Replacement Supplier and/or RECCo, including details of the processes, documentation, data transfer, systems migration, security and the segregation of RECCo's technology

- components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
- 4.3.8 the scope of the Termination Services that may be required for the benefit of RECCo (including such of the services set out in Annex 1 as are applicable);
 - 4.3.9 a timetable and critical issues for providing the Termination Services;
 - 4.3.10 any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
 - 4.3.11 how the Termination Services would be provided (if required) during the Termination Assistance Period;
 - 4.3.12 procedures to deal with requests made by RECCo and/or a Replacement Supplier for Staffing Information pursuant to Schedule 28 (*Staff Transfer*); and
 - 4.3.13 how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or RECCo with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.
- 4.4 The Parties acknowledge that the migration of the Services from the Supplier to RECCo and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.
- 4.5 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule on an annual basis (commencing 12 months after the first Exit Plan is agreed) and if requested by RECCo, within 14 days of such request, to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update, the Supplier shall submit the revised Exit Plan to RECCo for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

Finalisation of the Exit Plan

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

Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

5. Termination Services

Notification of Requirements for Termination Services

- 5.1 RECCo shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a “**Termination Assistance Notice**”) at least 4 months prior to the date of termination or expiry of this Contract or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- 5.1.1 the date from which Termination Services are required;
 - 5.1.2 the nature of the Termination Services required; and
 - 5.1.3 the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the expiry of the Initial Term or any Extension Period or Further Extension Period or earlier termination of this Contract;
- 5.2 RECCo shall have:
- 5.2.1 an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than 6 months after the date the Supplier ceases to provide the terminated Services or for more than 6 months beyond the end of the period specified in the original Termination Assistance Notice (whichever is later) and provided that it shall notify the Supplier to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire; and
 - 5.2.2 the right to terminate its requirement for Termination Services by serving not less than 20 Working Days’ written notice upon the Supplier to such effect.

Termination Assistance Period

- 5.3 Throughout the Termination Assistance Period, or such shorter period as RECCo may require, the Supplier shall:
- 5.3.1 continue to provide the Services (as applicable) and, if required by RECCo pursuant to Paragraph 5.1, provide the Termination Services;
 - 5.3.2 in addition to providing the Services and the Termination Services, provide to RECCo any reasonable assistance requested by RECCo to allow the Services to continue without interruption following the Partial Termination, termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to RECCo and/or its Replacement Supplier;
 - 5.3.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 5.3.2 without additional costs to RECCo;
 - 5.3.4 provide the Services and the Termination Services at no detriment to the

Target Performance Levels, save to the extent that the Parties agree otherwise in accordance with Paragraph 5.5; and

- 5.3.5 at RECCo's request and on reasonable notice, deliver up-to-date Registers to RECCo.
- 5.4 Without prejudice to the Supplier's obligations under Paragraph 5.3.3, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 5.3.2 without additional costs to RECCo, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.
- 5.5 If the Supplier demonstrates to RECCo's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) and/or the applicable Service Credits to take account of such adverse effect.

Termination Obligations

- 5.6 The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any Partial Termination or termination.
- 5.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule) in respect of the Services that have been terminated, the Supplier shall:
 - 5.7.1 cease to use RECCo Data;
 - 5.7.2 provide RECCo and/or the Replacement Supplier with a complete and uncorrupted version of RECCo Data in electronic form (or such other format as reasonably required by RECCo);
 - 5.7.3 erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all RECCo Data and promptly certify to RECCo that it has completed such deletion;
 - 5.7.4 return to RECCo such of the following as is in the Supplier's possession or control:
 - (a) any parts of the IT Environment and any other equipment which belongs to RECCo; and
 - (b) all copies of RECCo Software and any other software licensed by RECCo to the Supplier under the Contract or procured for RECCo by the Supplier under the Contract; and
 - (c) all material created by the Supplier under the Contract in which the IPRs are owned by RECCo; and
 - (d) any items that have been on-charged to RECCo, such as consumables;

- 5.7.5 vacate any RECCo Premises unless access is required to continue to deliver the Services;
- 5.7.6 provide access during normal working hours to RECCo and/or the Replacement Supplier during the Termination Assistance Period or (in absence of a Termination Assistance Period) for up to 6 months after the Partial Termination, expiry or termination of this Contract to:
- (a) such information relating to the Services as remains in the possession or control of the Supplier; and
 - (b) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that RECCo and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 5.7.6(b).
- 5.8 Upon Partial Termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.
- 5.9 Except where the Contract provides otherwise, all licenses, leases and authorisations granted by RECCo to the Supplier in relation to the terminated Services shall be terminated with effect from the end of the Termination Assistance Period.
- 6. Assets, Sub-contracts and Software**
- 6.1 Following notice of termination or Partial Termination of this Contract and during the Termination Assistance Period, the Supplier shall not, in respect of the terminated Services, without RECCo's prior written consent:
- 6.1.1 terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;
 - 6.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
 - 6.1.3 terminate, enter into or vary any licence for software in connection with the Services.
- 6.2 Within 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 5.3.5, RECCo shall provide written notice to the Supplier setting out:
- 6.2.1 which, if any, of the Transferable Assets RECCo requires to be transferred to RECCo and/or the Replacement Supplier in respect of the terminated Services ("**Transferring Assets**");

6.2.2 which, if any, of:

- (a) the Exclusive Assets that are not Transferable Assets; and
- (b) the Non-Exclusive Assets,

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

6.2.3 which, if any, of Transferable Contracts RECCo requires to be assigned or novated to RECCo and/or the Replacement Supplier (the **"Transferring Contracts"**),

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

6.3 [With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to RECCo and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:

6.3.1 a Termination Payment is payable by RECCo to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or

6.3.2 the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Contract, in which case RECCo shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.]

6.4 Risk in the Transferring Assets shall pass to RECCo or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to RECCo or the Replacement Supplier (as appropriate) on payment for the same.

6.5 Where the Supplier is notified in accordance with Paragraph 6.2.3 that RECCo and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:

6.5.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by RECCo) for RECCo and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which

6.5.2 procure a suitable alternative to such assets and RECCo or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.

6.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to RECCo and/or the Replacement Supplier of the Transferring Contracts. The

Supplier shall execute such documents and provide such other assistance as RECCo reasonably requires to effect this novation or assignment.

6.7 RECCo shall:

6.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and

6.7.2 once a Transferring Contract is novated or assigned to RECCo and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

6.8 The Supplier shall hold any Transferring Contracts on trust for RECCo until such time as the transfer of the relevant Transferring Contract to RECCo and/or the Replacement Supplier has been effected.

6.9 The Supplier shall indemnify RECCo (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to RECCo (and/or Replacement Supplier) pursuant to Paragraph 6.6 both:

6.9.1 in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and

6.9.2 in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the Supplier's failure to comply with Clause 16 (*Intellectual Property Rights*) and/or Schedule 32 (*Intellectual Property Rights*).

7. Supplier Personnel

7.1 RECCo and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 28 (Staff Transfer) shall apply.

7.2 The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to RECCo and/or the Replacement Supplier.

7.3 During the Termination Assistance Period, the Supplier shall give RECCo and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to RECCo and/or the Replacement Supplier.

7.4 The Supplier shall immediately notify RECCo or, at the direction of RECCo, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.

7.5 The Supplier shall not for a period of 12 months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to RECCo and/or the Replacement Supplier, except that this Paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

8. Charges

- 8.1 During the Termination Assistance Period (or for such shorter period as RECCo may require the Supplier to provide the Termination Services), RECCo shall pay the Charges to the Supplier in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.
- 8.2 Where RECCo requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with Paragraph 5.2 where more than 6 months' notice is provided, the same rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable; and
- 8.3 For calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
- 8.4 Except as otherwise expressly specified in this Agreement, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and RECCo shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

9. Apportionments

- 9.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between RECCo and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
 - 9.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;
 - 9.1.2 RECCo shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
 - 9.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 9.2 Each Party shall pay (and/or RECCo shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 9.1 as soon as reasonably practicable.

Annex 1: Scope of the Termination Services

1. Scope of the Termination Services

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

- 1.1.13 provide all necessary support, equipment, tools, and Software such as data migration services and/or Automated Programming Interfaces, in order to enable and support the execution of the migration plan by RECCo and/or Replacement Supplier;
- 1.1.14 making available to RECCo and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by RECCo (acting reasonably) at the time of termination or expiry;
- 1.1.15 assisting in establishing naming conventions for any new production site;
- 1.1.16 analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- 1.1.17 generating a computer listing of the Source Code of [insert details of relevant Software] in a form and on media reasonably requested by RECCo;
- 1.1.18 agreeing with RECCo a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
- 1.1.19 delivering copies of the production databases (with content listings) to RECCo's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by RECCo;
- 1.1.20 assisting with the loading, testing and implementation of the production databases;
- 1.1.21 assisting in the execution of a parallel operation until the effective date of expiry or termination of this Contract;
- 1.1.22 in respect of the maintenance and support of the Supplier System, providing historical performance data for the previous [insert time period];
- 1.1.23 assisting in the execution of a parallel operation of the maintenance and support of the Supplier System until the end of the Termination Assistance Period or as otherwise specified by RECCo (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);
- 1.1.24 providing an information pack listing and describing the Services for use by RECCo in the procurement of the Replacement Services;
- 1.1.25 answering all reasonable questions from RECCo and/or the Replacement Supplier regarding the Services;
- 1.1.26 agreeing with RECCo and/or the Replacement Supplier a plan for the migration of RECCo Data to RECCo and/or the Replacement Supplier;
- 1.1.27 providing access to RECCo and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding 6 months afterwards for the purpose of the smooth transfer of the Services to RECCo and/or the Replacement Supplier:
 - (a) to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its

Sub-contractors (and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and

- (b) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and

1.1.28 knowledge transfer services, including:

- (a) transferring all training material and providing appropriate training to those RECCo and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;
- (b) providing for transfer to RECCo and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents;
- (c) providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
- (d) allowing RECCo and/or the Replacement Supplier to work alongside and observe the performance of the Services by the Supplier at its Sites used to fulfil the Services (subject to compliance by RECCo and the Replacement Supplier with any applicable security and/or health and safety restrictions,

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

1.2 The Supplier shall:

- 1.2.1 provide a documented plan relating to the training matters referred to in Paragraph 1.1.14 for agreement by RECCo at the time of termination or expiry of this Contract;
- 1.2.2 co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1.18, providing skills and expertise of a suitable standard; and
- 1.2.3 fully co-operate in the execution of RECCo Data migration plan agreed pursuant to Paragraph 1.1.26, providing skills and expertise of a reasonably acceptable standard.

1.3 To facilitate the transfer of knowledge from the Supplier to RECCo and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of RECCo and/or the Replacement Supplier.

1.4 The information which the Supplier shall provide to RECCo and/or the Replacement Supplier pursuant to Paragraph 1.1.27 1.1.26 shall include:

- 1.4.1 copies of up-to-date procedures and operations manuals;
- 1.4.2 product information;
- 1.4.3 agreements with third party suppliers of goods and services which are to be transferred to RECCo and/or the Replacement Supplier;
- 1.4.4 key support contact details for third party supplier personnel under contracts which are to be assigned or novated to RECCo pursuant to this Schedule;
- 1.4.5 information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
- 1.4.6 details of physical and logical security processes and tools which will be available to RECCo; and
- 1.4.7 any relevant interface information,

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

1.5 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Supplier and/or RECCo access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:

- 1.5.1 any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 1.5 shall:
 - (a) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
 - (b) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that RECCo deems reasonable; and
- 1.5.2 RECCo and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

Schedule 26: Service Continuity Plan and Corporate Resolution Planning

Part A: Service Continuity Plan

1. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Business Continuity Plan”	has the meaning given in Paragraph 2.2.1(b);
“Business Continuity Services”	has the meaning given in Paragraph 4.2.2;
“Disaster Recovery Plan”	has the meaning given in Paragraph 2.2.1(c);
“Disaster Recovery Services”	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
“Disaster Recovery System”	the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
“Disaster”	the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for a period of five (5) Working Days, or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
“Insolvency Continuity Plan”	has the meaning given in Paragraph 2.2.1(d).
“Review Report”	has the meaning given in Paragraphs 7.2.1 to 7.2.3; and
“Service Continuity Plan”	means the plan prepared pursuant to Paragraph 2 of this Schedule which incorporates the Business Continuity Plan and the Disaster Recovery Plan.

2. Service Continuity Plan

2.1 Within three months from the Effective Date the Supplier shall prepare and deliver to RECCo for RECCo's written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

- 2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services (including where caused by an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member); and
- 2.1.2 the recovery of the Services in the event of a Disaster.

2.2 The Service Continuity Plan shall:

- 2.2.1 be divided into four parts:

- (a) Part A which shall set out general principles applicable to the Service Continuity Plan;
 - (b) Part B which shall relate to business continuity (the “**Business Continuity Plan**”);
 - (c) Part C which shall relate to disaster recovery (the “**Disaster Recovery Plan**”); and
 - (d) Part D which shall relate to an Insolvency Event of the Supplier, any Key Sub-contractors and/or any Supplier Group member (the “**Insolvency Continuity Plan**”); and
- 2.2.2 unless otherwise required by RECCo in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4, 5 and 6.
- 2.3 Following receipt of the draft Service Continuity Plan from the Supplier, RECCo shall:
 - 2.3.1 review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and
 - 2.3.2 notify the Supplier in writing that it approves or rejects the draft Service Continuity Plan no later than 20 Working Days after the date on which the draft Service Continuity Plan is first delivered to RECCo.
- 2.4 If RECCo rejects the draft Service Continuity Plan:
 - 2.4.1 RECCo shall inform the Supplier in writing of its reasons for its rejection; and
 - 2.4.2 the Supplier shall then revise the draft Service Continuity Plan (taking reasonable account of RECCo’s comments) and shall re-submit a revised draft Service Continuity Plan to RECCo for RECCo’s approval within 20 Working Days of the date of RECCo’s notice of rejection. The provisions of Paragraph 2.3 and this Paragraph 2.4 shall apply again to any resubmitted draft Service Continuity Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

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

- 3.1 Part A of the Service Continuity Plan shall:
 - 3.1.1 set out how the business continuity and disaster recovery elements of the plan link to each other;
 - 3.1.2 provide details of how the invocation of any element of the Service Continuity Plan may impact upon the operation of the Services and any services provided to RECCo by an Other Supplier;
 - 3.1.3 contain an obligation upon the Supplier to liaise with RECCo and (at RECCo’s request) any Other Supplier with respect to issues concerning business continuity and disaster recovery where applicable;
 - 3.1.4 detail how the Service Continuity Plan links and interoperates with any overarching and/or connected disaster recovery and/or business continuity plan of RECCo and any Other Suppliers in each case as notified to the Supplier by RECCo from time to time;

- 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility, where required by RECCo;
- 3.1.6 contain a risk analysis, including:
 - (a) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - (b) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
 - (c) identification of risks arising from the interaction of the Services with the services provided by an Other Supplier;
 - (d) identification of risks arising from an Insolvency Event of the Supplier, any Key Sub-contractors and/or Supplier Group member; and
 - (e) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- 3.1.7 provide for documentation of processes, including business processes, and procedures;
- 3.1.8 set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for RECCo;
- 3.1.9 identify the procedures for reverting to “normal service”;
- 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
- 3.1.11 identify the responsibilities (if any) that RECCo has agreed it will assume in the event of the invocation of the Service Continuity Plan; and
- 3.1.12 provide for the provision of technical advice and assistance to key contacts at RECCo as notified by RECCo from time to time to inform decisions in support of RECCo’s business continuity plans.
- 3.2 The Service Continuity Plan shall be designed so as to ensure that:
 - 3.2.1 the Services are provided in accordance with this Contract at all times during and after the invocation of the Service Continuity Plan;
 - 3.2.2 the adverse impact of any Disaster; service failure; an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member; or disruption on the operations of RECCo, is minimal as far as reasonably possible;
 - 3.2.3 it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force; and
 - 3.2.4 there is a process for the management of disaster recovery testing detailed in the Service Continuity Plan.

- 3.3 The Service Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the Services, to the business processes facilitated by and the business operations supported by the Services, and/or changes to the Supplier Group structure.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.

4. Service Continuity Plan: Part B – Business Continuity

Principles and Contents

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

5. Service Continuity Plan: Part C – Disaster Recovery

Principles and Contents

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of RECCo supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 5.3 The Disaster Recovery Plan shall include the following:
 - 5.3.1 details of the procedures and processes to be put in place by the Supplier

in relation to the Supplier Solution and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:

- (a) backup methodology and details of the Supplier's approach to data back-up ;
 - (b) identification of potential disaster scenarios;
 - (c) risk analysis;
 - (d) documentation of processes and procedures to restore services;
 - (e) hardware infrastructure configuration details;
 - (f) network planning including details of all relevant data networks and communication links;
 - (g) invocation rules;
- 5.3.2 any applicable Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Disaster Recovery Plan;
- 5.3.3 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 5.3.4 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- 5.3.5 testing and management arrangements.

6. Service Continuity Plan: Part D – Insolvency Continuity Plan

Principles and Contents

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

- 6.2.4 details of the roles and responsibilities of the Supplier, Key Sub-contractors and/or Supplier Group members to minimise and mitigate the effects of an Insolvency Event of such persons on the Services;
- 6.2.5 details of the recovery team to be put in place by the Supplier (which may include representatives of the Supplier, Key Sub-contractors and Supplier Group members); and
- 6.2.6 sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the Supplier.

7. **Review and Amendment of the Service Continuity Plan**

- 7.1 The Supplier shall review and update the Service Continuity Plan (and the risk analysis on which it is based):
 - 7.1.1 on a regular basis and as a minimum once every 12 months;
 - 7.1.2 within three calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 9;
 - 7.1.3 within 30 days of a Corporate Change Event; and]
 - 7.1.4 where RECCo requests any additional reviews (over and above those provided for in Paragraphs 7.1.1 to 7.1.3) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with RECCo's written requirements. Costs relating to such reviews shall be agreed in accordance with the Change Control Procedure.
- 7.2 Each review of the Service Continuity Plan pursuant to Paragraph 7.1 shall be a review of the procedures and methodologies set out in the Service Continuity Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the Service Continuity Plan or the last review of the Service Continuity Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the Service Continuity Plan. The review shall be completed by the Supplier within the period required by the Service Continuity Plan or, if no such period is required, within such period as RECCo shall reasonably require. The Supplier shall, within 20 Working Days of the conclusion of each such review of the Service Continuity Plan, provide to RECCo a report (a "**Review Report**") setting out:
 - 7.2.1 the findings of the review;
 - 7.2.2 any changes in the risk profile associated with the Services; and
 - 7.2.3 the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the Service Continuity Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.
- 7.3 Following receipt of the Review Report and the Supplier's Proposals, RECCo shall:

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

8. Testing of the Service Continuity Plan

- 8.1 The Supplier shall test the Service Continuity Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 8.2, RECCo may require the Supplier to conduct additional tests of some or all aspects of the Service Continuity Plan at any time where RECCo considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Service Continuity Plan.
- 8.2 If RECCo requires an additional test of the Service Continuity Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with RECCo's requirements and the relevant provisions of the Service Continuity Plan. The Supplier's costs of the additional test shall be borne by RECCo unless the Service Continuity Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 8.3 The Supplier shall undertake and manage testing of the Service Continuity Plan in full consultation with RECCo and shall liaise with RECCo in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of RECCo in this regard. Each test shall be carried out under the supervision of RECCo or its nominee.
- 8.4 The Supplier shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with RECCo. Copies of live test data used in any such testing shall be (if so required by RECCo) destroyed or returned to RECCo on completion of the test.

- 8.5 The Supplier shall, within 20 Working Days of the conclusion of each test, provide to RECCo a report setting out:
- 8.5.1 the outcome of the test;
 - 8.5.2 any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and
 - 8.5.3 the Supplier's proposals for remedying any such failures.
- 8.6 Following each test, the Supplier shall take all measures requested by RECCo, (including requests for the re-testing of the Service Continuity Plan) to remedy any failures in the Service Continuity Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to RECCo, by the date reasonably required by RECCo and set out in such notice.
- 8.7 For the avoidance of doubt, the carrying out of a test of the Service Continuity Plan (including a test of the Service Continuity Plan's procedures) shall not relieve the Supplier of any of its obligations under this Contract.
- 8.8 The Supplier shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by RECCo.

9. Invocation of the Service Continuity Plan

- 9.1 In the event of a loss of any critical part of the Service or a Disaster, the Supplier shall immediately invoke the business continuity and disaster recovery provisions in the Service Continuity Plan, including any linked elements in other parts of the Service Continuity Plan, and shall inform RECCo promptly of such invocation. In all other instances the Supplier shall invoke the business continuity and disaster recovery plan elements only with the prior consent of RECCo.
- 9.2 The Insolvency Continuity Plan element of the Service Continuity Plans, including any linked elements in other parts of the Service Continuity Plan, shall be invoked by the Supplier:
- 9.2.1 where an Insolvency Event of a Key Sub-contractor and/or Supplier Group member (other than the Supplier) could reasonably be expected to adversely affect delivery of the Services; and/or
 - 9.2.2 where there is an Insolvency Event of the Supplier and the insolvency arrangements enable the Supplier to invoke the plan.

Schedule 27: Conduct of Claims

1. Indemnities

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

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

2. Sensitive Claims

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

3. Recovery of Sums

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

4. Mitigation

- 4.1 The Beneficiary shall always take reasonable steps to minimise and mitigate any loss for which the Beneficiary is entitled to bring a claim against the Indemnifier pursuant to the indemnities in this Schedule.

Schedule 28

Staff Transfer

Schedule 28: Staff Transfer

1. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Former Supplier”	a supplier supplying services to RECCo before any Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
“Replacement Sub-contractor”	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place.
“Service Transfer”	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;
“Service Transfer Date”	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
“Staffing Information”	in relation to all persons identified on the Supplier’s Provisional Supplier Personnel List or Supplier’s Final Supplier Personnel List, as the case may be, all information required in Annex E1: Staffing Information in the format specified and with the identities of Data Subjects anonymised where possible. RECCo may acting reasonably make changes to the format or information requested in Annex E1: Staffing Information from time to time.
“Supplier’s Final Supplier Personnel List”	a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
“Supplier’s Provisional Supplier Personnel List”	a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

“Transferring RECCo Employees”	those employees of RECCo to whom the Employment Regulations will apply on the Relevant Transfer Date;
“Transferring Former Supplier Employees”	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and
“Transferring Supplier Employees”	those employees of the Supplier and/or the Supplier’s Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. Interpretation

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

3. Applicable Parts of this Schedule

- 3.1 The following parts of this Schedule shall apply to this Contract:
- 3.1.1 Part A: *Staff Transfer At Services Start Date – Transfer From Former Supplier*
 - 3.1.2 Part B *Employment Exit Provisions* including:
 - (a) *Annex E1 Staffing Information.*

Part A: Transferring Former Supplier Employees at Commencement of Services

1. Relevant Transfers

1.1 RECCo and the Supplier agree that:

- 1.1.1 the commencement of the provision of the Services at the Services Start Date or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
- 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10 of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Sub-contractor and each such Transferring Former Supplier Employee.

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

2. Former Supplier Indemnities

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

- 2.1.1 any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
- 2.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
 - (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
- 2.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions;

- (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- 2.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- 2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Sub-contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations; and
- 2.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
 - 2.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
 - 2.2.2 arising from the failure by the Supplier and/or any Sub-contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a

Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations then:

- 2.3.1 the Supplier shall, or shall procure that the Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to RECCo and, where required by RECCo, to the Former Supplier; and
 - 2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Sub-contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or RECCo, the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
 - 2.5.2 such offer has been made but not accepted; or
 - 2.5.3 the situation has not otherwise been resolved,
- the Supplier and/or any Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, RECCo shall procure that the Former Supplier indemnifies the Supplier and/or any Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:
 - (a) any claim for:
 - (b) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (c) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
 - (d) in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

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

2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Sub-contractor (as appropriate) to RECCo and, if applicable, the Former Supplier, within 6 months of the Relevant Transfer Date.

2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Sub-contractor within the time scales set out in Paragraph 2.5, such person shall be treated as a Transferring Former Supplier Employee and the Supplier shall, or shall procure that any Sub-contractor shall comply with such obligations as may be imposed upon it under the Law. (.

3. Supplier Indemnities and Obligations

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

- 3.1.1 any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;
- 3.1.2 the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
 - (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- 3.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 3.1.4 any proposal by the Supplier or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes. For the purposes of this sub-clause the expressions “substantial change” and “material detriment” shall

have the same meanings as for the purposes of Regulation 4(9) of the Employment Regulations;

- 3.1.5 any act or proposal by the Supplier or a Sub-contractor prior to or following the Relevant Transfer Date which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of the Employment Regulations. For the purposes of this sub-clause the expressions “repudiatory breach”, shall have the same meaning as for the purposes of Regulation 4(11) of the Employment Regulations;
- 3.1.6 any statement communicated to or action undertaken by the Supplier or a Sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with RECCo and/or the Former Supplier in writing;
- 3.1.7 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.8 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
- 3.1.9 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier’s failure to comply with its obligations under regulation 13(4) of the Employment Regulations; and
- 3.1.10 a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.

- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including,

without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.

- 3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

4. Information

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

5. Procurement Obligations

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

6. Pensions

- 6.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

Part B: Employment Exit Provisions

1. Pre-service Transfer Obligations

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

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

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

- 1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, within 20 Working Days to RECCo any information RECCo may reasonably require relating to the manner in which the Services are organised, which shall include:
 - 1.6.1 the numbers of Supplier Personnel engaged in providing the Services;
the percentage of time spent by each Supplier Personnel engaged in providing the Services; and
 - 1.6.2 a description of the nature of the work undertaken by each Supplier Personnel by location.
- 1.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to RECCo, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to RECCo or, at the direction of RECCo, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
 - 1.7.1 the most recent month's copy pay slip data;
 - 1.7.2 details of cumulative pay for tax and pension purposes;
 - 1.7.3 details of cumulative tax paid;

- 1.7.4 tax code;
 - 1.7.5 details of any voluntary deductions from pay;
 - 1.7.6 a copy of any personnel file and/or any other records regarding the service of the Transferring Supplier Employee;
 - 1.7.7 a complete copy of the information required to meet the minimum recording keeping requirements under the Working Time Regulations 1998 and the National Minimum Wage Regulations 1998; and
 - 1.7.8 bank/building society account details for payroll purposes.
- 1.8 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees that following within 20 Working Days of a request from RECCo it shall and shall procure that each Sub-contractor shall use reasonable endeavours to comply with any reasonable request to align and assign Supplier Personnel to any future delivery model proposed by RECCo for Replacement Services within 30 Working Days or such longer timescale as may be agreed.
- 1.9 Any changes necessary to this Contract as a result of alignment referred to in Paragraph 1.8 shall be agreed in accordance with the Change Control Procedure.

2. Employment Regulations Exit Provisions

- 2.1 RECCo and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations will apply. RECCo and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier or Supplier Sub-contractor and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10 of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations under the Employment Regulations and in particular obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (but excluding) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel List all the Transferring Supplier Employees arising in respect of the period up to (and including but excluding) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Statutory Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part to the
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period ending on (and including but excluding) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

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

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

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

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

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

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

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

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

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

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

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

2.3.5 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring

Supplier Employees in respect of the period up to (but excluding) the Service Transfer Date);

2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged RECCo and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Contract and/or the Employment Regulations; and

2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by RECCo and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or

2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under Regulation 13(4) of the Employment Regulations.

2.5 If any person who is not identified in the Supplier's Final Supplier Personnel List claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel List, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations, then:

2.5.1 RECCo shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and

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

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

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

- 2.7.1 no such offer of employment has been made;
- 2.7.2 such offer has been made but not accepted; or
- 2.7.3 the situation has not otherwise been resolved

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

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

2.9 The indemnity in Paragraph 2.8:

2.9.1 shall not apply to:

(a) any claim for:

- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

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

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

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

2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.

2.11 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to RECCo and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable RECCo, the Replacement Supplier and/or

Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. RECCo shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

- 2.12 Subject to Paragraph 2.13, RECCo shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- 2.12.1 any act or omission of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
 - 2.12.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
 - (b) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;
 - 2.12.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
 - 2.12.4 any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
 - 2.12.5 any act or proposal by the Replacement Supplier or Replacement Sub-contractor prior to or following the Service Transfer Date which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of the

Employment Regulations. For the purposes of this sub-clause the expression “repudiatory breach”, shall have the same meaning as for the purposes of Regulation 4(11) of the Employment Regulations;

- 2.12.6 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier’s Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- 2.12.7 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Supplier Employee identified in the Supplier’s Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and after the Service Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier’s Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and after the Service Transfer Date;
- 2.12.8 a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier’s Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and
- 2.12.9 any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier’s Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

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

Annex E1: Staffing Information

Employee Information (Anonymised)

Name of Transferor:

Number of Employees in-scope to transfer:

1. Completion notes

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

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

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

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

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

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

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

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

OTHER				
Details	Security Check Level	Security Clearance Expiry date	Individuals on long term sick leave/ family leave/authorised absence	Additional info or comments including any other details required by Regulation 11 of TUPE 2006
Emp No 1				
Emp No 2				
Emp No [n]				

Schedule 29: Key Personnel

This Schedule lists the key roles ("**Key Roles**") and names of the persons who the Supplier shall appoint to fill those Key Roles at the Operational Service Commencement Date ("**Key Personnel**").

Key Role	Name of Key Personnel	Responsibilities/ Authorities	Phase of the project during which they will be a member of Key Personnel

Schedule 31: Processing Personal Data

1. Data Processing

- 1.1 This Schedule shall be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Schedule shall be with the RECCo at its absolute discretion.
- 1.2 The contact details of the RECCo's Data Protection Officer are: **[insert Contact details]**
- 1.3 The contact details of the Supplier's Data Protection Officer are: **[insert Contact details]**
- 1.4 The Processor shall comply with any further written instructions with respect to processing by the Controller.
- 1.5 Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of Controller for each Category of Personal Data	The RECCo is Controller and the Supplier is Processor The Parties acknowledge that in accordance with Clause 21.2 to 23.15 and for the purposes of the Data Protection Legislation, the RECCo is the Controller and the Supplier is the Processor of the following Personal Data: [insert the scope of Personal Data for which the purposes and means of the processing by the Supplier is determined by the RECCo]
Subject matter of the Processing	[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.] Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide [insert description of relevant service].
Duration of the processing	The Term
Nature and purposes of the processing	[Please be as specific as possible, but make sure that you cover all intended purposes.] The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc]

Description	Details
Type of Personal Data being processed	[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]
Categories of Data Subject	[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]
Plan for return and destruction of the data once the processing is complete UNLESS requirement under law to preserve that type of data	[Describe how long the data will be retained for, how it be returned or destroyed]
Locations at which the Supplier and/or its Sub-contractors process Personal Data under this Contract and international transfers and legal gateway	[Clearly identify each location, explain where geographically personal data may be stored or accessed from. Explain the legal gateway you are relying on to export the data e.g. adequacy decision, EU SCCs, UK IDTA. Annex any SCCs or IDTA to this Contract]
Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal Data processed under this Contract Agreement against a breach of security (insofar as that breach of security relates to data) or a Data Loss Event	[Please be as specific as possible]

Annex 1: Joint Controller Agreement - *NOT USED*

If it is agreed that a Joint Controller Agreement is required then the template set out in MDC v2.1 will be used.

Annex 2: International Data Transfer Agreement and International Data Transfer Agreement Addendum to the EU Commission Standard Contractual Clauses:

If it is agreed that an International Data Transfer Agreement and International Data Transfer Agreement Addendum to the EU Commission Standard Contractual Clauses is required then the template set out in MDC v2.1 will be used.

Annex 3: Standard Contractual Clauses for EU GDPR Compliant Transfers:

If it is agreed that Standard Contractual Clauses for EU GDPR Compliant Transfers is required then the template set out in MDC v2.1 will be used.

Schedule 32

Intellectual Property Rights

1 Intellectual Property Rights – General Provisions

- 1.1 Except as expressly provided for in this Contract or otherwise agreed in writing:
 - 1.1.1 RECCo does not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
 - (a) the Supplier Software;
 - (b) the Third Party Software;
 - (c) the Third Party IPRs;
 - (d) the Supplier Background IPRs; and
 - (e) any Know-How, trade secrets or Confidential Information of the Supplier contained in any Specially Written Software or Project Specific IPR; and
 - 1.1.2 the Supplier does not acquire any right, title or interest in or to the Intellectual Property Rights of RECCo or its licensors, including:
 - (a) RECCo Software;
 - (a) RECCo Data; and
 - (b) RECCo Background IPRs; and
 - 1.1.3 neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks.
- 1.2 Where either Party acquires, by operation of law, ownership of Intellectual Property Rights that is inconsistent with the requirements of this Schedule 32 (*Intellectual Property Rights*), it must assign in writing the Intellectual Property Rights concerned to the other Party on the other Party's request (whenever made).
- 1.3 If the Supplier becomes aware at any time, including after the Term, that, in respect of any Deliverable, RECCo has not received the licences to the Supplier Software, the Third Party Software, the Third Party IPRs and the Supplier Background IPRs required by Paragraphs 2, 3 and 5, the Supplier must, within 10 Working Days notify RECCo:
 - 1.3.1 the specific Intellectual Property Rights RECCo has not received licences to; and
 - 1.3.2 the Deliverables affected.
- 1.4 Where a patent owned by the Supplier is infringed by the use of the Specially Written Software or Project Specific IPR by RECCo or any Replacement Supplier, the Supplier hereby grants to RECCo and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software.

- 1.5 Unless otherwise agreed in writing, the Supplier will record in the table at Annex 1 to this Schedule and keep updated throughout the Term:
- 1.5.1 any Specially Written Software and Project Specific IPR; and
- 1.5.2 where:
- (a) the Specially Written Software or Project Specific IPR adapts Supplier Software, Third Party Software, Third Party IPRs, or Supplier Background IPRs; or
 - (b) Supplier Software, Third Party Software, Third Party IPRs, or Supplier Background IPRs is embedded in, or forms an integral part of, the Specially Written Software or Project Specific IPR;
- full details of the Supplier Software, Third Party Software, Third Party IPRs, or Supplier Background IPRs.
- 1.6 For the avoidance of doubt, except as provided for in Paragraph 2.2.3(c)(ii), the expiry or termination of this Contract does not of itself terminate the licences granted to RECCo under Paragraphs 2, 3 and 5.
- 1.7 Except as otherwise expressed in the Contract or as otherwise agreed between the Parties, the Supplier shall be responsible for procuring necessary licenses to Software and Third Party Data on behalf of RECCo for use in relation to the Services in accordance with the Contract and in particular Clauses 3.2.10 and 5.7.3(a).
- 1.8 Subject to Paragraph 1.9, where the Supplier procures licenses to Software, Third Party IPRs and/or Supplier Background IPRs for use in its provision of the Services:
- 1.8.1 The Supplier shall procure appropriate licenses to the same in accordance with the methodology and timescales set out in the Implementation Plan;
 - 1.8.2 notwithstanding RECCo's involvement in the selection of Software, Third Party IPRs and/or Supplier Background IPRs and RECCo's approval of the same, RECCo relies on the Supplier's skill and expertise in its recommendations and the Supplier remains responsible for ensuring that all Software, Third Party IPRs and/or Supplier Background IPRs are fit for the purposes expressed in the Contract and suitable for use in relation to the Services;
 - 1.8.3 RECCo shall be the named licence holder for such Software, Third Party IPRs and/or Supplier Background IPRs;
 - 1.8.4 in the case of Software and Third Party Data, the Supplier shall ensure that the licenses to the same shall allow the export of any RECCo data contained within the Software and Third Party Data at any time during the licence term and (in the case of a term licence)

- for a period of [60] days following the end of the licence term;
- 1.8.5 without prejudice to Clause 5.7.3 of the Contract, the Supplier shall ensure that the Software, Third Party IPRs and/or Supplier Background IPRs and their related licenses meet the RECCo Requirements set out in Annex B of Schedule 2;
- 1.8.6 the Supplier shall not enter into any licence or contract on RECCo's behalf.
- 1.9 Paragraph 1.8 shall not apply to Excluded Third Party Software set out in Schedule 12 (Software and Data).

Option 1

1 Ownership and delivery of IPR created under the Contract

- 1.1 Subject to Paragraph 1.1.1 above, the Supplier agrees to:
- 1.1.1 transfer to RECCo, or procure the transfer to RECCo of all Intellectual Property Rights in the Specially Written Software and Project Specific IPRs, including:
- (a) the Documentation, Source Code and the Object Code of the Specially Written Software; and
 - (b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software,
- (together the "**Software Supporting Materials**"); and
- 1.1.2 execute all such assignments required to transfer properly any rights in the Specially Written Software and Project Specific IPRs to RECCo.
- 1.2 The Supplier must deliver to RECCo:
- 1.2.1 the Specially Written Software;
 - 1.2.2 any software elements of the Project Specific IPR;
 - 1.2.3 relevant Documentation; and
 - 1.2.4 all related Software Supporting Materials,
- within 5 Working Days of:
- 1.2.5 either:
- (a) initial release or deployment; or
 - (b) if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone; and

- 1.2.6 each subsequent release or deployment of the Specially Written Software and any software elements of the Project Specific IPR.
- 1.3 Where the Supplier delivers materials to RECCo under Paragraph 1.2, it must do so in a format specified by RECCo. Where RECCo specifies the material is to be delivered on media, RECCo becomes the owner of the media containing the material on delivery.
- 2 Use of Supplier or Third Party Non-COTS Software or Non-COTS Background IPR**
- 2.1 The Supplier must not use any:
 - 2.1.1 Supplier Non-COTS Software; or
 - 2.1.2 Supplier Non-COTS Background IPR;

in the provision of the Services or in any Deliverable (including in any Specially Written Software or in the software element of Project Specific IPRs) unless:

 - 2.1.3 in the case of Supplier Non-COTS Software and the software elements of Supplier Non-COTS Background IPR, it is:
 - (a) detailed in Schedule 12 (*Software and Data*); or
 - (b) both:
 - (i) submitted to the Technical Board for review; and
 - (ii) approved by RECCo; and
 - 2.1.4 in the case of non-software elements of Supplier Non-COTS Background IPR, it is approved by RECCo in writing.
- 2.2 The Supplier must not use any:
 - 2.2.1 Third Party Non-COTS Software; or
 - 2.2.2 Third Party Non-COTS Background IPR,

in the provision of the Services or in any Deliverable (including in any Specially Written Software or in the software element of Project Specific IPRs) unless:

 - 2.2.3 in the case of Third Party Non-COTS Software and the software elements of Third Party Non-COTS Background IPR, it is:
 - (a) detailed in Schedule 12 (*Software and Data*); or
 - (b) both:
 - (i) submitted to the [Service Management Group] [Technical Board] for review; and
 - (ii) approved by RECCo; and

- (c) one of the following conditions is met:
 - (i) the owner or an authorised licensor of the relevant IPR has granted RECCo a direct licence on the terms equivalent to those set out in Paragraph 5; or
 - (ii) if the Supplier cannot, after commercially reasonable endeavours, meet the condition in Paragraph 2.2.3(c)(i), all the following conditions are met:
 - (A) the Supplier has notified RECCo in writing giving details of:
 - (1) what licence terms can be obtained from the relevant third party; and
 - (2) whether there are providers which the Supplier could seek to use and the licence terms obtainable from those third parties;
 - (B) RECCo approves the licence terms of one of those third parties; and
 - (C) the owner and authorised licensor of the Third Party IPR has granted a direct licence of the Third Party IPR to RECCo on those terms; or
 - (iii)]

2.2.4 in the case of non-software elements of Third-Party Non-COTS Background IPR, it is approved by RECCo in writing.

3 Use of Supplier or Third Party COTS Software, Third Party Data or COTS Background IPR

3.1 The Supplier must not use any:

- 3.1.1 Supplier COTS Software;
- 3.1.2 Supplier COTS Background IPR;
- 3.1.3 Third Party COTS Software; or
- 3.1.4 Third Party Data; or
- 3.1.5 Third Party COTS Background IPR,

in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) unless:

- 3.1.6 in the case of Supplier COTS Software, Third Party COTS Software, Third Party Data and the software elements of Supplier COTS Background IPR and Supplier COTS Background IPR, it is

either:

- (a) detailed in Schedule 12 (*Software and Data*); or
- (b) both:
 - (i) submitted to the [Technical Board] for review; and
 - (ii) approved by RECCo; and

3.1.7 all the following conditions are met:

- (a) the Supplier has provided RECCo with the applicable terms for the IPRs (which must be either: (i) on terms at least equivalent to the terms set out in Paragraph 5.3 or in the Services Description; or (ii) subject to Supplier's compliance with Paragraph 3.2.5 below, at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available); and
- (b) RECCo has (in its absolute discretion) accepted those licence terms within 10 Working Days of the date on which they were provided to RECCo.

3.2 Subject to Paragraph 3.3, where the Supplier procures Third Party COTS Software, Third Party Data and/or COTS Background IPR for use in its provision of the Services, the Supplier shall use reasonable commercial efforts to procure licences for RECCo to Third Party COTS Software, Third Party Data and/or COTS Background IPR on terms at least equivalent to the terms set out in Paragraph 5.3 or in the Services Description.

3.3 This Paragraph 3 shall not apply to Excluded Third Party Software set out in Schedule 12 (*Software and Data*).

4 Licences granted by RECCo

4.1 RECCo grants the Supplier a licence to the

- 4.1.1 the Project-Specific IPR;
- 4.1.2 the Specially Written Software;
- 4.1.3 RECCo Software;
- 4.1.4 RECCo Data; and
- 4.1.5 RECCo Background IPRs

that:

- 4.1.6 is non-exclusive, royalty-free and non-transferable;
- 4.1.7 is sub-licensable to any Sub-contractor where
 - (a) the Sub-contractor enters into a confidentiality undertaking with the Supplier on the same terms as set out in Annex 1 to

Schedule 12 (*Software and Data*); and

- (b) the sub-licence does not purport to provide the sub-licensee with any wider rights than those granted to the Supplier under this Paragraph;
- 4.1.8 allows the Supplier and any sub-licensee to use, copy and adapt any licensed IPRs for the purpose of fulfilling its obligations under this Contract; and
- 4.1.9 terminates at the later of:
 - (a) the expiry of the Term; or
 - (b) the end of any Termination Assistance Period.
- 4.2 When the licence granted under Paragraph 4.1 terminates, the Supplier must, and must ensure that each Sub-contractor granted a sub-licence under Paragraph 4.1.7:
 - 4.2.1 immediately cease all use of the licensed IPR;
 - 4.2.2 either:
 - (a) at the discretion of RECCo, return or destroy documents and other tangible materials that contain any of the licensed IPR; or
 - (b) if RECCo has not made an election within six months of the termination of the licence, destroy the documents and other tangible materials that contain any of the licensed IPR; and
 - 4.2.3 ensure, so far as reasonably practicable, that any licensed IPR held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier.

5 Licences in respect of Supplier Non-COTS Software and Supplier Non-COTS Background IPR

- 5.1 Subject to RECCo approving the use of Supplier Non-COTS Software and Supplier Non-COTS Background IPR under Paragraph 2, the Supplier grants RECCo a Supplier Existing IPR Licence on the terms set out in Paragraph 5.3 in respect of each Deliverable where:
 - 5.1.1 the Supplier Non-COTS Software and Supplier Non-COTS Background IPR is embedded in the Deliverable;
 - 5.1.2 the Supplier Non-COTS Software and Supplier Non-COTS Background IPR is necessary for RECCo to use the Deliverable for any of the purposes set out in Paragraph 5.4; or
 - 5.1.3 the Deliverable is a customisation or adaptation of Supplier Non-COTS Software and Supplier Non-COTS Background IPR.

- 5.2 The categories of Supplier Non-COTS Software and Supplier Non-COTS Background IPR set out in Paragraph 5.1 are mutually exclusive.
- 5.3 The Supplier Existing IPR Licence granted by the Supplier to RECCo is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:
- 5.3.1 in the case of Supplier Non-COTS Software and Supplier Non-COTS Background IPR embedded in a Deliverable:
- (a) has no restriction on the identity of any transferee or sub-licensee;
 - (b) is sub-licensable for any of the purposes set out in Paragraph 5.4;
 - (c) allows RECCo and any transferee or sub-licensee to use, copy and adapt the Supplier Non-COTS Software and Supplier Non-COTS Background IPR for any of the purposes set out in Paragraph 5.4; and
- 5.3.2 in the case of Supplier Non-COTS Software and Supplier Non-COTS Background IPR that is necessary for RECCo to use the Deliverable for its intended purpose or has been customised or adapted to provide the Deliverable:
- (a) allows RECCo and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant Supplier Non-COTS Software and Supplier Non-COTS Background IPR for any of the purposes set out in Paragraph 5.4;
 - (b) is transferrable to only:
 - (i) any body (including any private sector body) that performs or carries out any of the functions or activities that RECCo had previously performed or carried out; or
 - (ii) a person or organisation that is not a direct competitor of the Supplier; where that transferee:
 - (A) enters into a direct arrangement with the Supplier in the form set out in Annex 1 of Schedule 12 (*Software and Data*); or
 - (B) enters into a confidentiality arrangement with RECCo in terms equivalent to those set out in set out in Clause 19 (*Confidentiality*);
 - (c) is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier) where the Replacement Supplier:

- (i) enters into a direct arrangement with the Supplier in the form set out in Annex 1 of Schedule 12 (*Software and Data*); or
 - (ii) enters into a confidentiality arrangement with RECCo in terms equivalent to those set out in set out in Clause 19 (*Confidentiality*);
- 5.3.3 includes a perpetual, royalty-free, non-exclusive licence to use, copy and adapt any Know-How, trade secrets or Confidential Information of the Supplier contained within any Supplier Non-COTS Software and Supplier Non-COTS Background IPR;
- 5.3.4 continues in effect following the expiry or earlier termination of this Contract; and
- 5.3.5 is subject to the restrictions that:
 - (a) no sub-licence granted to the Supplier Non-COTS Software and Supplier Non-COTS Background IPR shall purport to provide the sub-licensee with any wider rights than those granted to RECCo under this Paragraph; and
 - (b) any transferee or sublicensee of the Supplier Non-COTS Software and Supplier Non-COTS Background IPR must either:
 - (i) enter into a direct arrangement with the Supplier in the form set out in Annex 1 of Schedule 12 (*Software and Data*); or
 - (ii) enter into a confidentiality arrangement with RECCo in terms equivalent to those set out in set out in Clause 19 (*Confidentiality*).
- 5.4 For the purposes of Paragraphs 5.1 and 5.3, the relevant purposes are:
 - 5.4.1 to allow RECCo or any End User to receive and use the Deliverables;
 - 5.4.2 to commercially exploit [(including by publication under Open Licence)] the Project Specific IPR, Specially Written Software and Software Supporting Materials; and
 - 5.4.3 for any purpose relating to the exercise of RECCo's business or function.
- 5.5 Where the Supplier Existing IPR Licence is transferred under Paragraph 5.3.1(a) or 5.3.2(b) or there is a change in RECCo's legal status, the transferee or successor body do not acquire any wider rights than those granted to RECCo under this Paragraph.

6 [Open Licence Publication]

- 6.1 Subject to Paragraph 6.8, the Supplier agrees that RECCo may at its sole discretion publish under Open Licence all or part of the Project Specific IPR, the Specially Written Software or the Software Supporting Materials.
- 6.2 The Supplier warrants that:
- 6.2.1 the Project Specific IPR, the Specially Written Software or the Software Supporting Materials are suitable for release under Open Licence;
 - 6.2.2 in developing Project Specific IPR, the Specially Written Software or the Software Supporting Materials it has used reasonable endeavours to ensure that:
 - (a) the publication by RECCo will not:
 - (i) allow a third party to use them in to compromise the operation, running or security of the Specially Written Software, the Project Specific IPRs, RECCo System or the Supplier System;
 - (ii) cause any harm or damage to any party using them; or
 - (iii) breach the rights of any third party; and
 - (b) they do not contain any material which would bring RECCo into disrepute if published.
- 6.3 The Supplier must not include in the Project Specific IPR, the Specially Written Software or the Software Supporting Materials provided for publication by Open Licence any Supplier Software, Supplier Background IPR, or Know-How, trade secrets or Confidential Information of the Supplier contained in any Specially Written Software or Project Specific IPR unless the Supplier consents to:
- 6.3.1 their publication by RECCo under Open Licence; and
 - 6.3.2 their subsequent licence and treatment as Open Licence under the terms of the licence chosen by RECCo.
- 6.4 RECCo will not be liable in the event that any Supplier Software, Supplier Background IPR, or Know-How, trade secrets or Confidential Information of the Supplier contained in any Specially Written Software or Project Specific IPR is included in the Open Licence Publication Material published by RECCo
- 6.5 The Supplier must supply any or all the Project Specific IPR, the Specially Written Software or the Software Supporting Materials in a format (whether it is provided in any other format or not) suitable for publication under an Open Licence (the "**Open Licence Publication Material**") within 30 Working Days of written request from RECCo ("**RECCo Open Licence Request**").

- 6.6 The Supplier may within 15 Working Days of RECCo Open Licence Request under Paragraph 6.5 request in writing that RECCo excludes all or part of:
- 6.6.1 the Project Specific IPR, the Specially Written Software or the Software Supporting Materials Items; or
 - 6.6.2 the Supplier Software, the Third Party Software, the Third Party IPRs, the Supplier Background IPRs, or any Know-How, trade secrets or Confidential Information of the Supplier contained in any Specially Written Software or Project Specific IPR that would otherwise be included in the Open Licence Publication Material supplied to RECCo pursuant to Paragraph 6.5,
- from Open Licence publication.
- 6.7 The Supplier's request under Paragraph 6.5 must include the Supplier's assessment of the impact RECCo's agreeing to the request would have on its ability to publish other Project Specific IPR, Specially Written Software or Software Supporting Materials under an Open Licence.
- 6.8 Any decision to Approve any such request from the Supplier under Paragraph 6.5 shall be at RECCo's sole discretion, not to be unreasonably withheld or delayed, or made subject to unreasonable conditions.]

Annex 1: Project Specific IPR and Specially Written Software

Name of Project Specific IPR	Details

Name of Specially Written Software	Details

Name of adapted or embedded Supplier Software, Third Party Software, Third Party IPRs, or Supplier Background IPRs	Details

[Guidance note: This may need to be updated throughout the life of the Contract. RECCo should make clear to the Supplier that the Project Specific IPR and Specially Written Software which must be recorded in this Annex does not include all forms of IPR which may be created by the Supplier and the Supplier Staff during the completion of their obligations under the Contract. Only Project Specific IPR and Specially Written Software which is part of a Deliverable, or is necessary for the use of a Deliverable by RECCo will need to be recorded here. IPR such as email communications or documents which do not form part of the Deliverables need not be recorded in this Annex.]