**DATED**

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Facilities management agreement

between

[PARTY 1]

and

[PARTY 2]

and

[PARTY 3]

CONTENTS

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This agreement is dated [DATE]

PARTIES

1. [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Supplier)
2. [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Customer)

BACKGROUND

1. The Supplier is in the business of providing facilities management services to undertakings in the [DESCRIPTION OF INDUSTRY] sector.
2. The Customer agrees to obtain and the Supplier agrees to provide the Services on the terms of this agreement.

AGREED TERMS

1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

* 1. Definitions:

1. Applicable Data Protection Laws: means:
   1. To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
   2. To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.
2. Applicable Laws: the laws of England and Wales [and the European Union] and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services.
3. Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
4. Business Hours: the period from [9.00 am to 5.00 pm] on any Business Day.
5. Change: an amendment to:
   1. the scope, nature, volume or execution of the Services under this agreement; or
   2. any other term or schedule of this agreement.
6. **Change Control Note**: the written record of any Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.
7. Change Control Procedure: the procedure for agreeing a Change as set out in clause 10.
8. Change in Law: any change in any Applicable Law which impacts on the performance of the Services and which comes into force after the Commencement Date.
9. Charges: the Service Charges, the Exit Assistance Charges and any other charges which may become due and payable pursuant to this agreement, as calculated in accordance with Part 4 of Schedule 2.
10. Commencement Date: [[DATE] **OR** the date of this agreement].
11. Confidential Information: any information, which by its nature is confidential, concerning the business, assets, affairs, customers, [clients] or suppliers of the other party [or of any member of its Group].
12. Consents: all permissions, consents, approvals, certificates, permits, licences, agreements and authorities (whether statutory, regulatory, contractual or otherwise) necessary for the provision of the Services [and the installation and use of the Equipment] on the terms of this agreement.
13. Contract Managers: the managers appointed by the parties in accordance with clause 9.1.
14. Contract Year: a 12-month-period (or such shorter period if this agreement is terminated earlier), starting on the Operational Services Commencement Date and on each anniversary of the Operational Services Commencement Date.
15. control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and **controls**, **controlled** and the expression **change of control** shall be interpreted accordingly.
16. Core Hours: [HOURS DURING WHICH THE FACILITIES NEED MANAGING].
17. Critical Service Failure: an event where the performance of any of the Operational Services falls to, or below, any of the Critical Service Levels for that Service.
18. Critical Service Levels: has the meaning given in Schedule 3.
19. Customer Materials: the documents, information, items and materials (whether owned by the Customer or a third party), which are provided by the Customer to the Supplier in connection with the Services and which are listed in Part 1 of Schedule 4.
20. Customer Personal Data: any personal data which the Supplier processes in connection with this agreement, in the capacity of a processor on behalf of the Customer.
21. Customer's Responsibilities: the responsibilities of the Customer as specified in Schedule 4.
22. [Disaster Recovery and Business Continuity Plan: the business continuity and disaster recovery plan [prepared pursuant to **OR** as set out in] Schedule 8, as amended from time to time.]
23. Dispute Resolution Procedure: the procedure set out in clause 28.
24. Documentation: the documentation listed in Schedule 10.
25. Employees: those employees who are listed in paragraph 4 of Schedule 7 whose contracts of employment will transfer to the Supplier from the Customer as at the Commencement Date.
26. Employment Regulations: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/346*).
27. Equipment: the equipment, tools, systems and cabling, used directly or indirectly in the supply of the Services.
28. EU GDPR: means the General Data Protection Regulation (*(EU) 2016/679*), as it has effect in EU law.
29. Exit Assistance Charges: the charges payable by the Customer to the Supplier for the provision of the Exit Assistance Services, which shall be calculated in accordance with Part 4 of Schedule 2.
30. Exit Assistance Services: the services to be provided by the Supplier to the Customer pursuant to clause 32 to facilitate the transfer of the Operational Services to the Customer or a Replacement Supplier.
31. Exit Management Plan: the plan to be agreed by the parties in accordance with paragraph 4 of Schedule 9.
32. Exit Period: the period beginning on the earlier of:
    1. the date a Termination Notice is received by a party; or
    2. [NUMBER] months before the expiry of this agreement,
33. and ending on the Termination Date.
34. Facilities: the buildings and premises specified in Schedule 1, or as otherwise agreed between the parties in accordance with the Change Control Procedure.
35. Force Majeure Event: has the meaning given in clause 34.1.
36. General Change in Law: a Change in Law where the change is of a general legislative nature, or which generally affects or relates to the supply of services which are the same as, or similar to, the Services.
37. Good Industry Practice: means using the standards, practices, methods and procedures conforming to the Applicable Laws and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.
38. Group: in relation to a company, that company, any subsidiary or holding company [from time to time **OR** at the date of this agreement] of that company[, and any subsidiary [from time to time **OR** at the date of this agreement] of a holding company of that company].
39. Implementation Operations: the operations set out in the Implementation Plan.
40. Implementation Plan: the implementation plan set out in Schedule 2 containing the key activities and tasks, completion dates and responsibilities of the Supplier for the implementation of the Operational Services.
41. Initial Term: the period commencing at midnight on the Commencement Date and ending on the [NUMBER] anniversary of the Commencement Date.
42. Insolvency Event: in respect of either party or a Subcontractor:
    1. that party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
    2. that party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party];
    3. that party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
    4. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that party (being a company, limited liability partnership or partnership) [other than for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party];
    5. an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over that party (being a company, partnership or limited liability partnership);
    6. the holder of a qualifying floating charge over the assets of that party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
    7. a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of that party;
    8. that party (being an individual) is the subject of a bankruptcy petition, application or order;
    9. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of that party's assets and such attachment or process is not discharged within [14] days; or
    10. any event occurs, or proceeding is taken, with respect to that party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraphs (a) to (i) (inclusive).
43. Intellectual Property Rights: patents, [utility models,] rights to inventions, copyright and [neighbouring and] related rights, [moral rights,] trade marks [and service marks], business names and domain names, rights in get-up [and trade dress], goodwill and the right to sue for passing off [or unfair competition], rights in designs, [rights in computer software,] database rights, rights to use, and protect the confidentiality of, confidential information (including know-how [and trade secrets]) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
44. Key Personnel: those personnel identified in Part 8 of Schedule 4 for the roles attributed to such personnel, as modified pursuant to clause 16.
45. Mandatory Policies: the Customer's business policies [and codes] [attached **OR** listed] in Schedule 6[, as amended by notification to the Supplier from time to time].
46. Material Subcontract: each Subcontract with a Material Subcontractor.
47. Material Subcontractor: each Subcontractor who is notified to and approved by the Customer as a Material Subcontractor pursuant to clause 11 (being a Subcontractor [who processes personal data of the Customer or] where the value of the supplies of the proposed Subcontract exceeds [PERCENTAGE]% of the anticipated Service Charges in any Contract Year).
48. month: a calendar month and **monthly** shall be interpreted accordingly.
49. Operational Services: the [DESCRIPTION OF SERVICES] services more particularly set out in Schedule 1 (or any part of any of them), or as otherwise agreed between the parties in accordance with clause 10, including services which are incidental or ancillary to such services other than the Implementation Operations or the Exit Assistance Services.
50. Operational Services Commencement Date: the date on which the Supplier starts providing the Operational Services.
51. Operational Services Commencement Longstop Date: [DATE].
52. Remediation Notice: a written notice given by the Customer to the Supplier pursuant to clause 29 to initiate the Remediation Plan Process.
53. Remediation Plan: the plan agreed in accordance with clause 29 for the resolution of a Supplier's default in complying with its obligations under this agreement.
54. Remediation Plan Process: the process for resolving certain of the Supplier's defaults as set out in clause 29.
55. Replacement Services: any services which are identical or substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Customer internally or by any Replacement Supplier.
56. Replacement Supplier: any third party supplier of Replacement Services appointed by the Customer from time to time.
57. Security Policy: the Customer's security policy as [attached **OR** listed] in Schedule 6.
58. Service Charges: the charges which become due and payable by the Customer to the Supplier in respect of the Operational Services, which shall be calculated in accordance with Schedule 2.
59. Service Credits: the sums attributable to a Service Failure as specified in Part 5 of Schedule 2.
60. Service Failure: a failure by the Supplier to deliver any part of the Operational Services in accordance with the Service Levels.
61. Service Levels: the service levels to which the Operational Services are to be provided, as set out in Schedule 3.
62. Services: the services to be delivered by or on behalf of the Supplier under this agreement, including the Operational Services and the Exit Assistance Services and **Service** means any of the Services (or any part of any of them).
63. Subcontract: means any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.
64. Subcontractors: those persons with whom the Supplier enters into a Subcontract[, and any third party with whom that third party enters into a subcontract or its servants or agents].
65. Supplier Personal Data: any personal data which the Supplier processes in connection with this agreement, in the capacity of a controller.
66. Supplier's Personnel: all employees, staff, other workers, agents and consultants of the Supplier and of any Subcontractors who are engaged in the provision of the Services from time to time.
67. Target Operational Services Commencement Date: [DATE].
68. Term: the period commencing on the Commencement Date and ending on the expiry of the Initial Term or, if extended pursuant to clause 2.2, the period ending on the expiry of any extended term, or such earlier date on which the agreement terminates in accordance with its terms.
69. [Termination Compensation: the sums calculated in accordance with Part 6 of Schedule 2 and payable in accordance with clause 30.2(b).]
70. Termination Date: the date of termination or expiry of this agreement.
71. Termination Notice: any notice to terminate this agreement which is given by either party in accordance with clause 30.
72. Transferring Employees: those employees whose contract of employment will be transferred to the Customer or a Replacement Supplier pursuant to the Employment Regulations on termination or expiry of this agreement.
73. UK GDPR: has the meaning given in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
74. VAT: value added tax [or any equivalent tax] chargeable in the UK [or elsewhere].
    1. Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
    2. **A person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
    3. The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
    4. A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.
    5. A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 [and a company shall be treated, for the purposes only of the membership requirement contained in section 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of:
       1. another person (or its nominee) by way of security or in connection with the taking of security; or
       2. its nominee].

[For the purposes of determining whether a limited liability partnership is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be interpreted so that: (a) references in section 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.]

* 1. Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
  2. Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.
  3. [Unless expressly provided otherwise in this agreement, a **OR** A] reference to legislation or a legislative provision is a reference to it as [amended, extended or re-enacted from time to time **OR** it is in force as at the date of this agreement.
  4. [Unless expressly provided otherwise in this agreement, a **OR** A] reference to legislation or a legislative provision includes all subordinate legislation made [from time to time OR as at the date of this agreement] under that legislation or legislative provision.
  5. A reference to **writing** or **written** excludes fax [and email **OR** but not email].
  6. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
  7. A reference to **this agreement** or to any other agreement or document is a reference to this agreement or such other agreement or document, in each case as varied from time to time.
  8. References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
  9. Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

1. Commencement and duration
   1. This agreement commences on the Commencement Date and shall continue, unless terminated earlier by either party in accordance with clause 30, for the Term.
   2. If the Customer wishes to extend the agreement beyond the expiry of the Initial Term, it shall give the Supplier at least [NUMBER] months' written notice of such intention prior to the expiry of the Initial Term [provided always that the Customer shall not be entitled to extend the Initial Term by more than [NUMBER] years]. If the Customer gives such notice, then the parties shall negotiate in good faith to agree the terms of such extension by not later than [NUMBER] months prior to the expiry of the Initial Term.
   3. If the Customer does not wish to extend this agreement beyond the Initial Term or the parties cannot agree the terms of such extension, this agreement shall expire [NUMBER] months after the expiry of the Initial Term and the Supplier shall provide the Exit Services to the Customer during this period in accordance with the provisions of clause 32 and the Exit Plan.
2. Supplier's general obligations
   1. The Customer shall appoint the Supplier, and the Supplier shall provide the Services to the Customer, on the terms of this agreement and in consideration of the payment of the Charges by the Customer.
   2. The Supplier shall at all times:
      1. without prejudice to clause 7 provide the Services with reasonable care and skill and in accordance with Good Industry Practice;
      2. ensure that all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;
      3. obtain, maintain and comply with all Consents;
      4. ensure that any of the Supplier's Personnel who are engaged in the provision of any of the Services shall, if required by the Customer, attend such meetings at the premises of the Customer [or elsewhere] as may be reasonably required by the Customer;
      5. provide such co-operation and information in relation to the Services to such of the Customer's other suppliers as the Customer may reasonably require for the purposes of enabling any such person to create and maintain any interfaces reasonably required by the Customer;
      6. [notify the Customer of the proposed date and time of any non-routine maintenance work to be undertaken not less than [96] hours before the time it intends to start the work;]
      7. not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business;
      8. [be responsible for and bear all costs incurred in the performance of the Services, including the costs of contracts which are entered into by the Supplier to enable it to perform the Services;]
      9. hold all Customer Materials in safe custody at its own risk and maintain the Customer Materials in good condition until returned to the Customer, and not dispose of or use the Customer Materials other than in accordance with the Customer's written instructions or authorisations[. **OR** ; and
      10. [[ANY OTHER RELEVANT OBLIGATIONS]].]
   3. Without prejudice to clause 23, the Customer may appoint a representative to monitor the Supplier's performance of the Services at any time during Business Hours and without notice and the Supplier shall provide such representative with all such assistance as is reasonably necessary to carry out such monitoring.
   4. All the Supplier's property located or left at the Facilities, including the Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Customer shall be liable for the loss of or damage to any of the Supplier's property located at the Facilities which is caused by the negligent act or omission of the Customer, its employees, workers, agents, consultants or subcontractors.
3. [Due diligence
   1. The Supplier acknowledges and confirms that:
      1. it has had the opportunity to ask the Customer all the questions it considers to be relevant to enable it to establish whether it is able to provide the Services in accordance with the terms of this agreement;
      2. it has received all information requested by it from the Customer pursuant to clause 4.1(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;
      3. it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer pursuant to clause 4.1(b); and
      4. it has entered this agreement in reliance on its own due diligence.
   2. [The Customer warrants that it has supplied to the Supplier all material information relating to its requirements for the Services [which has been reasonably requested by the Supplier].]
   3. [Subject to clause 4.2, no **OR** No] representations, warranties or conditions are given or assumed by the Customer in respect of any information provided to the Supplier by the Customer and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
   4. The Supplier shall promptly notify the Customer in writing if it becomes aware of any inaccuracies in any information provided to it by the Customer or its representatives during its due diligence which materially and adversely affects its ability to perform the Services in accordance with this agreement.
   5. The Supplier shall not be entitled to recover any additional costs from the Customer which arise from, nor be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Customer by the Supplier in accordance with clause 4.4 save where such additional costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of the Customer and the Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Supplier shall be entitled to recover such reasonable additional costs from the Customer or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.]
4. Implementation
   1. The Supplier shall commence the Implementation Operations on the Commencement Date. The Supplier shall perform the Implementation Operations in accordance with the Implementation Plan and shall procure that the Operational Services Commencement Date occurs on or before the Target Operational Services Commencement Date.
   2. If at any time before the Target Operational Services Commencement Date the Supplier becomes aware that there is, or is likely to be, any circumstance affecting its ability to procure that the Operational Services Commencement Date occurs on or before the Target Operational Services Commencement, it shall notify the Customer in writing immediately, but in any event within [two] Business Days, specifying:
      1. the circumstances giving rise to, or likely to give rise to, the delay;
      2. the consequences which the delay may have on the Supplier's ability to procure that the Operational Services Commencement Date occurs on or before the Target Operational Services Commencement Date; and
      3. the measures which the Supplier proposes to take to mitigate the effects of the delay.
   3. The Supplier shall take and continue to take all reasonable steps to eliminate or mitigate the consequences of any delay affecting its ability to procure that the Operational Services Commencement Date occurs on or before the Target Operational Services Commencement Date.
   4. The Supplier shall commence performance of the Operational Services upon completion to the satisfaction of the Customer of the Implementation Operations in accordance with the Implementation Plan.
5. Customer's responsibilities
   1. The Customer shall:
      1. comply with the Customer's Responsibilities; and
      2. co-operate with the Supplier in all matters relating to the Services.
   2. Subject to clause 6.3, if the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its employees, workers, agents, consultants or subcontractors then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.
   3. A failure by the Customer to comply with the terms of this agreement can only relieve the Supplier from complying with its obligations under this agreement with effect from the date on which the Supplier notifies the Customer [in writing and in reasonable detail] of the Customer's failure and its effect or anticipated effect on the Services.
6. Service levels
   1. The Supplier shall ensure that the Operational Services meet or exceed the Service Levels at all times from the Operational Services Commencement Date.
   2. If there is a Service Failure, the Supplier shall:
      1. notify the Customer immediately of the Service Failure;
      2. provide the Customer with a Remediation Plan in accordance with clause 29;
      3. deploy all additional resources and take all remedial action that is necessary to rectify or to prevent the Service Failure from recurring; and
      4. carry out the actions identified in the Remediation Plan in accordance with its terms.
   3. Subject to the limit set out in clause 25.7(a), the Supplier shall automatically credit the Customer with the applicable Service Credits. Service Credits shall either be shown as a deduction from the amount due from the Customer to the Supplier in the next invoice then due to be issued under this agreement, or the Supplier shall issue a credit note against a previous invoice and the amount for the Service Credits shall be repayable by the Supplier as a debt within [NUMBER] Business Days of issue of the credit note. [The parties agree that any such Service Credits have been calculated as, and are, a genuine pre-estimate of the loss likely to be suffered by the Customer.]
   4. The Customer and the Supplier shall review the Service Levels every [NUMBER] months throughout the Term and make any changes in accordance with the Change Control Procedure to reflect changes in the Customer's requirements.
7. Facilities
   1. Any change to the number of Facilities or to the location of any of the Facilities shall be made through the Change Control Procedure.
   2. With effect from the Commencement Date, the Customer shall grant the Supplier a non-exclusive and revocable licence to enter the Facilities for the sole purpose of carrying out the Implementation Operations and providing the Services to the Customer. The licence shall be subject to the conditions of this agreement, is personal to the Supplier and is not deemed to create a relationship of landlord and tenant between the parties.
   3. The licence granted pursuant to clause 8.2 shall terminate immediately on the Termination Date.
   4. The Supplier has no right to exclude the Customer from any part of the Facilities and the Customer reserves the right at all times to permit other parties to use the Facilities.
   5. The Supplier shall not alter or modify any part of the Facilities, unless such alteration or modification is part of the Services to be provided by the Supplier and has been agreed in writing by the Customer.
   6. The Supplier shall ensure that when visiting the Facilities, the Supplier's Personnel shall:
      1. keep the Facilities clean, tidy and properly secure;
      2. co-operate as far as may be reasonably necessary with the Customer's employees;
      3. act in such a way as to avoid causing unreasonable or unnecessary disruption to the routine and procedures of the Customer; and
      4. comply with all rules and regulations that the Customer notifies to the Supplier from time to time [in writing] relating to the use and security of the Facilities.
   7. The Supplier shall ensure that the Supplier's Personnel shall not:
      1. obstruct access to the Facilities, or any part of them; or
      2. do or permit to be done on the Facilities anything which is illegal or which may be or become a nuisance, damage, inconvenience or disturbance to the Customer or the occupiers of or visitors to the Facilities.
   8. The Supplier shall notify the Customer immediately on becoming aware of any damage caused by the Supplier's Personnel to any property of the Customer, or to any of the Facilities in the course of providing the Services. The Supplier shall be responsible for the reasonable costs of repair or replacement and, without prejudice to its other rights and remedies under this agreement or otherwise, the Customer shall be entitled to set off such reasonable costs of repair or replacement against sums owing to the Supplier under this agreement.
8. Review and monitoring
   1. As soon as practicable following the [Commencement Date **OR** date of this agreement], each party shall nominate a Contract Manager who will have authority to act on its behalf and contractually bind it in respect of all matters relating to the performance of this agreement. The first Contract Managers are listed in Part 7 of Schedule 4. The Contract Managers will co-ordinate and manage the Implementation Operations, provision of the Operational Services and the Exit Assistance Services and work with each other to address any problems that arise in connection with the Implementation Operations, Operational Services or Exit Assistance Services (including by signing Change Control Notes).
   2. Each party shall use all reasonable endeavours to ensure that the same person acts as its Contract Manager throughout the Term, but may, following reasonable notice to the other party, replace that person from time to time where reasonably necessary in the interests of its business.
   3. The Contract Managers shall meet at not less than monthly intervals to monitor and review the performance of this agreement, including, after the Operational Services Commencement Date, the achievement of the Service Levels. Such meetings shall be minuted by the Customer's Contract Manager and copies of those minutes shall be circulated to and approved by both parties.
   4. In advance of each meeting to be held in accordance with clause 9.3:
      1. the Supplier shall provide the Customer with a monthly written report detailing its performance against each of the Service Levels and identifying any issues regarding the performance of the agreement for discussion at the meeting; and
      2. the Customer shall notify the Supplier of any concerns it has regarding the performance of the agreement for discussion at the meeting.
   5. At the meeting, the parties shall agree a plan to address any problems identified in the performance of the agreement. If any problem remains unresolved, or there is a failure to agree on the plan, the procedures set out in clause 29 shall apply. Progress in implementing the plan shall be included in the agenda for the next monthly meeting.
   6. A review meeting to assess the Supplier's performance of its obligations under this agreement shall be held at [six-monthly] intervals throughout the Term. Each meeting shall be attended by senior representatives of each party, together with the Contract Managers.
   7. The Customer may increase the extent to which it monitors the performance of the Operational Services if the Supplier fails to meet the Service Levels or fails to fulfil its other obligations under this agreement. The Customer shall give the Supplier prior notification of its intention to increase the level of its monitoring. The Supplier shall bear its own costs in complying with such enhanced monitoring as is conducted by the Customer pursuant to this clause 9.7.
9. Change control
   1. Either party may submit a written request for Change to the other party in accordance with this clause 10, but no Change will come into effect until a Change Control Note has been signed by the parties' respective Contract Managers.
   2. If the Customer requests a Change:
      1. the Customer will submit a written request to the Supplier containing as much information as is necessary to enable the Supplier to prepare a Change Control Note; and
      2. within [NUMBER] Business Days of receipt of a request, the Supplier will, unless otherwise agreed in writing by the parties, send to the Customer a Change Control Note.
   3. If the Supplier requests a Change, it will send to the Customer a Change Control Note.
   4. A Change Control Note must contain sufficient information to enable the Customer to assess the Change, including as a minimum:
      1. the title of the Change;
      2. the originator of the Change and date of request;
      3. description of the Change;
      4. details of the effect of the proposed Change on:
         1. the Services;
         2. the Service Levels;
         3. the Charges;
         4. any systems or operations of the Customer which communicate with, or are otherwise affected by, the Services; and
         5. any other term of this agreement;
      5. the date of expiry of validity of the Change Control Note; and
      6. provision for signature by the Customer and Supplier.
   5. If, following the Customer's receipt of a Change Control Note pursuant to clause 10.2 or clause 10.3:
      1. the parties agree the terms of the relevant Change Control Note, they will sign it and that Change Control Note will amend this agreement; and
      2. either party does not agree to any term of the Change Control Note, then the other party may refer the disagreement to be dealt with in accordance with the Dispute Resolution Procedure.
   6. Each party will bear its own costs in relation to compliance with the Change Control Procedure.
10. Subcontracting
    1. Notwithstanding clause 35.3, the Supplier can only enter into subcontracting arrangements in accordance with this clause 11.
    2. To help the Customer reach a decision on a proposed Subcontract, the Supplier shall provide the Customer with a copy of the proposed Subcontract, together with any other information that the Customer may reasonably require about the proposed Subcontractor (including whether the proposed Subcontractor is a Material Subcontractor) and the impact of the proposed Subcontract on this agreement.
    3. The Customer has consented to the engagement of the Subcontractors listed in Schedule 3.
    4. If the Customer agrees that the Supplier may subcontract its obligations, the Supplier shall implement an appropriate system of [due diligence,] [audit] [and] [training] designed to ensure the Subcontractor's compliance with the Mandatory Policies.
    5. The Supplier shall (unless otherwise agreed by the Customer in writing) ensure that each [Material] Subcontract includes:
       1. the right, under the Contracts (Rights of Third Parties) Act 1999, for the Customer to enforce the terms of that Subcontract as if it were the Supplier; and
       2. a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and obligations under the Subcontract to the Customer or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Customer.
    6. The Supplier shall not terminate or materially amend the terms of any [Material] Subcontract without the Customer's prior written consent, which shall not be unreasonably withheld or delayed.
    7. The Customer may require the Supplier to terminate a Subcontract where any of the following occur:
       1. the acts or omissions of the relevant Subcontractor have given rise to the Customer's right to terminate this agreement pursuant to clause 30.1;
       2. there is a change of control of the Subcontractor; or
       3. the Subcontractor suffers an Insolvency Event.
    8. If the Customer is able to obtain from any Subcontractor or any other third party more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier in the supply of the Services, then the Customer may:
       1. require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Customer in respect of the relevant item; or
       2. enter into a direct agreement with that Subcontractor or third party in respect of the relevant item, provided that the Customer makes the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services.
    9. If the Customer exercises either of its options pursuant to clause 11.8, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.
    10. The Supplier shall remain responsible for all acts and omissions of its Subcontractors and the acts and omissions of those employed or engaged by the Subcontractors as if they were its own. An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation on the Supplier to procure that the Supplier's Personnel shall also do, or refrain from doing, such act or thing.
11. Compliance and change in laws
    1. The Supplier shall at all times act, and shall procure that the Subcontractors shall at all times act, in compliance with the Applicable Laws and the Mandatory Policies. The Supplier shall maintain and shall procure that the Subcontractors shall maintain such records as are necessary pursuant to the Applicable Laws and the Mandatory Policies and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the Customer (or its authorised representative).
    2. Breach of clause 12.1 shall constitute a material breach of this agreement, which is irremediable, under clause 30.1(a).
    3. The Supplier shall monitor and shall keep the Customer informed in writing of any changes in the Applicable Laws which may impact the Services and shall provide the Customer with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes. The Supplier shall only implement such changes in accordance with the Change Control Procedure.
    4. The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms of this agreement nor be entitled to an increase in the Charges as the result of a General Change in Law.
12. Charges, invoicing and payment
    1. The Customer shall pay the Charges to the Supplier in accordance with Schedule 2.
    2. The Charges are inclusive of the cost to the Supplier of all resources and equipment [and spare parts, replacement parts, components and consumables] procured by the Supplier from third parties for the provision of the Services.
    3. Except as otherwise provided, the parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this agreement.
    4. All Charges are stated exclusive of VAT which shall be paid by the Customer at the rate and from time to time in the manner prescribed by law.
    5. [The Supplier may increase the Charges on an annual basis with effect from each anniversary of the Operational Services Commencement Date in line with the percentage increase in the Consumer Prices Index (all items) in the preceding 12-month period. The first such increase shall take effect at the beginning of the second Contract Year and shall be based on the latest available figure for the percentage increase in the Consumer Prices Index (all items) at the beginning of the last month of the previous Contract Year.]
    6. The Supplier shall invoice the Customer at the end of each month for any Operational Services and Exit Assistance Services performed during that month. The invoices shall take into account any Service Credits which have been accrued in the preceding period.
    7. The Customer shall pay each undisputed invoice submitted to it by the Supplier within [30] days of receipt to a bank account nominated in writing by the Supplier from time to time.
    8. If the Customer disputes any invoice:
       1. the Customer shall notify the Supplier in writing within [NUMBER] days of the date of receipt of the invoice, specifying the reasons for disputing the invoice;
       2. the Supplier shall provide all evidence as may be reasonably necessary to verify the disputed invoice;
       3. the Customer shall pay to the Supplier all amounts not disputed by the Customer on the due date as set out in clause 13.7;
       4. the parties shall negotiate in good faith to attempt to resolve the dispute promptly; and
       5. if the parties have not resolved the dispute within [30] days of the Customer giving notice to the Supplier, the dispute shall be resolved in accordance with the Dispute Resolution Procedure.
    9. If the Customer fails to make any payment due to the Supplier under this agreement by the due date for payment, then, without limiting the Supplier's remedies under clause 30:
       1. the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and
       2. the Supplier may suspend performance of part or all the Services until payment has been made in full.
    10. Each party may at any time[, without notice to the other party,] set off any liability owed by the other party to it against any liability owed by it to the other party, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. If the liabilities to be set off are expressed in different currencies, the party setting off may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by a party of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.
13. [Price reduction
    1. The Supplier shall throughout the Term seek ways to derive efficiencies with respect to delivery of the Services, and use all reasonable endeavours to ensure that the Customer receives the benefit of any such efficiencies.
    2. Where the Supplier identifies a potential efficiency:
       1. it shall promptly inform the Customer and shall advise the Customer whether, in the Supplier's professional opinion, the implementation of any change necessary to enable the Customer to enjoy that benefit is desirable (in view of quality, reliability and other relevant factors as well as price); and
       2. if the Customer shall conclude that the implementation of the necessary change is desirable, the Supplier shall implement the change.
    3. Where the achievement of the benefit by the Customer would necessitate the making of a Change Control Note, the Change Control Procedure shall apply but the Supplier shall not be entitled to object to the proposed change. Any benefits arising from any such change as is referred to in this clause 14 (including any consequent reductions in the Charges) shall accrue solely to the Customer (subject to any costs reasonably incurred by the Supplier in implementing the necessary change being taken into account).]
14. [Disaster recovery and business continuity
    1. The Supplier shall ensure that it is able to implement the provisions of the Disaster Recovery and Business Continuity Plan at any time in accordance with its terms.
    2. The Supplier shall test the Disaster Recovery and Business Continuity Plan on a regular basis (and, in any event, not less than once in every 12-month period from the Operational Services Commencement Date). The Customer shall be entitled to participate in such tests as it may reasonably require.
    3. Following each test, the Supplier shall send to the Customer a written report summarising the results of the test and shall promptly implement [at the Supplier's expense] any actions or remedial measures which the Customer reasonably considers to be necessary as a result of those tests.
    4. The Supplier shall implement the Disaster Recovery and Business Continuity Plan if the Operational Services are not available for more than [NUMBER] [hours **OR** days].]
15. Key personnel
    1. Each party shall appoint the persons named in Part 8 of Schedule 4 as the individuals who shall be responsible for the matters allocated to them. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.
    2. The Supplier shall not remove or replace any of its Key Personnel unless:
       1. required to do so by the Customer in accordance with clause 17.3;
       2. the person is on long-term sick leave;
       3. the element of the Services in respect of which the individual was engaged has been completed to the Customer's satisfaction;
       4. the person resigns from their employment with the Supplier; or
       5. the Supplier obtains the prior written consent of the Customer.
    3. Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than [NUMBER] Business Days. Any replacement shall be fully competent to carry out the tasks assigned to the person whom he or she has replaced. A temporary replacement shall be identified as soon as reasonably practicable from the Supplier or the Customer becoming aware of the role becoming vacant.
16. Supplier's Personnel
    1. At all times, the Supplier shall ensure that:
       1. each of the Supplier's Personnel is suitably qualified, adequately trained and capable of providing the Services in respect of which they are engaged;
       2. there is an adequate number of Supplier's Personnel to provide the Services properly; and
       3. all of the Supplier's Personnel comply with the Mandatory Policies.
    2. The Customer may refuse to grant access to, and remove, any of the Supplier's Personnel who do not comply with any of the Mandatory Policies, or if they present a security threat.
    3. The Supplier shall replace any of the Supplier's Personnel whom the Customer reasonably decides has failed to carry out their duties with reasonable care and skill. Following the removal of any of the Supplier's Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
    4. The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Customer on the Supplier's Personnel. The Supplier shall ensure that the Supplier's Personnel cannot be individually identified from the information so provided.
    5. The Supplier shall use its [best **OR** reasonable] endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.
17. Staff transfers
    1. The Customer and the Supplier have agreed the terms and conditions which shall apply in relation to the Employees and the Transferring Employees in Schedule 7 and both parties shall comply with the provisions of Schedule 7.
    2. [The Customer and the Supplier have, in addition to the matters referred to in clause 18.1, agreed the terms and conditions which shall apply in relation to the pensions of Employees and Transferring Employees in [DETAILS OF PENSIONS SCHEDULE] and both parties shall comply with the provisions of that Schedule.]
18. Non-solicitation
    1. To protect their respective legitimate business interests each party covenants with the other for itself and as agent for each member of its Group that it shall not (and shall procure that no member of its Group shall) (except with the prior written consent of the other party):
       1. attempt to solicit or entice away; or
       2. solicit or entice away,

from the employment or service of the other party or any member of its Group the services of any Restricted Person other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the other party or any member of its Group.

* 1. The parties shall be bound by the covenant set out in clause 19.1 during the Term, and for a period of [six **OR** 12] months after termination or expiry of this agreement.
  2. For the purposes of this clause 19, a **Restricted Person** shall mean any firm, company or person employed or engaged by a party or any member of its Group during the Term [at the level of [POSITION] or above], who has been engaged in the provision of the Services or the management of this agreement.
  3. Any consent given in accordance with clause 19.1 shall be subject to payment to the consenting party of a sum equivalent to [20%] of the then current annual remuneration of the Restricted Person or, if higher, [20%] of the annual remuneration to be paid to the Restricted Person.

1. Equipment
   1. The Supplier shall, at its own expense, be responsible for the provision, maintenance, installation and replacement of all the Equipment.
   2. The Supplier shall ensure that the Equipment:
      1. is suitable for the performance of the Services;
      2. is maintained in good working order, in a safe, serviceable and clean condition and in accordance with the manufacturer's instructions and Applicable Laws; and
      3. complies with the latest applicable British standard where such exists.
   3. The Supplier shall comply with any reasonable directions issued by the Customer in respect of the use and maintenance of the Equipment at the Facilities.
   4. The Supplier shall procure such spare parts, repair parts, components and consumables as are necessary to maintain the Facilities in accordance with this agreement. [The cost of such parts and materials shall be invoiced to the Customer in accordance with clause 13 **OR** The Supplier shall bear the costs of such parts and materials].
2. Intellectual Property Rights
   1. In relation to the Customer Materials:
      1. the Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
      2. the Customer grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use the Customer Materials for the Term for the purpose of providing the Services to the Customer.
   2. The Supplier:
      1. warrants that the receipt, use and onward supply of the Services by the Customer [and its permitted sub-licensees] shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
      2. shall indemnify the Customer in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other [reasonable] professional costs and expenses) suffered or incurred by the Customer arising out of, or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or supply of the Services.
   3. The Customer:
      1. warrants that the receipt and use of the Customer Materials in the performance of this agreement by the Supplier, its agents, consultants or Subcontractors shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
      2. shall indemnify the Supplier in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other [reasonable] professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim brought against the Supplier, its agents, consultants or Subcontractors for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this agreement of the Customer Materials.
3. Data protection
   1. For the purposes of this clause 22, the terms **Commissioner, controller**, **data subject**, **personal data**, **personal data breach, processor** and **processing,** shall have the meaning given to them in the UK GDPR[, and **supervisory authority** shall have the meaning given to it in the EU GDPR].
   2. Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 22 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Applicable Data Protection Laws.
   3. The parties acknowledge that, for the purposes of the Applicable Data Protection Laws:
      1. the Supplier shall process the personal data as set out in paragraph 1.1 of Schedule 5 as processor on behalf of the Customer; and
      2. [the Supplier shall act as controller of the personal data as set out in paragraph 1.2 of Schedule 5.]
   4. Should the determination in clause 22.3 change, each party shall use all reasonable endeavours to make any changes that are necessary to this clause 22 and Schedule 5.
   5. [The Customer consents to, (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by the Supplier in connection with the processing of Supplier Personal Data, provided these are in compliance with the then-current version of the Supplier's privacy policy available at [COMPANY WEBSITE URL] (**Privacy Policy**). In the event of any inconsistency or conflict between the terms of the Privacy Policy and this agreement, the Privacy Policy will take precedence.]
   6. Without prejudice to clause 22.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Supplier Personal Data and Customer Personal Data to the Supplier [[and **OR** or] lawful collection of the same by the Supplier] for the duration and purposes of this agreement.
   7. In relation to the Customer Personal Data, Schedule 5 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.
   8. Without prejudice to clause 22.2, the Supplier shall, in relation to the Customer Personal Data:
      1. process that Customer Personal Data only on the documented instructions of the Customer[, which shall be to process the Customer Personal Data for the purposes set out in [Schedule 5 **OR** [DOCUMENT]] unless the Supplier is required by Applicable Laws to otherwise process that Customer Personal Data (**Purpose**). Where the Supplier is relying on Applicable Laws as the basis for processing Customer Processor Data, the Supplier shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer on important grounds of public interest. The Supplier shall inform the Customer if, in the opinion of the Supplier, the instructions of the Customer infringe Applicable Data Protection Laws;
      2. implement the technical and organisational measures set out in [Schedule 5 **OR** [DOCUMENT]] to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
      3. ensure that any personnel engaged and authorised by the Supplier to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
      4. assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
      5. notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
      6. at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the agreement unless the Supplier is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this clause 22.8(f) Customer Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and
      7. maintain records to demonstrate compliance with this clause 22 [and allow for reasonable audits by the Customer or the Customer's designated auditor, for this purposes, on reasonable written notice].
   9. The Customer provides its prior, general authorisation for the Supplier to:
      1. appoint processors to process the Customer Personal Data, provided that the Supplier shall:
         1. ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on the Supplier in this clause 22;
         2. remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and
         3. inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify the Supplier for any losses, damages, costs (including legal fees) and expenses suffered by the Supplier in accommodating the objection.
      2. transfer Customer Personal Data outside of the UK as required for the Purpose, provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).
   10. Either party may, at any time on not less than 30 days' notice, revise this clause 22 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
   11. the Supplier's liability for losses arising from breaches of this clause 22 is set out in clause 25.7(b).
   12. [The Supplier shall[, [subject to clause 25.7(b) **OR** [OTHER SUM],] indemnify and keep the Customer indemnified from and against any and all costs, damages and expenses of any kind arising from any claim or demand brought by any person, data subject, Commissioner[ or supervisory authority] as a result of any breach or alleged breach by Supplier of any Applicable Data Protection Law or its obligations under liability for losses arising from breaches of this clause 22.]
4. Audits
   1. The Supplier shall allow the Customer and any auditors of or other advisers to the Customer to access any of the Supplier's premises, systems, Supplier's Personnel and relevant records as may be reasonably required to:
      1. fulfil any legally enforceable request by any regulatory body;
      2. verify the accuracy of the Charges or identify suspected fraud; or
      3. verify that the Services are being provided and all obligations of the Supplier are being performed in accordance with this agreement.
   2. The Customer shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or impede the provision of the Services and that, where possible, individual audits are co-ordinated with each other to minimise any disruption.
   3. Subject to the Supplier's obligations of confidentiality, the Supplier shall provide the Customer (and its auditors and other advisers) with all reasonable co-operation, access and assistance in relation to each audit.
   4. The Customer shall provide at least [NUMBER] Business Days' notice of its intention to conduct an audit unless such audit is conducted in respect of a suspected fraud, in which event no notice shall be required.
   5. The parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this clause 23, unless the audit identifies a material breach of this agreement by the Supplier, in which case the Supplier shall reimburse the Customer for all its reasonable costs incurred in the course of the audit.
   6. If an audit identifies that:
      1. the Supplier has failed to perform its obligations under this agreement, the provisions of clause 29 shall apply;
      2. the Customer has overpaid any Charges, the Supplier shall pay to the Customer the amount overpaid within [NUMBER] days from the date of receipt of an invoice or notice to do so; and
      3. the Customer has underpaid any Charges, the Customer shall pay to the Supplier the amount of the underpayment within [NUMBER] days from the date of receipt of an invoice for such amount.
5. Warranties

Each party warrants that:

* 1. it has full capacity and authority to enter into and to perform this agreement;
  2. this agreement is executed by a duly authorised representative of that party;
  3. there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this agreement;
  4. once duly executed, this agreement will constitute legal, valid and binding obligations; and
  5. its Key Personnel shall be authorised to carry out the matters for which they are expressed to be responsible in Schedule 4.

1. Limitation of liability
   1. The Supplier has obtained insurance cover in respect of certain aspects of its own legal liability for individual claims not exceeding £[AMOUNT] per claim. [The Supplier has been unable to obtain insurance in respect of certain types of liability at a commercially viable price.] The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess liability.
   2. References to liability in this clause 25 include every kind of liability arising under or in connection with this agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
   3. [Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.]
   4. Nothing in this clause 25 shall limit the Customer's payment obligations under this agreement.
   5. Nothing in this agreement shall limit:
      1. the Supplier's liability under:
         1. clause 21.2(b);
         2. paragraph 2.5 of Schedule 7; and
         3. paragraph 3.5 and paragraph 3.6 of Schedule 7.
      2. the Customer's liability under:
         1. clause 21.3(b);
         2. paragraph 2.3 of Schedule 7; and
         3. paragraph 3.7 of Schedule 7.
   6. Nothing in this agreement limits any liability for:
      1. death or personal injury caused by negligence;
      2. fraud or fraudulent misrepresentation;
      3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
      4. any liability that cannot legally be limited.
   7. Subject to [clause 25.3,] clause 25.5(a) and clause 25.6, the Supplier's total aggregate liability to the Customer:
      1. in respect of Service Credits, shall not exceed, in each Contract Year, [PERCENTAGE]% of the Service Charges that are paid [and payable] by the Customer in the applicable Contract Year;
      2. for loss arising from the Supplier's failure to comply with its data processing obligations under clause 22 shall not exceed £[AMOUNT];
      3. for damage to the customer's (or third party's) property caused by the negligence of the Supplier or Supplier's Personnel, shall not exceed £[AMOUNT LINKED TO RELEVANT INSURANCE POLICY] for any one event or series of connected events; and
      4. for all other loss or damage:
         1. arising in the period between the Commencement Date and the Operational Services Commencement Date, shall not exceed £[AMOUNT]; and
         2. arising in each Contract Year, shall not exceed the cap.
      5. In clause 25.7(d)(ii):
         1. **cap.** The cap is the greater of £[MINIMUM AMOUNT] and [NUMBER IN WORDS] per cent ([PERCENTAGE]%) of the total charges in the Contract Year in which the breaches occurred; and
         2. **total charges.** The total charges means the sum of all Service Charges and Exit Assistance Charges paid by the Customer and all Service Charges and Exit Assistance Charges payable under this agreement in respect of Services actually supplied by the Supplier, whether or not invoiced to the Customer.
   8. The Service Credits shall be the exclusive financial remedy for the Customer for each Service Failure for which a Service Credit has been set, unless:
      1. any failure to meet the Service Levels (either on an individual basis or in aggregate) constitutes a failure beyond that for which the Service Credits have been set;
      2. the Customer is otherwise entitled to terminate this agreement for the Supplier's breach; or
      3. the failure to perform the Operational Services in accordance with the Service Levels has arisen due to theft, gross negligence, fraud, fraudulent misrepresentation or wilful default.
   9. Subject to [clause 25.3,] clause 25.4, clause 25.5(b) and clause 25.6, the Customer's total aggregate liability in respect of all claims (other than a failure to pay any of the Charges that are properly due and payable and for which the Customer shall remain fully liable), losses or damages:
      1. arising in the period between the Commencement Date and the Operational Services Commencement Date, shall not exceed £[AMOUNT]; and
      2. arising in each Contract Year, shall not exceed the cap.
   10. In clause 25.9(b):
       1. **cap.** The cap is the greater of £[MINIMUM AMOUNT] and [NUMBER IN WORDS] per cent ([PERCENTAGE]%) of the total charges in the Contract Year in which the breaches occurred; and
       2. **total charges.** The total charges means the sum of all Service Charges and Exit Assistance Charges paid by the Customer and all Service Charges and Exit Assistance Charges payable under this agreement in respect of services actually supplied by the Supplier, whether or not invoiced to the Customer.
   11. The caps on the Supplier's liability under clause 25.7 [shall **OR** shall not] be reduced by amounts awarded or agreed to be paid under:
       1. [clause 7.3;]
       2. [clause 21.2(b);]
       3. [paragraph 2.5 of Schedule 7;] and
       4. [paragraph 3.5 and paragraph 3.6 of Schedule 7.]
   12. The caps on the Customer's liability under clause 25.9 [shall **OR** shall not] be reduced by amounts awarded or agreed to be paid under:
       1. [clause 13;]
       2. [clause 21.3(b); and]
       3. [paragraph 2.3 and paragraph 3.7 of Schedule 7.]
   13. Subject to [clause 25.3,] clause 25.4, clause 25.5 and clause 25.6, clause 25.13(b) identifies the kinds of loss that are not excluded. Subject to that, clause 25.13(a) excludes specified types of loss.
       1. Types of loss wholly excluded:
          1. Loss of profits.
          2. Loss of sales or business.
          3. Loss of agreements or contracts.
          4. Loss of anticipated savings.
          5. Loss of use or corruption of software, data or information.
          6. Loss of or damage to goodwill.
          7. Indirect or consequential loss.
       2. Types of loss and specific losses are not excluded:
          1. Sums paid by the Customer to the Supplier pursuant to this agreement in respect of any Services not provided in accordance with this agreement.
          2. Wasted expenditure.
          3. Additional costs of procuring and implementing replacements for, or alternatives to, Services not provided in accordance with this agreement. These include consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials.
          4. Losses incurred by the Customer arising out of or in connection with any third party claim against the Customer which has been caused by the act or omission of the Supplier. For these purposes, third party claims shall include demands, fines, penalties, actions, investigations or proceedings, including those made or commenced by subcontractors, the Supplier's Personnel, regulators and customers of the Customer.
          5. Anticipated savings in respect of [INDICATION OF SOURCE OF SAVINGS].
          6. [OTHER SPECIFIC LOSSES.]
   14. The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 3 and clause 7. In view of these commitments, the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.
   15. Unless a party notifies the other party that it intends to make a claim in respect of an event within the notice period, the other party shall have no liability for that event. The notice period for an event shall start on the day on which the party wishing to make a claim became, or ought reasonably to have become aware of [its having grounds to make a claim in respect of the event **OR** the event having occurred (as opposed to it becoming aware of its having grounds to make a claim in respect of it)] and shall expire [NUMBER] months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
2. Insurance
   1. During the Term [and for a period of [one year] afterwards] the Supplier shall maintain in force the following insurance policies with reputable insurance companies:
      1. public liability insurance with a limit of at least [£[AMOUNT] million a claim];
      2. product liability insurance with a limit of at least [£[AMOUNT] million] for claims arising from a single event or series of related events in a single calendar year;
      3. professional indemnity insurance with a limit of at least [£[AMOUNT] million] for claims arising from a single event or series of related events in a single calendar year; and
      4. employer's liability insurance with a limit of at least [£[AMOUNT] million] for claims arising from a single event or series of related events in a single calendar year.
   2. The Supplier shall ensure that the Customer's interest is noted on each insurance policy, or that a generic interest clause has been included. At the written request of the Customer, the Supplier shall provide the Customer with a copy of each insurance policy. On the renewal of each policy, the Supplier shall promptly send a copy of the receipt of the premium paid by the Supplier to the Customer.
   3. The Supplier shall ensure that the Subcontractors also maintain adequate insurance having regard to their obligations under this agreement.
   4. The Supplier shall notify the Customer if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.
   5. The Supplier's liabilities under this agreement shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in clause 26.1.
3. Conduct of claims
   1. Liability under the indemnities in clause 21.2(b) and clause 21.3(b) and paragraph 2.3, paragraph 2.5, paragraph 3.5, paragraph 3.6 and paragraph 3.7 of Schedule 7 is conditional on the indemnified party (the **Indemnified Party**) discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim against the Indemnified Party which may reasonably be considered likely to give rise to a liability under the indemnity (**Claim**), the Indemnified Party shall:
      1. as soon as reasonably practicable, give written notice of the Claim to the indemnifying party (the **Indemnifying Party**), specifying the nature of the Claim in reasonable detail;
      2. not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Indemnifying Party [(such consent not to be unreasonably conditioned, withheld or delayed)][, provided that the Indemnified Party may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Indemnifying Party, but without obtaining the Indemnifying Party's consent) if the Indemnified Party [reasonably] believes that failure to settle the Claim would be prejudicial to it in any material respect];
      3. give the Indemnifying Party [and its professional advisers] access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, workers, agents, consultants, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Indemnified Party, so as to enable the Indemnifying Party and its professional advisers to examine them and to take copies (at the Indemnifying Party's expense) for the purpose of assessing the Claim; and
      4. subject to the Indemnifying Party providing security to the Indemnified Party to the Indemnified Party's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Indemnified Party may reasonably request to avoid, dispute, compromise or defend the Claim.
   2. If a payment due from an Indemnifying Party under any of the indemnities set out in clause 27.1 is subject to tax (whether by way of direct assessment or withholding at its source), the Indemnified Party shall be entitled to receive from the Indemnifying Party such amounts as shall ensure that the net receipt, after tax, to the Indemnified Party in respect of the payment is the same as it would have been were the payment not subject to tax.
   3. Nothing in this clause shall restrict or limit the Indemnified Party's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.
4. Dispute resolution procedure
   1. If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**), then[, except as expressly provided in this agreement,] the parties shall follow the procedure set out in this clause:
      1. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Contract Managers of each of the parties shall attempt in good faith to resolve the Dispute;
      2. if the Contract Managers of each of the parties are for any reason unable to resolve the Dispute within [30] days of service of the Dispute Notice, the Dispute shall be referred to the [SENIOR OFFICER TITLE] of the Customer and the [SENIOR OFFICER TITLE] of the Supplier who shall attempt in good faith to resolve it;
      3. if the [SENIOR OFFICER TITLE] of the Customer and the [SENIOR OFFICER TITLE] of the Supplier are for any reason unable to resolve the Dispute within [30] days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within [NUMBER] days of service of the Dispute Notice, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (**ADR notice**) to the other party to the Dispute, referring the dispute to mediation;
      4. if there is any point on the logistical arrangements of the mediation, other than nomination of the mediator, upon which the parties cannot agree within [NUMBER] [working] days from the date of the ADR notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the parties having consulted with them; and
      5. unless otherwise agreed between the parties, the mediation will start not later than [NUMBER] [working] days after the date of the ADR notice.
   2. The commencement of mediation shall not prevent the parties commencing or continuing court proceedings.
   3. If for any reason the Dispute is not resolved within [NUMBER] [working] days of commencement of the mediation, the Dispute shall be referred to and finally resolved by [the courts of England and Wales in accordance with clause 35.16 of this agreement.
5. Remediation Plan Process
   1. Subject to clause 29.2 and clause 29.9, if the Supplier is in default in complying with any of its obligations under this agreement and the default is capable of remedy, the Customer may not terminate this agreement without first operating the Remediation Plan Process. If the Supplier commits such a default, the Customer shall give a Remediation Notice to the Supplier which shall specify the default in outline and the actions the Supplier needs to take to remedy the default.
   2. The Customer shall be under no obligation to initiate the Remediation Plan Process if it issues a Termination Notice in the circumstances set out in clause 30.1(a), clause 30.1(b), clause 30.1(e), clause 30.1(f), clause 30.1(g), clause 30.1(h) or clause 30.1(i).
   3. Within [NUMBER] Business Days of receipt of a Remediation Notice, the Supplier shall either:
      1. submit a draft Remediation Plan, even if it disputes that it is responsible for the matters which are the subject of the Remediation Notice; or
      2. inform the Customer that it does not intend to submit a Remediation Plan, in which event the Customer shall be entitled to serve a Termination Notice.
   4. The Customer shall either approve the draft Remediation Plan within [NUMBER] Business Days of its receipt pursuant to clause 29.3(a), or it shall inform the Supplier why it cannot accept the draft Remediation Plan. In such circumstances, the Supplier shall address all such concerns in a revised Remediation Plan, which it shall submit to the Customer within [NUMBER] Business Days of its receipt of the Customer's comments. If no such notice is given, the Supplier's draft Remediation Plan shall be deemed to be agreed.
   5. Once agreed, the Supplier shall immediately start work on the actions set out in the Remediation Plan.
   6. If, despite the measures taken under clause 29.4, a Remediation Plan cannot be agreed within [NUMBER] Business Days then the Customer may elect to end the Remediation Plan Process and serve a Termination Notice.
   7. If a Remediation Plan is agreed between the parties, but the Supplier fails to implement or successfully complete the Remediation Plan by the required completion date, the Customer may:
      1. terminate this agreement by serving a Termination Notice;
      2. give the Supplier a further opportunity to resume full implementation of the Remediation Plan; or
      3. refer the matter for resolution under the Dispute Resolution Procedure.
   8. If, despite the measures taken under clause 29.7, the Supplier fails to implement the Remediation Plan in accordance with its terms, the Customer may elect to end the Remediation Plan Process and refer the matter for resolution by the Dispute Resolution Procedure or serve a Termination Notice.
   9. The Customer shall not be obliged to follow the Remediation Plan Process if there is a repetition of substantially the same default by the Supplier as had previously been addressed in a Remediation Plan within a period of [NUMBER] months following the conclusion of such previous Remediation Plan. In such event, the Customer may serve a Termination Notice.
6. Termination
   1. Without affecting any other right or remedy available to it, and subject to clause 29, the Customer may terminate this agreement with effect on the expiry of the period specified in the Termination Notice by giving written notice to the Supplier if one or more of the following circumstances occurs or exists:
      1. the Supplier is in material breach of this agreement, which is irremediable;
      2. the Supplier fails to procure that the Operational Services Commencement Date occurs on or before the Operational Services Commencement Longstop Date;
      3. the parties fail to agree the Remediation Plan in accordance with the Remediation Plan Process;
      4. the Supplier fails to implement or successfully complete the Remediation Plan in accordance with the Remediation Plan Process;
      5. the circumstances referred to in clause 29.9 occur;
      6. the Supplier has committed [NUMBER] Critical Service Failure(s);
      7. the Supplier has accrued Service Credits in any period of [NUMBER] consecutive months, or any [NUMBER] months in any rolling 12-month period, in excess of £[AMOUNT];
      8. the Supplier suffers an Insolvency Event; or
      9. there is a change of control of the Supplier to which the Customer reasonably objects, provided that the Customer serves its Termination Notice within [NUMBER] months of the date on which the Supplier informs the Customer (by written notice) of the change of control or on which the Customer otherwise becomes aware of the change of control.
   2. Where the Customer wishes to terminate this agreement for convenience:
      1. the Customer may terminate this agreement at any time, on giving not less than [NUMBER] months' prior written notice to the Supplier[. **OR** ; and]
      2. [if the Customer terminates this agreement pursuant to clause 30.2(a) and such termination takes effect before the end of the Initial Term the Customer shall be obliged to pay the Termination Compensation to the Supplier to compensate the Supplier for the loss of the benefit of this agreement. ]
   3. Either party may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the other if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than [NUMBER] Business Days. Termination shall take effect on the expiry of the period specified in the Termination Notice.
   4. Without affecting any other right or remedy available to it, the Supplier may terminate this agreement with effect on the expiry of the period specified in the Termination Notice by giving the Customer written notice if:
      1. the Customer fails to pay any undisputed amount due under this agreement on the due date for payment and remains in default not less than [NUMBER] days after being notified in writing to make such payment;
      2. the Customer commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of [NUMBER] days after being notified in writing to do so;
      3. the Customer repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
      4. the Customer suffers an Insolvency Event; or
      5. the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.
   5. For the purposes of clause 30.1(a) and clause 30.4(b), a **material breach** means:
      1. a breach of any of the obligations set out in clauses [NUMBERS]; or
      2. a breach that has a serious effect on the benefit the terminating party would otherwise derive from this agreement [over any [NUMBER]-month period during its term].
7. Consequences of termination and survival
   1. On the Termination Date, the Supplier shall:
      1. repay to the Customer any amount which the Customer may have paid in advance in respect of Services not provided or procured by the Supplier as at the termination or expiry of this agreement;
      2. vacate the Facilities leaving them clean and tidy and removing any materials or equipment belonging to it. The Customer may dispose of any materials or equipment that have not been removed within [NUMBER] days of termination or expiry of this agreement and shall not be obliged to account to the Supplier for the same;
      3. deliver the Documentation to the Customer; and
      4. return to the Customer such of the following as are in the Supplier's possession or control:
         1. security and access keys and codes issued to the Supplier's Personnel;
         2. the Customer Materials;
         3. any other equipment which belongs to the Customer; and
         4. any items that have been on-charged to the Customer, such as consumables,

and if the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them.

* 1. On the Termination Date, the Customer shall immediately pay any outstanding unpaid invoices and interest due to the Supplier. The Supplier shall submit invoices for any Services [or items] that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt.
  2. On the Termination Date, each party shall return to the other party all Confidential Information of the other party and erase all of the other party's Confidential Information from its computer systems (to the extent possible) and shall certify that it does not retain the other party's Confidential Information.
  3. Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
  4. Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the Termination Date, including the right to claim damages in respect of any breach of the agreement which existed at or before the Termination Date.

1. Exit assistance and service transfer

Without prejudice to any other rights and obligations in this agreement, the parties shall comply with the provisions of Schedule 9 and the Supplier shall co-operate fully with the Customer to ensure an orderly migration of the Services to the Customer or, at the Customer's request, the Replacement Supplier.

1. Confidentiality
   1. Each party undertakes that it shall not [at any time **OR** at any time during this agreement, and for a period of [two] years after termination [or expiry] of this agreement,] disclose to any person any Confidential Information, except as permitted by clause 33.2.
   2. Each party may disclose the other party's Confidential Information:
      1. to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 33.2(a); and
      2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
   3. No party may use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.
2. Force majeure
   1. **Force Majeure Event** means [any circumstance not within a party's reasonable control including]:
      1. acts of God, flood, drought, earthquake or other natural disaster;
      2. epidemic or pandemic;
      3. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
      4. nuclear, chemical or biological contamination or sonic boom;
      5. any law or action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition[, or failing to grant a necessary licence or consent];
      6. collapse of buildings, fire, explosion or accident; [and]
      7. any labour or trade dispute, strikes, industrial action or lockouts [(other than by the staff of the party seeking to rely on this clause or those of its subcontractors or companies in the same Group); [and]
      8. [non-performance by suppliers or subcontractors (other than by companies in the same Group as the party seeking to rely on this clause); and]
      9. interruption or failure of utility service.
   2. [Subject to clause 34.4 **OR** A] party (Affected Party) shall not be liable for any failure or delay in performing any of its obligations under this agreement for so long as, and to the extent that, its performance is [directly] prevented, hindered or delayed by a Force Majeure Event.
   3. For so long as the Affected Party's liability in relation to any of its obligations suspended under clause 34.3, the other party shall not be liable for any failure or delay performing its corresponding obligations.
   4. clause 34.3 will only apply if the Affected Party:
      1. as soon as reasonably practicable after the start of the Force Majeure Event [but no later than [NUMBER] days from its start], notifies the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on the Affected Party's ability to perform any of its obligations under this agreement;
      2. took reasonable precautions to prevent or minimise the Force Majeure Event [including implementing and complying with [and effective business continuity plan **OR** the Disaster Recovery Plan and Business Continuity Plan in accordance with clause 15], except where compliance with the business continuity plan is itself affected by the Force Majeure Event]; and
      3. uses all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations [(including by accepting non-contractual performance by the other party, provided this causes no [material] [commercial] detriment to the Affected Party and can achieve the same result as contractual performance would have done [in all material respects)].
   5. The Affected Party shall keep the other party informed of its endeavours under clause 34.4(c) and their outcome promptly on request.
   6. If the Supplier is relieved from providing the Services under this clause, it shall [permit and[ co-operate with any efforts that the Customer may make to obtain alternative suppliers of those Services.
   7. If the Affected Party has not resumed full performance of any obligations suspended under clause 34.2 within [NUMBER] days after [giving notice of] the start of the Force Majeure Event, the other party may terminate this agreement by giving [not less than [NUMBER] days'] written notice to the Affected Party [provided that the other party exercises this right within [PERIOD] of it arising].
   8. If the Affected Party has complied with clause 34.4(c), but is unable to resume substantive performance of its core obligations suspended under clause 34.2within [NUMBER] days after giving notice of the Force Majeure Event, the Affected Party may terminate this agreement by giving not less than [NUMBER] days' written notice to the other party[, provided that the Affected Party exercises this right within [PERIOD[ of it arising].
3. General
   1. Entire agreement
      1. This agreement constitutes the entire agreement between the parties.
      2. Each party acknowledges that in entering into this agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.
   2. Variation

Subject to clause 10, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

* 1. Assignment and other dealings
     1. The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of the Customer (such consent not to be unreasonably withheld or delayed).
     2. The Customer may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement, provided that it gives prior written notice of such dealing to the Supplier.
  2. Waiver
     1. A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
     2. A delay or failure to exercise, or the single or partial exercise of, any right or remedy does not waive that or any other right or remedy, nor does it prevent or restrict the further exercise of that or any other right or remedy.
  3. Severance
     1. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
     2. If any provision or part-provision of this agreement is deemed deleted under clause 35.5(a), the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
  4. Notices
     1. Any notice given to a party under or in connection with this agreement shall be in writing and shall be:
        1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
        2. sent by email to the following addresses (or an address substituted in writing by the party to be served):

Supplier: [ADDRESS].

Customer: [ADDRESS]

* + 1. Any notice shall be deemed to have been received:
       1. if delivered by hand, at the time the notice is left at the proper address;
       2. if sent by [pre-paid first-class post or other] next working day delivery service, at [9.00 am] on the [second] Business Day after posting[; or]
       3. if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
    2. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
  1. Third party rights
     1. [Unless it expressly states otherwise, this **OR** This] agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
     2. [The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.]
  2. Inadequacy of damages

Without prejudice to any other rights or remedies that the Customer may have, the Supplier acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement by the Supplier. Accordingly, the Customer shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this agreement.

* 1. No partnership or agency
     1. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other party.
     2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
  2. Counterparts
     1. This agreement may be executed in any number of counterparts, each of which constitutes a duplicate original, but all the counterparts together constitute the one agreement.
     2. Transmission of [an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) **OR** the executed signature page of a counterpart of this agreement] by email (in PDF, JPEG or other agreed format) takes effect as the transmission of an executed "wet-ink" counterpart of this agreement. [If this method of transmission is adopted, without prejudice to the validity of the agreement thus made, each party shall on request provide the other[s] with the "wet-ink" hard copy original[s] of their counterpart.]
  3. Announcements

No party shall make, or permit any person to make, any public announcement concerning the existence, subject matter or terms of this agreement, the wider transactions contemplated by it, or the relationship between the parties, without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.

* 1. Conflict

If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement prevail.

* 1. Rights and remedies

[Except as expressly provided in this agreement, the **OR** The] rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

* 1. Further assurance

Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this agreement.

* 1. Governing law

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

* 1. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

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

1. Operational Services Specification
2. Implementation Plan
3. Service Levels
4. Customer's Responsibilities
5. Customer Materials

The Customer shall provide the Supplier with the following documents, information, items and materials:

[DETAILS OF DOCUMENTS, INFORMATION, ITEMS AND MATERIALS]

Access

The Customer shall:

* + - 1. respond to and provide such documentation, data and other information as the Supplier reasonably requests for the Supplier to discharge its obligations under this agreement;
      2. respond to requests for information in a prompt and timely manner, where such requests are reasonably made by or on behalf of the Supplier to enable the Supplier to discharge its obligations under this agreement; and
      3. subject to their compliance with the Security Policy, provide such access for any of the Supplier's Personnel to such parts of the Facilities during Core Hours and at such other hours as may be arranged in advance as the Supplier reasonably requires for the Supplier to discharge its obligations under this agreement.

Facilities and Equipment

The Customer shall:

* + - 1. provide free of charge all electric power, water, gas, office space, lighting and heating at the Facilities and the provision of normal office services reasonably needed by the Supplier's Personnel to perform the Services (but excluding any secretarial support, typing and photocopying facilities required to produce the documentation for which the Supplier is responsible);
      2. subject to the Supplier's compliance with clause 20.2 and clause 20.3, not unreasonably refuse a request from the Supplier to keep the Equipment at the Facilities;
      3. arrange for the disposal of refuse from the Facilities; and
      4. not service, maintain or attempt repair to the Facilities, or any part of them, or Equipment, directly or through a third party, without the consent of the Supplier.

Customer's staff

The Customer shall use its reasonable endeavours to ensure that all of its staff who will use the Facilities:

* + - 1. [complete the relevant training modules, as agreed with the Supplier;]
      2. comply with the Security Policy;
      3. familiarise themselves with the agreed procedures for reporting faults, incidents, accidents and problems relating to the use of the Facilities; and
      4. are kept up to date with matters relating to the use of the Facilities via notices, email or other form of messaging service.

Facilities

The Services shall be provided at the following Facilities:

[DETAILS OF FACILITIES]

Charges and deductions

Charges

Service Charges

Exit Assistance Charges

Service Credits

Termination Compensation

Subcontractors

|  |  |  |  |
| --- | --- | --- | --- |
| **Name and address of Subcontractor** | **Registered address and company number** | **Product/service description** | **Term of Subcontract** |
|  |  |  |  |
|  |  |  |  |

Contract Managers and Key Personnel

Contract Managers

Key Personnel

Processing, personal data and data subjects

* + 1. Parties' roles

Where the Supplier acts as a processor

[Where the Supplier acts as a controller]

* + 1. Particulars of the processing

Scope

Nature

Purpose of processing

Duration of processing

Types of personal data

Categories of data subject

* + 1. Technical and organisational measures

Mandatory Policies

[LIST [AND ATTACH] THE MANDATORY POLICIES HERE]

The Mandatory Policies are:

* [Modern Slavery and Human Trafficking Policy.]
* [Corporate and Social Responsibility Policy.]
* [Ethics and Anti-Bribery Policy.]
* [Expenses Policy.]
* [Health and Safety Policy.]
* [Security Policy.]

TUPE transfers

* + 1. Interpretation

The definitions and rules of interpretation in this paragraph apply in this Schedule 7.

Employee Liability Information: in respect of each of the Employees:

* + - * 1. the identity and age of the Employee;
        2. those particulars of employment that an employer is obliged to give the Employee under section 1 of the Employment Rights Act 1996;
        3. information about any disciplinary procedure taken against the Employee and any grievances raised by the Employee within the previous two years, where a Code of Practice issued under Part IV of TULRCA relating exclusively or primarily to the resolution of disputes or any other applicable code or statutory procedure applied;
        4. information about any court or tribunal case, claim or action either brought by the Employee against the Customer within the previous two years or where the Customer has reasonable grounds to believe that such action may be brought against the Supplier arising out of the Employee's employment with the Customer; and
        5. information about any collective agreement which will have effect after the [Commencement Date] in relation to the Employee pursuant to regulation 5(a) of the Employment Regulations.

Staffing Information: in relation to all persons detailed on the Supplier's Provisional Staff List, such information as the Customer may reasonably request (subject to the Applicable Data Protection Laws), but including in an anonymised format:

* + - * 1. their ages, dates of commencement of employment or engagement and gender;
        2. details of whether they are employees, workers, self-employed, contractors or consultants, agency workers or otherwise;
        3. the identity of their employer or relevant contracting party;
        4. their relevant notice periods and any other terms relating to termination of employment or engagement, including any redundancy procedures and contractual redundancy payment schemes;
        5. the current wages, salaries, profit sharing, incentive and bonus arrangements applicable to them;
        6. details of other employment-related benefits including medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and customer car schemes applicable to them;
        7. any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
        8. details of any such individuals on long-term sickness absence, maternity or other statutory leave or otherwise absent from work; and
        9. copies of all relevant documents and materials relating to such information including copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of such individuals).

Service Transfer Date: the date on which the Services [(or any part of the Services)] transfer from the Supplier to the Customer or any Replacement Supplier.

Supplier's Final Staff List: the list of all the Supplier's Personnel engaged in or wholly or mainly assigned to the provision of the Services [(or any part of the Services)] at the Service Transfer Date.

Supplier's Provisional Staff List: a list prepared and updated by the Supplier of all the Supplier's Personnel engaged in, or wholly or mainly assigned to, the provision of the Services [(or any part of the Services)] at the date of preparation of the list.

TULRCA: Trade Union and Labour Relations (Consolidation) Act 1992.

* + 1. Transfer of Employees to Supplier at the Commencement Date
       1. The Customer and the Supplier believe that, pursuant to the Employment Regulations, at the Commencement Date, the Supplier will become the employer of the Employees.
       2. The Customer represents, warrants and undertakes to the Supplier that:
          1. no persons are employed or engaged in the provision of the Services other than the Employees;
          2. none of the Employees has given or received notice terminating their employment or will be entitled to give notice as a result of the provisions of this agreement;
          3. full particulars of the terms of employment of all the Employees (including all remuneration, incentives, bonuses, expenses and other payments and benefits whatsoever payable other than the pension benefits of any Employees disclosed in accordance with [DETAILS]) are set out in paragraph 4 of this Schedule 7;
          4. there is not in existence any contract of employment with directors or employees of the Customer (or any contract for services with any individual) relating to the Services which cannot be terminated by three months' notice or less without giving rise to the making of a payment in lieu of notice or a claim for damages or compensation (other than a statutory redundancy payment or statutory compensation for unfair dismissal);
          5. in relation to each of the Employees (and so far as relevant to each of its former employees who were employed or engaged in the provision of the Services) the Customer has:

complied with all obligations imposed on it by Articles of the Treaty on the Functioning of the European Union, European Commission Regulations and Directives and all statutes, regulations and codes of conduct relevant to the relations between it and its employees or it and any recognised trade union or appropriate representatives;

maintained adequate and suitable records regarding the service of each of its employees;

calculated and paid all holiday pay for periods of holiday taken under regulation 13 of the Working Time Regulations 1998 (*SI 1998/1833*) in accordance with Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (as it applies in England and Wales from time to time, including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 January 2020);

complied with all collective agreements and customs and practices for the time being dealing with such relations or the conditions of service of its employees; and

complied with all relevant orders and awards made under any statute affecting their conditions of service;

* + - * 1. the Customer has not been involved in any industrial or trade disputes in the last [three] years and to the best of the Customer's knowledge, information and belief there are no circumstances which may result in any industrial dispute involving any of the Employees and none of the provisions of this agreement including the identity of the Supplier is likely to lead to any industrial dispute;
        2. there is not outstanding any agreement or arrangement to which the Customer is party in relation to the Employees for profit sharing or for payment to any of the Employees of bonuses or for incentive payments or other similar matters;
        3. the Customer has not entered into any recognition agreement with a trade union in relation to the Employees nor has it done any act which may be construed as recognition;
        4. the Customer has complied with all recommendations made by the Advisory Conciliation and Arbitration Service in relation to the Employees and with all awards and declarations made by the Central Arbitration Committee in relation to the Employees;
        5. [there is no agreement, arrangement, scheme or obligation (whether legal or moral) for the payment of any pensions, allowances, lump sums or other like benefits on redundancy, on retirement or on death or during periods of sickness or disablement for the benefit of any of the Employees or former employees employed or engaged in the provision of the Services or for the benefit of dependants of such persons;]
        6. no amounts due to or in respect of any of the Employees (including PAYE and National Insurance [and pension contributions]) are in arrears or unpaid;
        7. no monies or benefits other than in respect of contractual emoluments are payable to any of the Employees and there is not at present a claim, occurrence or state of affairs which may hereafter give rise to a claim against the Customer arising out of the employment or termination of employment of any of the Employees for compensation for loss of office or employment or otherwise and whether under contract or any statute or regulations or otherwise;
        8. the Customer has provided the Employee Liability Information to the Supplier regarding each of the Employees either in writing or by making it available to the Supplier in a readily accessible form;
        9. the Employee Liability Information contains information as at a specified date not more than 14 days before the date on which the information was provided to the Supplier;
        10. the Customer has notified the Supplier in writing of any change in the Employee Liability Information since the date on which it was provided; and
        11. the Employee Liability Information was provided not less than 28 days before the Commencement Date.
      1. The Customer shall indemnify the Supplier in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Supplier including all legal expenses and other professional fees (together with any VAT thereon) in relation to the following, provided that such costs, claims, expenses and liabilities are not payable as a result of any act or omission of the Supplier:
         1. the termination by the Customer of the employment of any of the Employees;
         2. anything done or omitted to be done in respect of any of the Employees which is deemed to have been done by the Supplier by virtue of the Employment Regulations; and
         3. any claim made at any time by any employee of the Customer other than the Employees who claim to have become an employee of or have rights against the Supplier by virtue of the Employment Regulations,
      2. All salaries and other emoluments including holiday pay, taxation and National Insurance contributions and contributions to retirement benefit schemes relating to the Employees shall be borne by the Customer up to and including the Commencement Date and by the Supplier with effect from the Commencement Date.
      3. The Supplier shall indemnify the Customer in full for and against all claims, costs expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Customer including all legal expenses and other professional fees (together with any VAT thereon) in relation to:
         1. any failure by the Supplier to comply with its obligations pursuant to the Employment Regulations; and
         2. anything done or omitted to be done by the Supplier in respect of any of the Employees whether before or after the Commencement Date.
      4. During the Term the Supplier shall provide to the Customer any information the Customer may reasonably require relating to any individual employed, assigned or engaged in providing the services under this agreement (subject to Applicable Data Protection Laws).
    1. Employment exit provisions
       1. This agreement envisages that termination or expiry of the agreement may result in the transfer of provision of the Services [in whole or in part] from the Supplier to the Customer or a Replacement Supplier (**Service Transfer**). If a Service Transfer is a relevant transfer for the purposes of the Employment Regulations then, in such event, the Customer or a Replacement Supplier would inherit liabilities in respect of the Transferring Employees. Accordingly, if the Employment Regulations apply on a Service Transfer the provisions in paragraph 3.5 to paragraph 3.9 of this Schedule 7 shall apply. Paragraph 3.12 of this Schedule 7 shall apply to a Service Transfer which is not a relevant transfer for the purposes of the Employment Regulations. For the avoidance of doubt, all other paragraphs in this paragraph 3 of this Schedule 7 shall apply to all Service Transfers, whether or not the Employment Regulations apply.
       2. The Supplier agrees that, subject to compliance with the Applicable Data Protection Laws:
          1. within 20 days of the earlier of:

receipt of a notification from the Customer of a Service Transfer or intended Service Transfer; or

receipt of a Termination Notice,

and, in any event, on receipt of a written request of the Customer at any time, it shall provide the Supplier's Provisional Staff List and the Staffing Information to the Customer or, at the direction of the Customer, to a Replacement Supplier and it shall provide an updated Supplier's Provisional Staff List when reasonably requested by the Customer or any Replacement Supplier;

* + - * 1. at least 28 days before the Service Transfer Date, the Supplier shall prepare and provide to the Customer and/or, at the direction of the Customer, to the Replacement Supplier, the Supplier's Final Staff List, which shall be complete and accurate in all material respects. The Supplier's Final Staff List shall identify which of the Supplier's Personnel named are Transferring Employees;
        2. the Customer shall be permitted to use and disclose the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Supplier for any services which are substantially the same type of services as the Services [(or any part of the Services)]; and
        3. on reasonable request by the Customer the Supplier shall provide the Customer or at the request of the Customer, the Replacement Supplier, with access (on reasonable notice and during Business Hours) to such employment records (and provide copies) as the Customer reasonably requests.
      1. From the date of the earliest event referred to in paragraph 3.2 of this Schedule 7, the Supplier agrees that it shall not without the prior written consent of the Customer, assign any person to the provision of the Services [(or the relevant part)] which is the subject of a Service Transfer who is not listed in the Supplier's Provisional Staff List and shall not without the prior written consent of the Customer (such consent not to be unreasonably withheld or delayed):
         1. increase the total number of employees listed on the Supplier's Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed with the Customer;
         2. make, propose or permit any changes to the terms and conditions of employment of any employees listed on the Supplier's Provisional Staff List;
         3. increase the proportion of working time spent on the Services [(or the relevant part)] by any of the Supplier's Personnel save for fulfilling assignments and projects previously scheduled and agreed with the Customer;
         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 Staff List; and
         5. replace any of the Supplier's Personnel listed on the Supplier's Provisional Staff List or deploy any other person to perform the Services [(or the relevant part)] or increase the number of employees or terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Staff List.

The Supplier will promptly notify the Customer or, at the direction of the Customer, the Replacement Supplier of any notice to terminate employment received from any persons listed on the Supplier's Provisional Staff List regardless of when such notice takes effect.

* + - 1. At least [NUMBER] days before the expected Service Transfer Date, the Supplier shall provide to the Customer or any Replacement Supplier, in respect of each person (subject to compliance with Applicable Data Protection Laws) on the Supplier's Final Staff List who is a Transferring Employee, their:
         1. pay slip data for the most recent month;
         2. cumulative pay for tax and pension purposes;
         3. cumulative tax paid;
         4. tax code;
         5. voluntary deductions from pay; and
         6. bank or building society account details for payroll purposes.
      2. In connection with a relevant transfer to which the Employment Regulations apply, the parties agree that the Supplier shall perform and discharge all its obligations in respect of all the Transferring Employees and their representatives for its own account up to and including the Service Transfer Date. The Supplier shall indemnify the Customer and any Replacement Supplier in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Customer or any Replacement Supplier including all legal expenses and other professional fees (together with any VAT thereon) in relation to:
         1. the Supplier's failure to perform and discharge any such obligation;
         2. any act or omission by the Supplier on or before the Service Transfer Date or any other matter, event or circumstance occurring before the Service Transfer Date;
         3. all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including all wages, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) payable in respect of any period on or before the Service Transfer Date;
         4. any claim arising out of the provision of, or proposal by the Supplier to offer any change to any benefit, term or condition or working condition of any Transferring Employee arising on or before the Service Transfer Date;
         5. any claim made by or in respect of any person employed or formerly employed by the Supplier other than a Transferring Employee for which it is alleged the Customer or any Replacement Supplier may be liable by virtue of this agreement and/or the Employment Regulations;
         6. any act or omission of the Supplier in relation to its obligations under regulation 11 of the Employment Regulations, or in respect of an award of compensation under regulation 12 of the Employment Regulations except to the extent that the liability arises from the Customer or Replacement Supplier's failure to comply with regulation 11 of the Employment Regulations; and
         7. any statement communicated to or action done by the Supplier or in respect of any Transferring Employee on or before the Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the Customer in writing.
      3. The Supplier shall indemnify the Customer and any Replacement Supplier in respect of any claims arising from any act or omission of the Supplier in relation to any other Supplier's Personnel who is not a Transferring Employee during any period whether before, on or after the Service Transfer Date.
      4. The Customer shall indemnify the Supplier against all claims arising from the Customer's or the Replacement Supplier's failure to perform and discharge any obligation and against any claims in respect of any Transferring Employees arising from or as a result of:
         1. any act or omission by the Customer or the Replacement Supplier relating to a Transferring Employee occurring on or after the Service Transfer Date; and
         2. all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including all wages, bonuses, PAYE, National Insurance contributions, pension contribution and otherwise) accrued and payable after the Service Transfer Date.
      5. The parties shall co-operate to ensure that any requirement to inform and consult employee representatives in relation to any relevant transfer as a consequence of a Service Transfer will be fulfilled.
      6. The Customer shall assume (or shall procure that the Replacement Supplier shall assume) the outstanding obligations of the Supplier in relation to any Transferring Employees in respect of accrued holiday entitlements and accrued holiday remuneration before the Service Transfer Date.
      7. The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraph 3.2 to paragraph 3.9 of this Schedule 7 to the extent necessary to ensure that any Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Supplier by the Supplier or the Customer to the Supplier under paragraph 3.2 to paragraph 3.9 in its own right pursuant to section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
      8. Notwithstanding paragraph 3.10, it is expressly agreed that the parties may by agreement rescind or vary this Schedule 7 or any term of this Schedule 7 without the consent of any other person who has the right to enforce the terms of this Schedule 7 or the term in question notwithstanding that such rescission or variation may extinguish or alter that person's entitlement under that right.
      9. In the event of a Service Transfer to which the Employment Regulations do not apply, the following provisions shall apply:
         1. the Customer or the Replacement Supplier can, at its discretion, make to any of the employees listed on the Supplier's Provisional Staff List or any Supplier's Personnel assigned to the Services an offer, in writing, to employ that employee under a new contract of employment to take effect at the earliest reasonable opportunity;
         2. when the offer has been made by the Customer or Replacement Supplier and accepted by any employee or worker, the Supplier shall permit the employee or worker to leave his or her employment, as soon as practicable depending on the business needs of the Supplier which could be without the employee or worker having worked their full notice period, if the employee so requests and where operational obligations allow;
         3. if the employee does not accept an offer of employment made by the Customer or Replacement Supplier, the employee shall remain employed by the Supplier and all claims in relation to the employee shall remain with the Supplier; and
         4. if the Customer or the Replacement Supplier does not make an offer to any employee on the Supplier's Provisional Staff List or any Supplier's Personnel, then that employee and all claims in relation to that employee remains with the Supplier.
    1. Employees

|  |  |
| --- | --- |
| **Employee name** | **Benefit** |
|  |  |
|  |  |

[Disaster Recovery and Business Continuity Plan]

Exit Management Plan and service transfer arrangements

* + 1. Interpretation

The following definitions apply in this Schedule 9 only.

**Fair Market Value**: the fair market value of the relevant asset(s) calculated in accordance with [CROSS-REFERENCE].

**Net Book Value**:the net book value of the relevant asset(s) calculated in accordance with [CROSS-REFERENCE].

**Registers**: the registers referred to in paragraph 3.1(a) of this Schedule 9.

* + 1. Purpose of Schedule
       1. The Supplier is required to ensure the orderly transition of the Services to the Customer or Replacement Supplier (as applicable) in the event of any termination or expiry of this agreement. This Schedule 9 describes the roles and responsibilities of the parties which are intended to achieve this.
    2. Obligations during the Term to facilitate exit
       1. During the Term, the Supplier shall:
          1. create, maintain and promptly make available to the Customer on request registers of:

all assets (excluding assets owned by the Customer) required to perform the agreement[, detailing their ownership status, whether they are used exclusively for this agreement, conditions and physical location, and their [Fair Market Value **OR** Net Book Value]];

Subcontracts and other agreements (including software licences) required to perform the agreement;

operational risks relating to the Services;

all performance records and standards in relation to the Services[. **OR** ; and

[OTHER];]

* + - * 1. compile and maintain a procedures manual, describing how the Operational Services are delivered, including the processes used; and
        2. maintain copies of any Subcontracts or other agreements referred to in the Registers.
    1. Exit Management Plan
       1. The Supplier shall, within [NUMBER] months of the [Commencement Date **OR** [OTHER]], submit an Exit Management Plan to the Customer which complies with the requirements of this Schedule.
       2. The parties shall use their reasonable endeavours to agree the contents of the Exit Management Plan. If the parties are unable to agree the contents of the Exit Management Plan within [NUMBER] Business Days of its submission, either party may refer the dispute to the Dispute Resolution Procedure.
       3. The Exit Management Plan shall:
          1. address each of the issues set out in this Schedule to facilitate the transition of the Services from the Supplier to the Customer or Replacement Supplier (as applicable) and ensure that there is no disruption in the supply of the Services and no deterioration in the quality of delivery of the Services;
          2. detail how the Services will transfer to the Customer or Replacement Supplier (as applicable);
          3. provide a timetable for exit and compliance with the requirements of the agreement[. **OR** ; and
          4. [OTHER].]
       4. The Supplier shall review and, if appropriate, update the Exit Management Plan on a basis consistent with the principles set out in this Schedule:
          1. [in the first month of each Contract Year (commencing with the second Contract Year) **OR** [FREQUENCY]] to reflect any changes in the Services that have occurred since the Exit Management Plan was last agreed; and
          2. following any major change to the Services under the agreement.
       5. During the Exit Period, the Supplier shall comply with all its obligations in the Exit Management Plan.
    2. Exit Assistance
       1. During the Exit Period, the Supplier shall:
          1. provide the Customer or Replacement Supplier with the procedures manual compiled pursuant to paragraph 3.1(b);
          2. provide access, during Business Hours, to the Customer or Replacement Supplier to:

any information relating to the Services as remains in the possession or control of the Supplier; and

such members of the Supplier's Personnel involved in the provision of the performance of the agreement and who are still employed or engaged by the Supplier[. **OR** ; and

* + - * 1. [OTHER].]
    1. Payment for Exit Assistance Services
       1. Except where the Customer has terminated this agreement pursuant to clause 30.1, the Customer shall pay the Exit Assistance Charges[, up to £[AMOUNT]], which shall be calculated in accordance with Part 4 of Schedule 2.
    2. [Transfer of assets
       1. At least [NUMBER] Business Days before the Termination Date, the Supplier shall provide the Customer with the Register referred to in paragraph 3.1(a)(i), indicating which assets are capable of legal transfer to the Customer or Replacement Supplier (as applicable).
       2. The Customer shall notify the Supplier at least [NUMBER] Business Days after receipt of the list pursuant to paragraph 7.1 which, if any, assets need to be transferred to it or the Replacement Supplier (as applicable). The Supplier shall sell any transferring assets to the Customer or Replacement Supplier (as applicable) at [Net Book Value **OR** Fair Market Value]. Risk in such transferring assets shall pass to the Customer or Replacement Supplier (as applicable) on the Termination Date and title shall pass to the Customer or Replacement Supplier (as applicable) on payment for the same. ]
    3. [Transfer of contracts
       1. At least [NUMBER] Business Days before the Termination Date, the Supplier shall provide the Customer with the up-to-date Register referred to in paragraph 3.1(a)(ii), identifying which contracts are used exclusively to deliver the Services.
       2. The Customer shall notify the Supplier at least [NUMBER] Business Days after receipt of the list pursuant to paragraph 8.1 which exclusive third party contracts, if any, the Customer requires to be transferred to it or the Replacement Supplier (if applicable).
       3. The Supplier shall, at the Customer's request and with the co-operation of the Customer, procure the novation to the Customer or Replacement Supplier (as applicable) of any transferring third party contracts notified to it under paragraph 8.2. ]
    4. Employees
       1. The Supplier shall comply with all of its obligations regarding its personnel in accordance with paragraph 3 of Schedule 7.
    5. Reports
       1. At least every [PERIOD] during the Exit Period, the Supplier shall provide the Customer with a report to confirm the progress of implementation of the Exit Management Plan.

Documentation

|  |  |  |
| --- | --- | --- |
| Signed by [NAME OF DIRECTOR] |  | ……………….………….…….…. |
| for and on behalf of [NAME OF **Supplier**] |  | Director |
| Signed by [NAME OF DIRECTOR] |  | ……………….………….…….…. |
| for and on behalf of [NAME OF **Customer**] |  | Director |