

STANDARD NETWORK ESTABLISHMENT AGREEMENT

THIS AGREEMENT is made on [date]

BETWEEN:-

- (1) [organisation name]
- (2) [organisation name]
- (3) [...]

(together, the **Network Participants**).

WHEREAS:-

- (A) The Network Participants wish to establish an information sharing network on the basis set out in the Memorandum of Understanding dated [date] between the [PartyA,] [PartyB,] and [PartyC] [and others] relating to the operation and activities of the ISN Framework (the **ISN Framework MoU**).

IT IS AGREED as follows:-

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the following terms shall have the following meanings:-

Agreement	this agreement and the Schedules
Applicable Law	all applicable laws, statutes, enactments, regulations, decrees, directives, legislative enactments, orders, binding decisions of a competent Court or Tribunal, and other binding rules and restrictions which are in force from time to time during the term of this Agreement
Background Information	Information which a Network Participant makes available to a Network
Background IPRs	IPRs in and to any Background Information which are owned or controlled by a Network Participant and which are necessary either for the operation and/or activities of the Network and/or the fulfilment of its Network Purpose or for the use of the Foreground Information and/or Foreground IPRs in the furtherance of the operation and/or activities of the Network and/or the fulfilment of the Network Purpose
Commercially Sensitive Information	has the meaning given to it in Clause 12.4
Competition Law	the rules on anti-competitive agreements and abuses of a dominant position as set out in the Competition Act 1998 and the Enterprise Act 2002 (or equivalent legislation in the UK or any other jurisdiction)
Confidential Information	has the meaning given to it in Clause 22.1
Data	any data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media
Data Protection Laws	any Applicable Laws which relate to the processing of personal data or the protection of individuals with regards to the

processing of personal data, including the Data Protection Act 2018, the UK GDPR and the Privacy and Electronic Communications Regulations 2003 (as amended by SI 2011 no. 6)

Data Provider	any Network Participant who is providing or has provided access to data, to any other Network Participant under the terms of this Agreement
Data User	any Network Participant who is being provided with access to data or to whom access to data has been provided, by any other Network Participant under the terms of this Agreement
Deed of Adherence	the deed of adherence in the form or substantially the form set out in the Appendix to this Agreement
Defaulting Network Participant	any Network Participant who has breached the network rules
Disclosing Network Participant	a Network Participant who makes Background Information available to the Network
Exiting Network Participant	has the meaning given to it in Clause 6.1
Foreground Information	has the meaning given to it in Clause 16.8.1
Foreground IPRs	IPRs made or conceived by any Network Participant or any person employed or engaged by any Network Participant in undertaking the operation and/or activities of the Network in connection with this Agreement.
Information	any Data or other information, including insights, methods, processes, techniques, formulas, patterns, data, information signals ¹ or compilations of information
Information Access Legislation	has the meaning given to it in Clause 25.1
Intellectual Property Rights or IPRs	rights in any patent, petty patent, registered or unregistered trade mark, trade and business name (including rights in any get-up or trade dress), domain name, utility model, know-how, together with any registered or unregistered design right, copyright, database rights and any other industrial or commercial monopoly rights, which now subsist or may in the future subsist in any part of the world together with rights to apply for registration of such rights, and all applications, renewals, extensions and revisions thereof
Interoperability Framework	sets the standards and guidelines necessary for multi party and multi domain intelligence and insight collaboration.
ISN Framework	the framework for information sharing networks established by a Memorandum of Understanding between the [Organisation] and [Organisation] dated [date].
Joint Foreground Information	has the meaning given to it in Clause 16.8.2

¹ <https://github.com/information-sharing-networks/signals>

Minimum Interoperability Requirements	the requirements set out in the Interoperability Framework as notified by the ISN Consortium to the Network Executive Committee from time to time
Network	any network established under the ISN Framework
Network Advisory Committee	has the meaning given to it in Clause 3.14
Network Executive Committee	has the meaning given to it in Clause 3.1
Network Information	Information that is shared between Network Participants within a Network
Network Orchestrator	appointed by the Network Executive Committee to oversee network sustainability and advise the Network Executive Committee on this and related concerns
Network Personal Data	has the meaning given to it in Clause 19.3
Network Purpose	the purpose of a Network as set out in Clause 2.1
Network Rules	the rules applicable to any Network as set out in or established in accordance with, this Agreement
Original Data Provider	has the meaning given to it in Clause 8.4
Pass-through Data Provider	has the meaning given to it in Clause 8.4
Personal Data	has the meaning given to it in the UK GDPR
Prohibited Information	Information that must not be included in Network Information
Principal Rules	the principal rules of a Network from time to time as set out or established in accordance with Clause 2.1
Receiving Network Participant	a Network Participant to whom Background Information is made available by a Disclosing Network Participant
Security Incident	a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Network Information
Service	any platform, infrastructure and/or service provided by a Network Participant to one or more other Network Participants within a Network in connection with the sharing, transmission and/or access to Information pursuant to this Agreement
Service Access Terms	the terms and conditions which govern the use of, and access to, the Service, the current versions of which are set out in Schedule 2, as the same may be amended from time to time by the Network Participants
UK GDPR	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of Personal Data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016, as incorporated into the law of the United Kingdom by

the UK European Union (Withdrawal) Act 2018, and as modified by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019

- 1.2 Any reference to any statute, enactment, order, statutory provision or statutory instrument or other similar instrument include a reference to that statute, statutory instrument together with all rules and regulations made under it or them all as from time to time amended, consolidated or re-enacted.
- 1.3 The Schedules form part of this Agreement but are not operative parts of this Agreement.
- 1.4 References to any English statute or other legislation or legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.
- 1.5 In this Agreement, unless otherwise specified or the context otherwise requires:
- 1.5.1 words importing the singular include the plural and *vice versa*;
- 1.5.2 words importing any gender include all other genders;
- 1.5.3 **person** includes any individual, firm, company or other body corporate, corporation, government, state or agency of state, trust or foundation, or any association, partnership or unincorporated body (whether or not having separate legal personality and wherever incorporated or established) of two or more of the foregoing;
- 1.5.4 **party** means a party to this Agreement and **parties** shall be construed accordingly;
- 1.5.5 words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those words;
- 1.5.6 any reference to "writing" includes a reference to facsimile transmission, e-mail or other comparable means of communication;
- 1.5.7 reference to a Clause is to a clause in this Agreement;
- 1.5.8 reference to a Schedule is to a schedule to this Agreement; and
- 1.5.9 in the event of any conflict between the terms of the Agreement and the terms set out in any Schedule, the terms of the Agreement shall have precedence.
- 1.6 Headings used in this Agreement shall not affect its construction or interpretation.

2. PRINCIPAL RULES

- 2.1 The following details (the **Principal Rules**) shall be completed for each Network by the initial prospective Network Participants.

Name of Network	[details].
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Network Purpose	[details].
Description of Network Information	[details].
Description of Prohibited Information	[details].
With whom can Network Information be shared	[details].
For what purpose can Network Information be used and/or shared?	[details].
Is the Network to terminate after a certain time or upon successful completion of a certain project or is it to be open-ended?	The Network shall, unless extended by the unanimous written consent of all Network Participants, function until [date] at which point the Network shall automatically terminate and be wound up in accordance with Clause 5.

2.2 Subject to Clause 2.4, the Principal Rules shall only be capable of amendment with the prior written consent of all Network Participants at the relevant time.

2.3 Each of the Network Participants undertakes to comply with the Principal Rules and in particular:

2.3.1 to use any Information to which it has gained access via the Network, only for the Network Purpose; and

2.3.2 not to share any Information to which it has gained access via the Network, to any person other than the other Network Participants and those persons specified in Clause 2.1.

2.4 If prior written consent is given by all Network Participants to such, the requirement for all Network Participants to consent to any amendment to the Principal Rules may be replaced with a requirement to obtain the prior written consent of at least 75 per cent. of the Network Participants at the relevant time.

2.5 Notwithstanding the provisions of this Agreement all Network Participants acknowledge that all public bodies will not be precluded, restricted or limited to exercise their regulatory and legislative powers in relation to the Information or any Data supplied under this Agreement (including the rights to inform enforcing authorities or other public bodies) and to take any necessary and appropriate action to protect the safety of consumers.

3. **MANAGEMENT OF NETWORK**

3.1 The Network Participants will establish an executive committee (the **Network Executive Committee**) to manage the Network.

3.2 The Network Executive Committee shall be entitled to appoint one person to the role of Network Orchestrator from time to time to fulfil the functions of the Network Orchestrator as set out in this Agreement and to remove such person from that role from time to time.

- 3.3 Subject always to Clauses 1 and 8.1 and to any rights expressly reserved to the Network Participants and to any obligations expressly imposed on Network Participants under this Agreement, the Network Participants may by unanimous decision grant the Network Executive Committee such powers as they wish to regulate the operations of the Network.
- 3.4 Each Network Participant shall be entitled to appoint one representative to be part of the Network Executive Committee and to remove from such appointment any person appointed by it and to appoint another one person in his or her place from time to time.
- 3.5 Any appointment or removal pursuant to Clause 3.4 shall be effected by notice in writing and signed by or on behalf of the relevant Network Participant and delivered to the Network Orchestrator (if any) or the Network Executive Committee.
- 3.6 The Network Participants, acting unanimously, will be entitled to vary the constitution of the Network Executive Committee as they see fit.
- 3.7 The Network Executive Committee shall have a minimum of two members and the quorum for the transaction of business at a meeting of the Network Executive Committee shall be two members entitled to vote and who are present at the commencement of and throughout such meeting.
- 3.8 The Network Executive Committee will be responsible for the operation and management of the Network as well as reviewing the possibilities for the future development and expansion of the Network and its activities. In particular and subject to the other provisions of this Agreement, the Network Executive Committee will:-
- 3.8.1 based on pilot learnings and evaluation, monitor the financial arrangements for the operation of Network, and the management of such arrangements by the Network Participants;
 - 3.8.2 review any application to become a Network Participant made pursuant to Clause 4 and approve or reject such application;
 - 3.8.3 discuss any technical and/or operational problems associated with the Network and its activities and operations, including any proposed solutions put forward by any of the Network Participants;
 - 3.8.4 discuss complaints made by any Network Participant or any third party in relation to the operations or activities undertaken by the Network with a view to setting out a proposed solution;
 - 3.8.5 receive and discuss reports prepared by each and any Network Advisory Committee or any sub-committee of the Network Executive Committee;
 - 3.8.6 liaise and interact with each of the Network Participants on matters requiring the approval of the Network Participants, such as amendments to the Network Rules;
 - 3.8.7 review any application to withdraw from membership of the Network and assess the consequences of such withdrawal;
 - 3.8.8 review and approve any press releases or public announcements to be made on behalf of the Network; and
 - 3.8.9 consider and determine whether to make any changes to any of the Service Access Terms, the Network Rules and (subject always to Clause 1) the Principal Rules, in each case as proposed by a Network Participant.

- 3.9 Subject to the provisions of the Network Rules (and, in particular, this Clause 3), the Network Executive Committee may regulate its proceedings as it shall think fit.
- 3.10 The chair of the Network Executive Committee shall be appointed by the Network Executive Committee at each meeting from one of their number and the general principle shall be that chairmanship of meetings of the Network Executive Committee shall rotate among the representatives of the Network Participants nominated pursuant to Clause 3.4.
- 3.11 The quorum for transaction of business at a meeting of the Network Executive Committee shall be two members of the Network Executive Committee entitled to vote and who are present at the commencement of and throughout such meeting.
- 3.12 Members of the Network Executive Committee unable to physically attend a meeting of the Network Executive Committee will be considered present and be counted towards establishing a quorum in respect of such meeting if he or she can participate in such meeting by way of conference telephone or similar equipment, so long as all the Network Participants can hear each other throughout any such meeting.
- 3.13 The Network Executive Committee may delegate any of its powers to any member of the Network Executive Committee or a sub-committee consisting of two or more of the members of the Network Executive Committee. The proceedings of a sub-committee with two or more members shall be governed by the Network Rules regulating the proceedings of the Network Executive Committee so far as they are capable of applying. Any sub-committee formed pursuant to this Clause shall be entitled to appoint up to two additional members to sit on it. Such additional sub-committee members shall:-
- 3.13.1 be entitled to attend but not vote at meetings of the relevant committee; and
 - 3.13.2 have the requisite skill, knowledge and experience to assist the relevant committee in fulfilling its objectives pursuant to this Clause;
 - 3.13.3 where they are not an employee of any of the Network Participants, be required to execute a confidentiality and non-use undertaking in respect of their attendance at meetings of the committee of the Network Executive Committee and the activities of the Network.
- 3.14 The Network Executive Committee may establish one or more advisory committees (each a **Network Advisory Committee**), which shall be tasked with advising the Network Executive Committee on such matters as the Network Executive Committee may specify. Each Network Advisory Committee shall be made up of representatives approved by the Network Executive Committee and shall report to the Network Executive Committee. Each Network Advisory Committee shall fulfil the role and perform the functions established by the terms of reference for that Network Advisory Committee as may be specified by the Network Executive Committee. Each Network Advisory Committee shall regulate its proceedings and meet at such intervals as it sees fit, provided that it shall meet no less frequently than once every three months. The proceedings of each Network Advisory Committee shall be governed by the Network Rules regulating the proceedings of the Network Executive Committee (including Clause 3.9) so far as they are capable of applying, and are appropriate.
- 3.15 A resolution in writing signed by all members of the Network Executive Committee entitled to vote shall be valid and effectual as if it had been passed at a meeting of the Network Executive Committee and may consist of several documents in like form each signed by one or more of the members of the Network Executive Committee.
- 3.16 Other than decisions made in respect of matters pertaining to:-

- 3.16.1 any material change to structure of the Network or the scope of the activities carried out by Network;
- 3.16.2 the withdrawal of a Network Participant from the Network; or
- 3.16.3 the termination of the Network,

which decisions may only be made with the prior approval of all of the representatives of the Network Participants on the Network Executive Committee entitled to vote on the relevant matter, all decisions of the Network Executive Committee shall be made by a majority with each member of the Network Executive Committee (or nominee) having one vote. In the event of any tied vote, the chairman of the relevant meeting shall have a final or casting vote.

- 3.17 The role of the Network Orchestrator (if any) shall be decided upon by the Network Executive Board from time to time but is expected to include overseeing the sustainability of the Network and to this end, the Network Orchestrator shall make recommendations from time to time to the Network Executive Board in this respect.

4. ADMISSION OF NETWORK APPLICANTS

- 4.1 Any person seeking admission to the Network (a **Network Applicant**) may be admitted to the Network and become a Network Participant by the majority approval of the Network Executive Committee provided that prior to admission:
 - 4.1.1 the Network Applicant and each existing Network Participant (or its duly appointed representative, on its behalf) first execute a Deed of Adherence; and
 - 4.1.2 the Network Applicant shall have satisfied the Minimum Interoperability Requirements to the reasonable satisfaction of the Network Executive Committee, as set out in Clause 3.1 of the Service Access Terms.

5. WINDING UP OF A NETWORK

Winding Up of a Network

- 5.1 Each Network shall be immediately and automatically wound up if, at any time during the life of a Network:
 - 5.1.1 the Network Executive Committee unanimously agrees in writing that it would be beneficial or appropriate to wind up that Network and/or cease the activities carried on by the relevant Network Participants; or
 - 5.1.2 the Network Participants unanimously agree in writing that it would be beneficial to wind up that Network and cease the activities carried on by the relevant Network Participants.

Consequences of Winding Up

- 5.2 In the event of termination of a Network, pursuant to Clause 5.1:-
 - 5.2.1 the affairs of the Network will be wound up;
 - 5.2.2 the Network Executive Committee will meet and calculate the relevant termination costs to be settled using the funds of the Network, provided that:
 - (a) to the extent the funds held by that Network are insufficient to cover the relevant termination costs, the Network Participants shall share the relevant costs (if any) in equal proportions; and

- (b) any surplus funds, once any termination costs have been settled in full, shall be distributed in equal proportion to the Network Participants

5.3 Termination of a Network (howsoever arising) shall not affect any of the following:-

- 5.3.1 the rights or liabilities of any Network Participant accrued prior to and including the date of termination in respect of that Network; or
- 5.3.2 the existence and validity of the rights and liabilities of the parties under those Clauses which are intended expressly or by implication to survive termination or expiry of the Network, including Clauses 22 & 23.

5.4 Upon termination of a Network (howsoever arising), the relevant Network Participants shall:-

- 5.4.1 remain fully liable for all costs, expenses and liabilities incurred in connection with the termination or the grounds leading to such termination, and for any outstanding costs, expenses and liabilities;
- 5.4.2 provide all other Network Participants with such assistance as may reasonably be required in order to: (a) achieve an orderly termination of the participation of the Exiting Network Participant in any of the activities being carried out by the Network; and (b) effect an orderly withdrawal from the Network; and
- 5.4.3 cease use of any Background Information made available by any other Network Participant, save to the extent required to do otherwise by Applicable Law or order of a court in which case the provisions of confidentiality and the use and disclosure restrictions set out in this Agreement shall continue to apply to such Background Information;
- 5.4.4 as soon as practicable (and as specified in the Service Access Terms in Schedule 2) delete and destroy all copies of Background Information made available by any other Network Participant which are in its possession or control, save to the extent required to do otherwise by Applicable Law in which case the provisions of confidentiality and the use and disclosure restrictions set out in this Agreement shall continue to apply to such Background Information; and
- 5.4.5 allow a representative or agent of the other Network Participants reasonable access to its premises and its books, accounts, records, documents, papers and the like to ensure that the foregoing provisions of this Clause 5.4 have been implemented (such access being at the cost of the Network and/or the Network Participants) and certify its compliance with the foregoing provisions of this Clause 5.4.

6. TERM AND TERMINATION OF MEMBERSHIP

Termination of Membership

6.1 Each Network Participant's membership shall be terminated upon the following (and such Network Participant shall be an "**Exiting Network Participant**" for the purposes of this Agreement):-

- 6.1.1 immediately upon:
 - (a) winding up of the Network in accordance with Clause 5;

- (b) material breach by that Network Participant of the terms of this Agreement, to be determined by the other Network Participants at their sole and absolute discretion;
- 6.1.2 by that Network Participant, at any time following its admission on one month's prior written notice, delivered to the Network Executive Committee; or
- 6.1.3 by a unanimous decision of the other Network Participants and with immediate effect where that Network Participant:
 - (a) commits any material breach of the terms of this Agreement, which, if the breach is capable of remedy is not remedied within 20 business days of the Network Executive Committee providing that Network Participant with written notice specifying the breach and requiring its remedy; or
 - (b) undergoes a change of ownership or control; or
 - (c) has a resolution passed or an order made for the winding up of it or becomes subject to an administration order, or a receiver is appointed over any of its property or assets or is insolvent or would be taken to be insolvent under section 123 of the Insolvency Act 1986 or is dissolved;
- 6.1.4 by a unanimous decision of the other Network Participants, at any time on three months' prior written notice.
- 6.2 For the avoidance of doubt, where a Network Participant ceases to be a member of one Network, such termination shall not be automatically deemed to be a termination of all other Networks to which that Network Participant is a member.

Consequences of Termination

- 6.3 Termination (howsoever arising) of a Network Participant's membership of a Network shall not affect any of the following:-
 - 6.3.1 the rights or liabilities of any Network Participant accrued prior to and including the date of termination; or
 - 6.3.2 the existence and validity of the rights and liabilities of the parties under those Clauses and Network Rules which are intended expressly or by implication to survive termination or expiry of membership, including Clauses 22 & 23.
- 6.4 Upon termination (howsoever arising), the Exiting Network Participant shall:-
 - 6.4.1 remain fully liable for all costs, expenses and liabilities incurred in connection with the termination or the grounds leading to such termination, and for any outstanding costs, expenses and liabilities incurred during the term of its membership;
 - 6.4.2 provide all other Network Participants with such assistance as may reasonably be required in order to: (a) achieve an orderly termination of the participation of the Exiting Network Participant in any of the activities being carried out by the Network; and (b) effect an orderly withdrawal from the Network;
 - 6.4.3 cease use of any Background Information made available by any other Network Participant and/or Confidential Information disclosed to the Exiting

Network Participant pursuant to the Network Rules, save to the extent required to do otherwise by Applicable Law in which case the provisions of confidentiality and the use and disclosure restrictions set out in this Agreement shall continue to apply to such Background Information and/or Confidential Information;

- 6.4.4 return to the other Network Participants or destroy (to the extent technically practicable) on demand all documentation, papers, accounts, information and other materials which contain Confidential Information pertaining to any of the other Network Participants (irrespective of the format or medium on which such matters are stored), save where one copy is required to be retained by the Exiting Network Participant for archival purposes or in accordance with any legal or regulatory requirement to which that Exiting Network Participant may be subject (including, for the avoidance of doubt, where such information has been disclosed to any legal or regulatory authority), in each case provided that any material which is retained remains subject to the provisions of confidentiality set out in this Agreement;
 - 6.4.5 as soon as practicable (and in any event within 30 days) delete and destroy all copies of Background Information made available by any other Network Participant which are in its possession or control, save to the extent required to do otherwise by Applicable Law in which case the provisions of confidentiality and the use and disclosure restrictions set out in this Agreement shall continue to apply to such Background Information; and
 - 6.4.6 allow a representative or agent of the other Network Participants reasonable access to its premises and its books, accounts, records, documents, papers and the like to ensure that the foregoing provisions of this Clause 6.4 have been implemented (such access being at the cost of the Network and/or the Network Participants) and certify its compliance with the foregoing provisions of this Clause 6.4
- 6.5 Upon the termination of the membership of the Exiting Network Participant (howsoever arising), each remaining Network Participant shall:
- 6.5.1 cease use of any Background Information made available by the Exiting Network Participant, save to the extent required to do otherwise by Applicable Law or order of a court in which case the provisions of confidentiality and the use and disclosure restrictions set out in this Agreement shall continue to apply to such Background Information;
 - 6.5.2 as soon as practicable (and as specified in the Service Access Terms in Schedule 2) delete and destroy all copies of Background Information made available by the Exiting Network Participant which are in its possession or control, save to the extent required to do otherwise by Applicable Law in which case the provisions of confidentiality and the use and disclosure restrictions set out in this Agreement shall continue to apply to such Background Information;
 - 6.5.3 certify its compliance with the foregoing provisions of this Clause 6.5 to the Exiting Network Participant.
 - 6.5.4 It is acknowledged by the Network Participants that notwithstanding the provisions of this clause all public bodies shall not be precluded, restricted or prevented from exercising their rights or responsibilities which may include the disclosure of information.

7. VALUE EXCHANGE

- 7.1 The Network Executive Committee will determine the basis and extent to which:

- 7.1.1 each Data Provider will receive value in respect of data shared by it with other Network Participants; and
 - 7.1.2 each Data User will be required to provide value in respect of data which other Network Participants share with it.
- 7.2 Without limiting the discretion of the Network Executive Committee in this respect, options for value exchange include:
 - 7.2.1 a financial fee payable by the Data User to the Data Provider;
 - 7.2.2 a reciprocal supply of data, with each Network Participant being required to be a Data Provider in order to be a Data User;
 - 7.2.3 a provision of services by the Data User to the Data Provider; and
 - 7.2.4 no exchange of value.
- 7.3 The Network Executive Committee may choose to differentiate between different types of data in determining an appropriate value exchange.
- 7.4 The Network Executive Committee will determine appropriate terms for the settlement of value exchange between Network Participants.
- 7.5 The Network Participants shall be responsible for the costs of the Network.
- 7.6 Unless expressly otherwise provided in this Agreement, each Network Participant shall bear its own costs, charges and expenses connected with the operation of the Network.

8. WARRANTIES

- 8.1 Each Network Participant warrants to the others:-
 - 8.1.1 it has the right and authority to enter into this Agreement; and
 - 8.1.2 its signatory hereto is authorised and fully empowered to execute this Agreement on its behalf.
- 8.2 Each Data Provider warrants to each Data User to whom it is providing or has provided Information in accordance with the terms of this Agreement, that until it ceases to be a Network Participant or the Network is terminated and wound up (whichever is sooner):
 - 8.2.1 it has the right and authority to provide such Information to the Data User and that the Data User has the right to use such Information on the basis of the Principal Rules and as referenced in the Service Access Terms.
 - 8.2.2 the use by the Data User in accordance with the terms of this Agreement of any Information provided or made available to it by the Data Provider shall not infringe the Intellectual Property Rights of any third party.
- 8.3 The Network Participants shall [by unanimous decision] be entitled to determine:
 - 8.3.1 the extent (if any) to which a Data Provider is required to warrant the accuracy or integrity of any Information to which it provides access; and
 - 8.3.2 an appropriate liability cap to which any such warranty will be subject.

- 8.4 No Data Provider (the **Pass-through Data Provider**) shall be required to provide any warranty in respect of any Information provided to the Network by another Data Provider (the **Original Data Provider**), including where the Pass-through Data Provider has provided such Information on to another Network Participant.

9. LIABILITIES

- 9.1 Without prejudice to Clauses 5, 6 and 8, the Network Executive Committee shall be entitled to select such sanctions as it sees fit to address any breaches by a Network Participant (the **Defaulting Network Participant**) of any Network Rules.

- 9.2 Without limiting the discretion of the Network Executive Committee in this respect, options for sanctions include:

9.2.1 a fine payable by the Defaulting Network Participant;

9.2.2 the suspension or removal of the Defaulting Network Participant's rights (if any) to access any data in accordance with the terms of this Agreement; and

9.2.3 no sanction

- 9.3 A Pass-through Data Provider will bear no liability in respect of any Information provided to the Network by an Original Data Provider (unless it is also the Original Data Provider of that Information), including where the Pass-through Data Provider has provided such Information on to another Network Participant. By way of example, where a Pass-through Data Provider has provided such Information to another Network Participant on a pass-through basis or has itself provided Information by way of augmentation to Information provided by another Original Data Provider, any liability attaching to it will be in respect of the augmentation only and not in respect of the Information provided by the Original Data Provider (unless it is also the Original Data Provider of that Information).

10. FLEXIBILITY OF DATA SHARING

- 10.1 The Network Participants (or any subset of such) shall be entitled to agree that as between them:

10.1.1 a Network Participant shall be entitled to augment Information provided by a Data Provider and then provide that augmented Information on to another Data User;

10.1.2 specific rights and obligations shall apply to them in addition to those set out in this Agreement; and/or

10.1.3 a Network Participant may in certain circumstances to be established by the Network Participants and subject to certain terms and conditions to be established by the Network Participants, provide Information provided by a Data Provider to:

(a) one or more Network Participants in another Network; and/or

(b) one or more third parties who are not Network Participants.

11. INFORMATION

- 11.1 Each Network Participant shall, upon request by the Network Executive Committee, at its own cost provide such information and assistance to the Network Executive Committee as the Network Executive Committee may reasonably request, to enable the Network Executive Committee to comply with its obligations under this Agreement.

12. COMPETITION LAW REQUIREMENTS

- 12.1 The Network Participants will at all times have regard to Clause 26 and in particular:
- 12.1.1 ensure that the Network Purpose is clearly defined, along with the parameters for the nature of the data, how it is collected, how it is shared and how it is used and ensure that these parameters (and any changes to them) are regularly reviewed for compliance with Competition Law;
 - 12.1.2 agree a framework for allowing open, fair, reasonable and non-discriminatory access to the Network and the data collected (as set out in Clauses 26.2.2 and 26.2.3);
 - 12.1.3 to the extent that any Network will have two or more Network Participants which are actual or potential competitors ensure that adequate governance is in place to avoid the exchange of Commercially Sensitive Information between them.
- 12.2 With respect to Commercially Sensitive Information, in order to minimise the Competition Law risk, Network Participants will consider whether it is necessary to:
- 12.2.1 anonymise and/or aggregate the data before it is shared with competing Network Participants; and/or
 - 12.2.2 share only historic data with competing Network Participants; and/or
 - 12.2.3 establish information firewalls to limit access to any Commercially Sensitive Information either between the competing Network Participants or within those Network Participants' organisations so that those individuals who are responsible for setting the competing Network Participants' commercial strategy do not have access to the Commercially Sensitive Information (so called 'clean team arrangements').
- 12.3 If any Network Participant suspects that any Commercially Sensitive Information has been (inadvertently or otherwise) disclosed to a competitor, it must immediately inform the Network Executive Committee and its legal advisors and consider steps to ensure that such Commercially Sensitive Information is deleted and otherwise not used.

Commercially Sensitive Information

- 12.4 Competition Law prohibits the exchange of Commercially Sensitive Information between actual or potential competitors. **Commercially Sensitive Information** means any information which is: (i) not otherwise in the public domain and; (ii) would be strategically useful to the recipient, for example by reducing uncertainty about the provider's strategy and/or providing a competitive advantage to the recipient.
- 12.5 Commercially Sensitive Information may include recent, current, or future:
- 12.5.1 costs;
 - 12.5.2 prices and pricing policies;
 - 12.5.3 profitability of product lines;
 - 12.5.4 marketing or product development plans;
 - 12.5.5 information on ongoing or expected projects;
 - 12.5.6 customer-specific items or customer lists;

12.5.7 trade secrets; and

12.5.8 non-public information relating to R&D or intellectual property rights.

13. **INTELLECTUAL Property Rights**

13.1 Nothing in this Agreement transfers title to Background IPRs.

13.2 Foreground IPRs shall be owned by the Network Participant or Network Participants generating such Foreground IPRs.

13.3 Except as expressly set out in this Agreement, no Network Participant will acquire any right, title or interest in or to the Intellectual Property Rights of any information that other Network Participants have made available to, or is accessed by, that Network Participant pursuant to this Agreement.

13.4 If two or more Network Participants are by operation of law joint owners of Foreground IPRs (**Joint Owners** and **Joint Foreground IPRs** respectively) then:-

13.4.1 each Joint Owner may use such Joint Foreground IPRs for the fulfilment of the Network Purpose and for its own internal business and operational purposes;

13.4.2 no Joint Owner may commercialise the Joint Foreground IPRs or sell products manufactured with, or incorporating the Joint Foreground IPRs, or sell services using the Joint Foreground IPRs without the prior written consent of all other Joint Owners; and

13.4.3 no Joint Owner may either grant a licence to the Joint Foreground IPRs, or assign its interest in the Joint Foreground IPRs to any third party without the prior written consent of all other Joint Owners.

13.5 Subject always to the provisions of Clause 22, each Disclosing Network Participant hereby grants to each Receiving Network Participant to whom it has agreed, in accordance with Clause 10.1.1, to make available Background Information pursuant to this Agreement, a non-exclusive royalty-free personal non-assignable licence (without any right to grant sub-licences) under the Background IPR to use the Background Information and Background IPRs solely for the purposes of carrying out the activities or operations of the Network and/or, to the extent consistent with the Network Purpose and the provisions of Clauses 16.3 and 16.4, for its own internal business and operational purposes. All licences granted under this Clause 13.5 shall terminate automatically on termination of this Agreement.

14. **EXPLOITATION Of Foreground IPRs**

14.1 Each Network Participant shall be responsible for the commercial exploitation of any Foreground IPRs generated or conceived solely by that Network Participant and shall, subject to any obligations of confidentiality owed to a third party, inform the Network Executive Committee.

14.2 If more than one Joint Owner wishes to exploit Joint Foreground IPR, the relevant Joint Owners shall agree between them as to which should lead on such exploitation, provided that if agreement cannot be reached the matter shall be referred to the Network Executive Committee for determination.

14.3 The Joint Owners undertake to share all revenue or other payments received in connection with the exploitation of Joint Foreground IPRs in proportion to the respective contributions and efforts of each Joint Owner to the creation of the relevant Joint Foreground IPRs, to be agreed on by the relevant Network Participants at that

time, after deduction of actual and reasonable costs of protection and commercialisation.

15. Protection Of Intellectual Property

- 15.1 Decisions on whether any Foreground IPRs should be protected by patent or other intellectual property protection and the costs of filing and protection of such patent application(s) or other protection shall be made and paid for respectively by the Network Participant generating such Foreground IPRs. In the case of protection of Joint Foreground IPRs, the cost of such protection shall be paid by the Joint Owners in proportion to their relative contributions and efforts. The Joint Owners shall discuss any such protection that should be sought and shall use all reasonable endeavours to reach agreement in relation thereto.

16. Network Information

- 16.1 Network Information is shared to facilitate the achievement of the Network Purpose.
- 16.2 The Network Participants agree to notify each other and update the description of the categories of Network Information in Clause 2.1 if they become aware that the description is no longer accurate and/or complete.
- 16.3 Network Information must not include Prohibited Information.
- 16.4 Except as set out in Clause 16.5, the Network Participants agree that only the Disclosing Network Participant shall have the right to determine how any Background Information that it makes available may be used and disclosed by any person, in whole or in part (whether substantial or insubstantial). Use and disclosure of Information includes accessing, viewing, consulting, extracting, copying, transmitting, sharing, adapting, altering, deleting and combining Background Information. It is agreed that public bodies may use Background Information as required including disclosure to other public bodies notwithstanding the provisions of this Clause.
- 16.5 Each Receiving Network Participant may use and/or disclose Background Information only:
- 16.5.1 in accordance with Clause 2.3;
 - 16.5.2 where specifically permitted in writing by the Disclosing Network Participant (which permission may be subject to terms and conditions determined by the Disclosing Network Participant); or
 - 16.5.3 as required by Applicable Law.
- 16.6 The Network Participants agree that Clauses 16.3 and 16.5 shall not apply to any Information which a Receiving Network Participant acquires from other sources without limitations regarding its use or disclosure.
- 16.7 Each Receiving Network Participant acknowledges and agrees that:
- 16.7.1 it shall not acquire any rights in or to the Background Information other than the right to use it in accordance with the express terms of this Agreement;
 - 16.7.2 the Disclosing Network Participant or its licensors has or have made and will continue to make substantial investment in:
 - (a) the obtaining, verification, selection, co-ordination, analysis, development, presentation and supply of the Background Information; and

- (b) the development of analytical techniques, models and technologies which enhance the value of the Background Information.

16.8 Unless the Network Participants agree otherwise:

- 16.8.1 any Information which is derived by a Receiving Network Participant through the use of and/or access to Background Information in accordance with Clauses 16.5.1 and/or 16.5.3 shall constitute Foreground Information;
- 16.8.2 any Information which is derived by two or more Receiving Network Participants through the use of and/or access to Background Information in accordance with Clauses 16.5.1 and/or 16.5.3 shall constitute Foreground Information pertaining to those Receiving Network Participants jointly ("**Joint Foreground Information**");
- 16.8.3 any Information other than Foreground Information which is derived by a Receiving Network Participant through the use of and/or access to Background Information shall be deemed to constitute Background Information;
- 16.8.4 any Information other than Foreground Information derived by a Receiving Network Participant through the use and/or access of Background Information made available by two or more Disclosing Network Participants, shall be deemed to constitute Background Information of each of those Disclosing Network Participants individually and in common.

16.9 Each Network Participant shall, when it makes any use and/or disclosure of Network Information, and at the request of the Disclosing Network Participant, expressly acknowledge the source of the Network Information and attribute the contribution of the Disclosing Network Participant, including any source(s) of Background Information and associated details specified by the Disclosing Network Participant.

16.10 Without prejudice to Clauses 16.3 and 16.5, where the Receiving Network Participant discloses or gives access to any Background Information to a third party, it shall procure that such third party complies with and gives full effect to this Clause 16, including by as soon as practicable executing such documents and performing such acts as may reasonably be required for this purpose. This Clause 16.10 shall not apply to third party providers of the Receiving Network Participant's core business systems (and related ancillary services such as IT maintenance and support) provided that no bulk transfer of Background Information is made to such third parties.

16.11 The Receiving Network Participant shall be responsible to the Disclosing Network Participant for the use and/or disclosure of Background Information by third parties to whom it discloses or gives access to Background Information, including any unauthorised use or disclosure attributable to an act or default of the Receiving Network Participant.

16.12 The Network Participants agree that only the Receiving Network Participant which derives Foreground Information in accordance with Clause 16.8 shall have the right to determine how that Foreground Information may be used and disclosed by any person, in whole or in part (whether substantial or insubstantial), provided that, notwithstanding such right, the use and disclosure of Foreground Information shall be subject to the limitations set out in this Agreement.

16.13 Foreground Information and Joint Foreground Information shall only be used and/or disclosed in accordance with Clauses 13.4 and 14, whereby:

- 16.13.1 the Receiving Network Participants to whom Joint Information pertains in accordance with Clause 16.8.2 shall be deemed to be Joint Owners with

respect to that Joint Information, and references to a Joint Owner shall be construed as a reference to each such Receiving Network Participant;

16.13.2 each reference to Joint Foreground IPRs shall be construed as a reference to Joint Foreground Information; and

16.13.3 each reference to Foreground IPRs shall be construed as a reference to Foreground Information.

16.14 Clauses 16.12 and 16.13 shall not apply to any Information which a Receiving Network Participant acquires from other sources without limitations regarding its use or disclosure.

17. Information management

17.1 Each Disclosing Party shall, with respect to the Background Information which it makes available to the Network, ensure that the Background Information is not subject to any prohibition or restriction which would prevent or restrict the Disclosing Party from making the Background Information available to the Network for the Network Purpose.

17.2 A Receiving Network Participant shall not use and/or access Background Information to the extent that it is subject to any obligation which prevents it from complying with its obligations under this Agreement. The Receiving Network Participant shall be responsible for identifying any such prohibition or restriction.

17.3 The Receiving Network Participant shall notify the Disclosing Network Participant of any:

17.3.1 requirements to disclose Background Information under Applicable Law to which it is subject before it accesses and/or uses the relevant Background Information; and

17.3.2 requests or orders for compulsory disclosure of and/or access to Background Information before making the disclosure and/or granting access to the relevant Background Information.

17.4 If a Receiving Network Participant is required to disclose Background Information and/or Joint Information by Applicable Law (which does not form part of the Network Purpose), the Receiving Network Participant shall, unless prevented by Applicable Law:

17.4.1 as soon as practicable notify the Disclosing Network Participant in writing prior to making any such disclosure;

17.4.2 before making the disclosure, consult with and take into account the representations of the Disclosing Network Participant with regards to the timing and content of any such disclosure; and

17.4.3 disclose only that part of the Background Information that it is compelled/required to disclose by Applicable Law.

17.5 Each Receiving Network Participant agrees that, in the event that Background Information is disclosed or used by them without authorisation, that Network Participant shall as soon as reasonably practicable notify the Disclosing Network Participant of the unauthorised use or disclosure and take steps (including, in particular, any reasonable steps which the Disclosing Network Participant requires the Receiving Network Participant to take) to prevent further dissemination of the Background Information and to prevent further unauthorised use or disclosure. The obligation to notify the Disclosing Network Participant of any unauthorised disclosure

and to mitigate any damage caused by the unauthorised use or disclosure remains in effect regardless of the termination of any other rights and obligations arising under this Agreement.

17.6 Where a Disclosing Network Participant discloses Prohibited Information to the Network:

17.6.1 the Disclosing Network Participant shall, even if the disclosure is accidental:

- (a) be responsible for the use and disclosure of such Prohibited Information and the other Network Participants shall not assume any such responsibility;
- (b) within 24 hours of discovering any disclosure of Prohibited Information, notify the Receiving Network Participants of such disclosure providing full details of the circumstances of the disclosure and a description of the Prohibited Information; and
- (c) provide the Receiving Network Participants with any assistance which they may require to ensure the expedient and permanent deletion of the Prohibited Information; and

17.6.2 each Receiving Network Participant shall delete and destroy all copies of such Prohibited Information which it discovers to be in its possession or control.

17.7 With respect to the quality of Background Information shared within a Network:

17.7.1 the Disclosing Network Participant shall, when it makes the Background Information available:

- (a) provide the Background Information in a structured, commonly used and machine-readable format;
- (b) use reasonable efforts to ensure that the Background Information is sufficiently accurate, complete and reliable, taking into account the Network Purpose for which the Background Information is shared, unless the Disclosing Network Participant indicates that the Background Information has been obtained from a third party, in which case the Disclosing Network Participant's obligation shall be limited to maintaining the same levels of accuracy, completeness and reliability as when the Information was obtained by the Disclosing Network Participant from the third party;
- (c) only make available Background Information which is adequate and relevant for the Network Purpose;

17.7.2 the Receiving Network Participant shall, when it accesses and/or uses the Background Information:

- (a) not change the format of any Background Information unless such change is reasonably required for the achievement of the Network Purpose;
- (b) maintain the ongoing accuracy and completeness of the Background Information, including by implementing appropriate automatic and manual controls at input, processing and output stages;

- (c) taking into account the Network Purpose, carry out appropriate accuracy and completeness checks on a regular and, where appropriate, continual basis; and
 - (d) inform the Disclosing Network Participant if it has any reasonable concerns regarding the accuracy, completeness and reliability of the Background Information, setting out the reasons for its concerns.
- 17.8 Each Receiving Network Participant shall maintain a log which describes its use and/or disclosure of Background Information, and the Receiving Network Participant shall ensure that such log is:
 - 17.8.1 accurate and up to date at all times;
 - 17.8.2 sufficiently detailed as to demonstrate the Receiving Network Participant's compliance with this Agreement;
 - 17.8.3 kept secure and only made available to personnel who need access to it to ensure compliance with this Clause 17.8; and
 - 17.8.4 made available to the Disclosing Network Participant and/or Network Executive Committee upon request if the Disclosing Network Participant and/or the Network Executive Committee reasonably suspect that the provisions of this Agreement may have been breached.
- 17.9 Each Receiving Network Participant shall only retain Background Information for as long as is necessary to achieve the Network Purpose up until the end date of this Agreement or up until the end of the evaluation period as specified in Schedule 2. . Once the Background Information is no longer needed for the Network Purpose, the Receiving Network Participant shall, unless it is required to retain such Background Information by Applicable Law, delete all copies of such Background Information which are in its possession and/or control as soon as practicable.
- 17.10 Each Network Participant shall take all reasonable steps to ensure the reliability and integrity of all its personnel who have access to Information made available within the Network, and ensure that each such member of its personnel is subject to binding confidentiality obligations with respect to the Information.
- 17.11 Each Receiving Network Participant agrees not to transfer Background Information outside the United Kingdom where the Disclosing Network Participant has notified it that the Background Information must not be so transferred.
- 18. **Information Security**
- 18.1 Each Network Participant shall be responsible for implementing appropriate technical and organisational measures to keep Network Information secure, which must, at a minimum:
 - 18.1.1 comprise measures which are essentially equivalent to those set out in Schedule 2 (Baseline Information Security Requirements);
 - 18.1.2 satisfy the requirements of any Applicable Law, including the Data Protection Laws (where relevant);
 - 18.1.3 satisfy the requirements of any Applicable Law which:
 - (a) applies to the Disclosing Network Participant of the relevant Network Information, including requirements under the Network and Information Systems Regulations 2018 (if applicable); and

- (b) is notified by the Disclosing Network Participant to the Network Participant; and

18.1.4 satisfy any specific information security requirements agreed by the Network Participants in relation to a particular Network or Network Information.

18.2 Each Network Participant must continuously review and improve its approach to security to ensure any associated controls or defences are appropriate, modern and proportionate to adequately protect and assure the Network Information at all times in accordance with good industry practice.

18.3 Where any Network Information is subject to the Government Security Classification Policy (for the purposes of this clause, the "**GSCP**") and the Disclosing Network Participant of such Network Information has notified the other Network Participants of the applicability of the GSCP and the appropriate classification of the Network Information under the GSCP, the Receiving Network Participants shall handle the relevant Network Information in accordance with the requirements of the GSCP.

18.4 Each Network Participant must notify the other Network Participants if it discovers a suspected or actual Security Incident. Such notification shall be made as soon as practicable, and in any event:

18.4.1 within 48 hours if a Security Incident is suspected but not confirmed;

18.4.2 within 24 hours if a Security Incident is confirmed or if the Security Incident may involve a personal data breach which affects Network Personal Data;

18.5 If a Security Incident occurs:

18.5.1 the Network Participant which suffers a Security Incident shall:

- (a) as soon as practicable and fully investigate the Security Incident;
- (b) provide the other Network Participants with all information relating to the Security Incident, including information about the cause, circumstances and any proposed corrective action, as and when such information becomes available; and
- (c) implement any measures necessary to restore the level of security required by Clause 18.1 and mitigate any adverse effects of the Security Incident;

18.5.2 the other Network Participants shall, where reasonably requested to do so, provide reasonable cooperation and assistance to the extent that such cooperation and assistance is needed by the affected Network Participant to perform its obligations in Clause 18.5.1 and/or is generally needed to restore the level of security required by Clause 18.1 and mitigate any adverse effects of the Security Incident.

For the avoidance of doubt, a Security Incident shall include an accidental Security Incident and/or disclosure of Network Information.

19. **Personal Data**

19.1 In this Clause 19, the terms "**controller**", "**data subject**", "**personal data breach**", "**process**", "**processed**", "**processing**" and "**processor**" shall have the meanings given to them in the UK GDPR, and the terms "**process**" and "**processed**" shall be construed accordingly.

- 19.2 Each of the Network Participants agrees to comply with the Data Protection Laws. The Network Participants shall provide reasonable assistance to each other to the extent that such assistance is reasonably required to ensure that the processing of personal data under this Agreement is compliant with the Data Protection Laws.
- 19.3 The Network Participants acknowledge that the factual arrangement between them dictates the classification of each Network Participant in respect of the Data Protection Laws. Notwithstanding the foregoing, if the Network Participants anticipate that during the term of this Agreement, each of them will process Personal Data contained within the Network Information (**Network Personal Data**) as a controller.
- 19.4 The Network Participants shall describe the Network Personal Data and the processing of such data under this Agreement, in Schedule 1.
- 19.5 Where a Network Participant discloses (including by transmitting, transferring or giving access to) Personal Data to another Network Participant, it shall, with respect to such Personal Data, ensure that:
- 19.5.1 all notices have been given (and/or, as applicable, consent obtained) and are sufficient in scope to enable the processing of such Personal Data as required under this Agreement in accordance with the Data Protection Laws; and
- 19.5.2 such Personal Data is limited to that which is necessary for achieving the Network Purpose.
- 19.6 Each of the Network Participants shall as soon as practicable notify the other Network Participants if it receives any communication from a data subject or a competent regulator which relates to the compliance of the processing of Network Personal Data under this Agreement. If reasonably practicable, the Network Participant which receives such communication shall consult with and take into account the views of the other Network Participants before responding to the communication.
- 19.7 The Network Participants anticipate that where a Network Participant makes a Service available to the Network to enable the sharing of Network Information between the Network Participants through that Service, each Network Participant will be a joint controller with the Network Participant who makes the Service available with respect to the storage and disclosure of Information on / from the Service. In such a case:
- 19.7.1 the Network Participant which makes the Service available to the Network (the **Lead Controller**) shall be responsible for:
- (a) acting as the contact point for data subjects;
 - (b) responding to requests from data subjects exercising (or purporting to exercise) their rights under Data Protection Law (**Data Subject Requests**) which it receives. This includes making the essence of these joint controller arrangements available to data subjects when requested by the data subjects;
 - (c) assisting the Supporting Controllers to respond to Data Subject Requests received by the Supporting Controllers where such assistance is necessary for the Supporting Controllers to respond to such Data Subject Requests;
 - (d) responding to communications from competent regulators which relate to the use of the Service for processing Network Personal Data;

- (e) notifying any competent regulator and/or the relevant data subjects of any personal data breach which affects the Service, where it reasonably considers that such notification is required by the Data Protection Laws, on its own behalf and on behalf of the Supporting Controllers;
- (f) leading the preparation of a data protection impact assessment in relation to the use of the Service for processing Network Personal Data, where it reasonably considers that such an assessment is required by the Data Protection Laws;
- (g) entering into agreements with third party processors involved in the provision of the Service which relate to the processing of Network Personal Data, including any transfers of Network Processing Data outside the UK, on its own behalf and on behalf of the Supporting Controllers;
- (h) instructing and managing third party processors involved in the provision of the Service, on its own behalf and/or on behalf of the Supporting Network Participants (as appropriate in the circumstances); and
- (i) consulting with the Supporting Controllers in relation to the performance of its obligations in Clauses (a) to (h) before such performance, unless it is legally prohibited from doing so or it is not reasonably practicable to do so in the circumstances, provided that this clause (i) shall not prevent it from taking any action which it considers, acting reasonably, necessary to ensure compliance with Data Protection Laws or any other Applicable Laws;

19.7.2 Each other Network Participant (a **Supporting Controller**) shall:

- (a) provide all notices to (and obtain consent from) data subjects which are required for the sharing of Network Personal Data through the Service of the relevant Processing activity, on behalf of all the Network Participants. Such fair processing notices shall inform data subjects of their right to request the essence of these joint controller arrangements and that the Lead Controller acts as the contact point;
- (b) assist the Lead Controller to comply with its obligations in Clause 19.7.1;
- (c) respond to Data Subject Requests which it receives;
- (d) as soon as practicable notify the Lead Controller if it receives any communication from a competent regulator which relate to the use of the Service for processing Network Personal Data; and
- (e) notify the Lead Controller if it becomes aware of any personal data breach which affects or may affect the Service or Network Personal Data held on the Service, within 24 hours of becoming aware; and

19.7.3 Only the Lead Controller shall instruct and manage third party processors involved in the provision of the Service. A Network Participant wishing to instruct and/or carry out any action relating to the management of such processors shall make a request to the Lead Controller;

- 19.7.4 In the event of a personal data breach which affects or may affect Network Personal Data, each Network Participant shall comply with its obligations in relation to a Security Incident under Clause 18.

20. **Audits**

- 20.1 Each Network Participant shall, at the reasonable request of the Network Executive Committee, allow for and contribute to audits of its compliance with this Agreement, including in relation to its use of Network Information.
- 20.2 Audits under Clause 20.1 shall be carried out:
- 20.2.1 by independent and accredited third party auditors nominated by the Network Executive Committee;
 - 20.2.2 not more than once per calendar and not less than 40 days after the Network Executive Committee notifies the Network Participant of its intention to carry out an audit, unless a Security Incident has occurred or the Network Executive Committee reasonably suspects a material breach of this Agreement by the Network Participant; and
 - 20.2.3 during regular business hours and in a manner which does not cause unreasonable disruption to the operations of the Network Participant.
- 20.3 The Network Participant shall provide reasonable cooperation in relation to the carrying out of audits under this Clause 20, including by making personnel available to be interviewed, providing documents, records and other materials, and granting reasonable access to its facilities, systems and premises, to the extent that such is required for a full and proper audit to be carried out.
- 20.4 Any information obtained in the course of an audit shall be treated as Confidential Information of the audited Network Participant.
- 20.5 A copy of any reports generated pursuant to an audit shall be made available to the Network Executive Committee and the audited Network Participant. Excerpts of such reports shall also be made available to a Disclosing Network Participant to the extent that they describe identified breaches of the Agreement in relation to Background Information made available by that Disclosing Network Participant.
- 20.6 The audited Network Participant shall as soon as practicable cure any material non-compliance with the Agreement which is identified by an audit.
- 20.7 The Network Participants agree that the audit rights under this Clause 20 do not include the right to install audit tools, conduct ethical hacking, penetration testing or vulnerability testing of any Network Participant's systems or networks.

21. **SERVICE ACCESS TERMS**

- 21.1 Each of the Network Participants undertakes to the other Network Participants to comply at all times with Schedule 2 in using the Service.

22. **CONFIDENTIALITY**

- 22.1 Each Network Participant shall during the full term of this Agreement and thereafter keep secret and confidential all business or technical information of a confidential or commercially sensitive nature (the **Confidential Information**) disclosed to it by any of the other Network Participants (or otherwise belonging to the other Network Participants) pursuant to or for the purposes of this Agreement (and shall procure that its agents, sub-contractors, consultants, students and representatives and/or officers and employees who are involved or become involved in matters pertaining to this

Agreement and/or the Network, are similarly bound) and shall not disclose the same to any person save to the extent necessary either (i) to perform its obligations in accordance with the terms of this Agreement, or (ii) save as expressly authorised in writing to be disclosed by the disclosing Network Participant.

22.2 The obligation of confidentiality contained in Clause 22.1 shall not apply or (as the case may be) shall cease to apply to Confidential Information which:

22.2.1 at the time of its disclosure by the disclosing Network Participant is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving Network Participant;

22.2.2 is already known to the receiving Network Participant (as evidenced by written records) at the time of disclosure of such Confidential Information by the disclosing Network Participant and was not otherwise acquired by the receiving Network Participant from the disclosing Network Participant under any obligations of confidence;

22.2.3 is at any time after the date of this Agreement acquired by the receiving Network Participant from a third party having the right to disclose the same to the receiving Network Participant without breach of obligation owed by that third party to the disclosing Network Participant; or

22.2.4 is required to be disclosed by Applicable Law (including pursuant to a proper and valid request pursuant to the Freedom of Information Act 2000 or Environmental Information Regulations 2004) or order of a court of competent jurisdiction or government department or agency, provided that prior to such disclosure the Receiving Network Participant shall (to the extent permitted by law and regulation) advise the disclosing Network Participant of the proposed form of the disclosure and afford the disclosing Network Participant the opportunity to comment so as to limit the disclosure of Confidential Information to the extent required to so comply, but it is acknowledged that the final determination will rest with Receiving Network Participant any information will be disclosed.

23. **LIMITATION AND EXCLUSION OF LIABILITY**

23.1 Nothing in this Agreement will limit or exclude the liability of each Network Participant in respect of death or personal injury arising out of its negligence or for its fraud.

23.2 Subject to Clause 23.1 and Clause 9, in no circumstances will any Network Participant be liable to the other Network Participants for any loss of business, revenue, profits, anticipated savings or goodwill (in each whether direct or indirect and even if such loss was reasonably foreseeable or any Network Participant had been advised of the possibility of a Network Participant suffering or incurring same) or for any indirect, special or consequential loss arising out of or in connection with this Agreement.

24. **FORCE MAJEURE**

24.1 Any delay or failure by any Network Participant in performance under this Agreement shall be excused if and to the extent that such delay or failure is caused by occurrences beyond such Network Participant's control including but not limited to, acts of God, decrees or restraints of government, strikes, labour disputes, war, fire, riot, sabotage, terrorism, failure in information technology or telecommunications services and any other cause or causes whether similar or dissimilar to those already specified which cannot reasonably be controlled by such Network Participant provided that any such Network Participant:-

- 24.1.1 shall as soon as practicable give notice in writing to the other Network Participants of the reason for such delay or failure to perform; and
- 24.1.2 shall use reasonable endeavours to avoid, eliminate or overcome such cause and shall resume performance of its obligations as soon as reasonably possible. Such performance shall be so excused for the period during which such inability of the Network Participant to perform is so caused but for no longer period and shall be remedied as far as possible with all reasonable despatch. Any time period for performance shall be extended by a period equal in duration to any period during which such performance is excused by this clause.
- 24.2 If performance by any Network Participant hereunder is delayed by any of the occurrences set out in Clause 24.1 for a continuous period of three months or more then the matter shall be referred to the Network Executive Committee to discuss and determine a course of action most appropriate to the interests of the Network in respect of such delay.
25. **FREEDOM OF INFORMATION**
- 25.1 The Network Participants hereby acknowledge that each is or may be subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (the **Information Access Legislation**), and it is accordingly hereby agreed that to the extent any Network Participant is subject to the Information Access Legislation:
- 25.1.1 each Network Participant hereby acknowledges that any information provided by it under this clause which it has outlined as being confidential or commercially sensitive may nevertheless be required to be disclosed by a Network Participant in compliance with Applicable Law; and
- 25.1.2 each Network Participant shall, prior to disclosing any information, consult in writing with any concerned Network Participant or other third party in relation to whether any information relating to that Network Participant or third party under this Agreement or in connection with the Network should be disclosed as part of a response to a request for information made of that Network Participant under the Information Access Legislation. Each concerned Network Participant shall respond in writing within 7 days. The relevant Network Participant shall give due regard to any response made by a concerned Network Participant following such consultation, provided that it is acknowledged that the relevant Network Participant shall ultimately be responsible for determining whether any information will be disclosed and whether (and the extent to which) any exemptions apply.
26. **COMPETITION LAW COMPLIANCE**
- 26.1 Each of the Network Participants undertakes to the other Network Participants to comply at all times with all Competition Law with respect to the establishment, management and operation of the Network.
- 26.2 In particular, each Network Participant will ensure that:
- 26.2.1 the legitimate purpose of the Network, and how the data is to be collected, exchanged and used clearly defined and regularly reviewed for compliance with Competition Law;
- 26.2.2 access and membership to the Network is granted on an open, fair, reasonable and non-discriminatory basis (therefore, the membership criteria will not unfairly exclude any particular third party or category of third parties);

- 26.2.3 the results of any data exchange should be made available to any third party that requests access on a fair, reasonable and non-discriminatory basis (subject to any necessary confidentiality requirements); and
 - 26.2.4 to the extent that members of the Network are actual or potential competitors on the relevant market, that sufficient governance is in place to ensure that any exchange of Commercially Sensitive Information is properly controlled and that all Network Participants understand the limits of what should be shared.
- 26.3 If any provision of this Agreement or the terms of the Network is found to constitute an infringement of Competition Law, all Network Participants agree to negotiate in good faith to replace such provision with a valid, legal and enforceable provision.
27. **TUPE REGULATIONS**
- 27.1 The Network Participants acknowledge and agree that it is not their intention and belief that by virtue of any of:-
- 27.1.1 the cessation or partial cessation of the operation or activities of the Network; or
 - 27.1.2 the expiry or termination of this Agreement; or
 - 27.1.3 the withdrawal of any Network Participant from this Agreement,
- in each case irrespective of howsoever and whensoever arising, the contracts of employment of any of the employees of any of the Network Participants shall have effect (whether under the TUPE Regulations or any judicial decisions interpreting the same or otherwise) after such cessation, expiry or termination as if originally entered into between any such employee and any other Network Participant to this Agreement.
- 27.2 If any contract of employment of any individual who is an employee of any of the Network Participants is found or alleged to have effect as if originally made between any of the other Network Participants and the individual concerned, and/or if the employment and/or liabilities associated with employment is/are found or alleged to have transferred between any of the Network Participants, upon the occurrence of any of the circumstances referred to in Clause 27.1 as a result of the provisions of the TUPE Regulations and/or any judicial decision interpreting the same or otherwise:
- 27.2.1 the Network Participant affected may upon becoming aware of the same, terminate any such contract(s) forthwith; and
 - 27.2.2 the Network Participant whose employee's contract of employment and/or employment and/or liabilities associated with employment is/are found or alleged to have transferred hereby agrees and undertakes to indemnify and keep indemnified on demand the Network Participant affected from and against any losses, liabilities, costs, charges, damages, expenses (including reasonable legal expenses), actions, proceedings, claims or demands (including, without prejudice, tax) suffered or incurred by the Network Participant affected arising out of the employee's termination of employment and against any sums payable to, in respect of or on behalf of such employee in respect of his or her employment on or after such date of cessation, expiry or termination as aforesaid until such date of termination of employment.

28. Compliance With Laws

- 28.1 Each of the Network Participants undertakes to the other Network Participants to comply at all times with all relevant laws and regulations in connection with the operation and activities of the Network.
- 28.2 Upon any change in Applicable Law which has or is likely to have an impact on the lawful performance of this Agreement, the Network Participants agree to amend this Agreement and/or take any other commercially reasonable actions which may be required to ensure the continued compliance by the Network Participants with Applicable Law.

29. General

- 29.1 This Agreement is personal to each of the Network Participants (and each of their legal successors) and no Network Participant shall be entitled to assign sub-licence, delegate or transfer any or all its rights or obligations (either in whole or in part) under this Agreement without the prior written consent of all of the other Network Participants.
- 29.2 The Network Participants enter into this Agreement as independent parties and nothing in this Agreement will constitute or be deemed to constitute any partnership or joint venture between the Network Participants. Accordingly, save as expressly provided otherwise in this Agreement no Network Participant shall enter into or have any authority to enter into any agreement, undertaking or arrangement (whether written or oral) for or on behalf of any of the other Network Participants or to make any representation or warranty on behalf of or pledge the credit or otherwise bind or oblige the other Network Participants without the prior written consent of such Network Participant.
- 29.3 This Agreement constitutes the entire agreement and understanding of the Network Participants relating to its subject matter and supersedes all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of this Agreement. Each of the Network Participants acknowledges and agrees that it does not enter into this Agreement on the basis of and does not rely, and has not relied upon, and will have no remedy in respect of, any statement or representation or warranty or other provision made, given or agreed to by the other Network Participants to this Agreement (whether negligently or innocently made) except those expressly set out in or repeated or referred to in this Agreement and the only remedy available in respect of any misrepresentation or untrue statement made to it will be a claim for breach of contract under this Agreement. Accordingly, each of the Network Participants hereby waives any and all other remedies available to it at law (whether under statute, common law or otherwise) in respect of any such misrepresentation or untrue statement. Nothing in this Agreement will operate to limit or exclude liability for any fraudulent misrepresentation, statement or act.
- 29.4 This Agreement (and any dispute or claim relating to it or its subject matter (including non-contractual claims)) is governed by and is to be construed in accordance with English law.
- 29.5 The Network Participants irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle and claim, dispute or issue (including non-contractual claims) which may arise out of or in connection with this Agreement.
- 29.6 If any provision of this Agreement is held to be invalid or unenforceable by any judicial or other competent authority, all other provisions of this Agreement shall remain in full force and effect and will not in any way be impaired.
- 29.7 If any provision of this Agreement is held to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in

question will apply with the minimum modifications necessary to make it valid and enforceable

- 29.8 This Agreement shall not be capable of being varied, modified, altered or substituted, except by prior written agreement of all of the Network Participants.
- 29.9 This Agreement may be executed in any number of counterparts and by each of the parties on separate counterparts, each of which when executed and delivered shall be deemed to be an original, but all the counterparts together shall constitute one and the same agreement. No counterpart shall be effective until each party has executed and delivered at least one counterpart.
- 29.10 Each party agrees that they may sign this Agreement by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of the parties' intention to be bound by this Agreement as if signed by each party's manuscript signature. Transmission of the executed signature page of a counterpart of this Agreement by e-mail (in PDF, JPEG, PNG, BMP, TIFF or any other agreed format) shall take effect as delivery of an executed counterpart of this Agreement.
- 29.11 Except as expressly provided in this Agreement, a person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement.
- 29.12 No forbearance, delay or indulgence by any of the Network Participants in enforcing any of the provisions of this Agreement will prejudice or restrict the rights of that Network Participant or those Network Participants, nor will any waiver of its or their rights operate as a waiver of any subsequent breach. No right, power or remedy conferred in this Agreement on, or reserved for, any of the Network Participants is exclusive of any other right, power or remedy available to that Network Participant or those Network Participants.

30. Dispute Resolution

- 30.1 All disputes which shall at any time arise between the Network Participants hereto which cannot be resolved shall in the first place (and prior to commencement of any litigation or other proceedings) be referred to senior management (or their appointed nominees) of the disputing Network Participants for a joint decision.
- 30.2 If the relevant senior management (or their appointed nominees) are unable to resolve the dispute and the relevant senior management (or their appointed nominees) agree that the dispute ought to be referred for the decision of an expert, the procedures in Clauses 30.3 to 30.7 below shall apply.
- 30.3 The expert shall have appropriate qualifications and practical experience to resolve the particular dispute and be agreed by the disputing Network Participants or in the event of failure to agree shall be appointed by the London Court of International Arbitration upon the application of any of the disputing Network Participants.
- 30.4 The disputing Network Participants shall as soon as practicable furnish to the expert (imposing appropriate obligations of confidence) all information reasonably requested by such expert relating to the particular dispute.
- 30.5 The expert shall be required by the disputing Network Participants to use all reasonable endeavours to render his decision within 30 days following his receipt of the information requested or if this is not possible as soon thereafter as may reasonably be practicable and the disputing Network Participants shall co-operate fully with the expert to achieve this objective.

- 30.6 The disputing Network Participants shall share equally the fees and expenses of the expert. The decision of the expert shall be final and binding upon each of the disputing Network Participants in the absence of manifest error.
- 30.7 For the avoidance of doubt, this Clause 30 provides for a form of advanced dispute resolution and is not a reference to arbitration.
31. **Notice**
- 31.1 Any notice required to be served on the Network Participants hereunder or in connection with the Agreement shall be in writing and shall be served by recorded delivery to the address of the recipient set out at the start of this Agreement or such other address previously notified by the recipient to the other Network Participants in writing marked "For the attention of the "Head of Legal", with a copy of such notice being provided at the same time to the representative of the relevant Network Participant on the Network Executive Committee. Any such notice posted as aforesaid shall be deemed to have been received three days after the date it was posted and, in proving service, it shall be sufficient to show that such notice was sent by recorded delivery letter properly addressed and stamped.
32. **Publication/Announcements**
- 32.1 All announcements, brochures, materials or the like concerning the existence or the terms of this Agreement or the Network shall be in accordance with such guidelines as may be specified by the Network Executive Committee from time to time and shall be framed so as to exclude any Confidential Information.

IN WITNESS WHEREOF this agreement has been executed on the date first written above.

APPENDIX
DEED OF ADHERENCE

THIS DEED is made on [date]

BETWEEN:-

- (1) [Organisation name]
- (2) [Organisation name]
- (3) [Organisation name]; and
- (4) [Organisation name] (the "**New Participant**").

WHEREAS:-

- (A) The Network Participants (excluding the New Participant) (the **Current Participants**) entered into an agreement (the **Agreement**) dated [date] relating to the operation and activities of the Network.
- (B) The Current Participants unanimously approve the New Participant becoming a Network Participant of the Network in accordance with the terms of the Agreement and, in particular, pursuant to Clause 4 of the Agreement.
- (C) The Agreement requires that the Current Participants procure the execution of this deed by the New Participant.
- (D) The New Participant agrees to the terms and to the execution of this deed.

IT IS AGREED as follows:-

- 1. Words and expressions used in this deed shall have the same meaning as is given to them in the Agreement unless the context otherwise expressly requires.
- 2. The New Participant hereby agrees to assume and assumes the benefit of the rights under the Agreement and hereby agrees to assume and assumes the burden of the obligations under the Agreement, in each case that apply to the Current Participants as if the New Participant were an original Network Participant to the Agreement.
- 3. The New Participant hereby agrees to be bound by the Agreement in all respects as if the New Participant were a party to the Agreement as one of the Current Participants and to perform all the obligations expressed to be imposed on such a party to the Agreement, to be performed on or after the date hereof.
- 4. This deed is made for the benefit of:
 - 4.1 the parties to the Agreement; and
 - 4.2 any other person or persons who may after the date of the Agreement (and whether or not prior to or after the date hereof) assume any rights or obligations under the Agreement and be permitted to do so by the terms thereof,

and this deed shall be irrevocable without the consent of the Network Participants' Representative acting on their behalf in each case only for so long as they remain a Network Participant under the Agreement.

- 5. None of the Current Participants:

5.1 makes any representation or warranty or assumes any responsibility with respect to the legality, validity, effectiveness, adequacy or enforceability of any of the Agreement (or any agreement entered into pursuant thereto);

5.2 assumes any responsibility for the financial condition of any other party to the Agreement or any other document or for the performance and observance by any other party to the Agreement or any other document (save as expressly provided therein),

and any and all conditions and warranties, whether expressed or implied by law or otherwise, are excluded.

6. This deed shall be governed by and construed in accordance with the laws of England and Wales.

This deed of adherence has been executed and delivered as a deed on the date shown on the first page.

EXECUTED as a DEED by

Signed for and on behalf of

[participant]

Name:

Position:

Signature:

Signed for and on behalf of

[participant]

Name:

Position:

Signature:

Signed for and on behalf of

[participant]

Name:

Position:

Signature:

SCHEDULE 1 - PERSONAL DATA PROCESSING PARTICULARS

Data subjects	Categories of data (including special categories of data)	Disclosing Network Participant (including the Disclosing Network Participant's lawful basis of processing)	Purposes of the transfer	Receiving Network Participant(s) (including the Receiving Network Participant's lawful basis of processing)

SCHEDULE 2 - SERVICE ACCESS TERMS

1. Service Description

- 1.1. This service allows for the exchange of test and live data for this ISN and those parties who have signed this standard network establishment agreement through the use of [signals](#).
- 1.2. This service is expected to be provisioned and hosted on infrastructure within **[where and date]**

2. Service Catalogue

Serial	System	Description	Link
(a)	Github repository	[insert description]	[github link]
(b)	Standard Network Establishment Agreement	Annex A to the ISN MOU, or the document this schedule is attached	
(c)	Accelerated Network Establishment Agreement	Annex B to the ISN MOU for Network Participants who wish to adopt an accelerated approach to the establishment of the information sharing network.	
(d)	Interoperability Framework	See paragraph 3	
(e)	Baseline Information Security Requirements	See paragraph 4	
(f)	Warranty and liability	See paragraph 5	
(g)	Privacy/GDPR	See paragraph 6	
(h)	Support	See paragraph 7	

3. Interoperability Framework

- 3.1. ISN Minimum Interoperability Requirements;
- 3.1.1. The ISN Consortium sets these out, evolves them and notifies ISNs operating under the ISN MoU when technical changes are required
- 3.1.2. Signals must be contributed into the ISN via the REST API as documented in the 'Documentation' tab in Participant Sites
- 3.1.3. Collaboration processes will be followed to determine optionality of signal fields, the result will be captured in the relevant ISN Github repository
- 3.2. The ISN consortium will provide notice and discuss technical changes with ISN participants
- 3.3. Backwards compatibility will be preserved once live data is being contributed into the ISN by participants.

- 3.4. All participants have the ability to propose, define and amend signal(s), as such each ISN will not be limited to a singular signal. It is foreseen for example that signals requesting small numbers of additional fields may be sent to participants when agreed - providing additional information when necessary.

4. Baseline Information Security Requirement

- 4.1. Participants in the ISN that are responsible for providing software and related services should follow the basic security guidelines outlined below. This includes demonstrating that they:
- a) actively identify security and privacy threats to the service, and have a robust, proportionate approach to securing information and managing fraud risks
 - b) have a plan and budget that lets them manage security during the life of the service (for example by responding to new threats, putting controls in place and applying security patches to software)
 - c) collect and process users' personal information in a way that is secure and respects their privacy
 - d) follow the guidance about using cookies or similar technologies
 - e) use an approach to identity assurance and authentication that balances the risks in a proportionate way (for services that need identity assurance or authentication)
 - f) work with business and information risk teams to make sure the service meets security requirements and regulations without putting delivery at risk
 - g) carry out appropriate vulnerability and penetration testing
 - h) manage Access Tokens in a secure manner controlling who has access to them

5. Warranty and Liability

5.1. Collaboration Agreement

- 5.1.1. Both the Standard Network Establishment Agreement and the Accelerated Network Establishment Agreement utilise the [Open Government Licence v3.0](#).
- 5.1.2. Signals contributed into this ISN by participants are not subject to any warranty and there is no subsequent associated liability.
- 5.1.3. There will be no Network Executive Committee for this Border Trade Demonstrator for the duration of this Agreement.
- 5.1.4. No sanction will be applied as there will be no Network Executive Committee for the duration of this Agreement.
- 5.1.5. There will be no audits as there will be no Network Executive committee for the duration of this Agreement.

5.2. The ISN Reference Implementation Demonstrator Sites

- 5.2.1. For the ISN toolkit 'reference implementation' the MIT (the Massachusetts Institute of Technology) licence applies. The software is provided "as is", without warranty of any kind, express or implied, including but not limited to the warranties of merchantability, fitness for a particular purpose and non infringement. In no event shall the authors or copyright holders be liable for any claim, damages or other liability, whether in an action of contract, tort or otherwise, arising from, out of or in connection with the software or the use or other dealings in the software.

6. **Privacy/GDPR**

- 6.1. Under no circumstances will any personal data be exchanged within this ISN.

7. **Support**

- 7.1. Service Availability/Performance expected responsiveness;

- 7.1.1. We do not guarantee:

- a) the availability of the Service;
- b) the speed at which information may be transmitted or received via the Service; or
- c) that the Service will be compatible with your equipment or any software which you use.

- 7.2. Customer Support

- 7.2.1. Github issue tracker can be utilised for questions, feedback and problems.
- 7.2.2. Normal consortia account management meetings for matters arising, if appropriate

ANNEX 1:[Data fields in scope of]

Field name	Description	Data type	Optionality