

**CROWN COMMERCIAL SERVICE**

**and**

**[SUPPLIER NAME]**

**DYNAMIC MARKETPLACE AGREEMENT  
FOR THE PROVISION OF  
APPRENTICESHIP TRAINING AND RELATED SERVICES**

**Agreement Ref: RM6102**

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This Agreement is made

**BETWEEN:**

- (1) the Minister for the Cabinet Office ("**Cabinet Office**") as represented by Crown Commercial Service, which is an executive agency and operates as a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP (the "**Authority**"); and
- (2) (the "**Supplier**").

**RECITALS:**

- A The Authority placed a contract notice **[Insert the OJEU reference number]** on **[date to be inserted]** (the "**OJEU Notice**") in the Official Journal of the European Union inviting providers of Apprenticeship Training and Related Services for the supply of the Goods and/or Services to Contracting Authorities.
- B The Supplier made a request to participate by submitting its response to the Authority's Selection Questionnaire ("**SQ**") in response to the OJEU Notice (the "**SQ Response**").
- C Through the SQ Response, the Supplier represented to the Authority that it is capable of delivering the Goods and/or Services and, in particular, the Supplier made representations to the Authority in the SQ Response in relation to suitability, economic and financial standing and technical and professional ability.
- D On the basis of the Supplier's responses in the SQ Response, the Supplier was admitted to the Dynamic Marketplace Agreement to provide the Goods and/or Services to Contracting Authorities from time to time on a call off basis in accordance with this Dynamic Marketplace Agreement.
- E This Dynamic Marketplace Agreement sets out the award and calling-off ordering procedure for purchasing the Goods and/or Services which may be required by Contracting Authorities, the template terms and conditions for any Contract which Contracting Authorities may enter into and the obligations of the Supplier during and after the Dynamic Marketplace Period.
- F It is the Parties' intention that there will be no obligation for any Contracting Authority to award any Contracts under this Dynamic Marketplace Agreement during the Dynamic Marketplace Period.

**A. PRELIMINARIES**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

- 1.1.1 In this Dynamic Marketplace Agreement, unless the context otherwise requires, capitalised expressions shall have the meanings set out in DMP Schedule 1 (Definitions) or the relevant DMP Schedule in which that capitalised expression appears.

1.1.2 If a capitalised expression does not have an interpretation in DMP Schedule 1 (Definitions) or the relevant DMP Schedule, it shall have the meaning given to it in this Dynamic Marketplace Agreement. If no meaning is given to it in this Dynamic Marketplace Agreement, it shall in the first instance be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.

## 1.2 Interpretation

1.2.1 In this Dynamic Marketplace Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) reference to a gender includes the other gender and the neuter;
- (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
- (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- (e) the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
- (f) references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form and expressions referring to writing shall be construed accordingly;
- (g) references to "**representations**" shall be construed as references to present facts; to "**warranties**" as references to present and future facts; and to "**undertakings**" as references to obligations under this Dynamic Marketplace Agreement;
- (h) references to "**Clauses**" and "**DMP Schedules**" are, unless otherwise provided, references to the clauses and schedules of this Dynamic Marketplace Agreement and references in any DMP Schedule to paragraphs, parts, annexes and tables are, unless otherwise provided, references to the paragraphs, parts, annexes and tables of the DMP Schedule or the part of the DMP Schedule in which the references appear;

- (i) any reference to this Dynamic Marketplace Agreement includes DMP Schedule 1 (Definitions) and the DMP Schedules; and
  - (j) the headings in this Dynamic Marketplace Agreement are for ease of reference only and shall not affect the interpretation or construction of this Dynamic Marketplace Agreement.
- 1.2.2 Subject to Clause 1.2.3, in the event and to the extent only of a conflict between any of the provisions of this Dynamic Marketplace Agreement, the conflict shall be resolved, in accordance with the following descending order of precedence:
- (a) the Clauses and DMP Schedule 1 (Definitions); and
  - (b) DMP Schedules 2 to 20 and 22 inclusive.
- 1.2.3 If there is any conflict between the provisions of this Dynamic Marketplace Agreement and provisions of any Contract, the provisions of this Dynamic Marketplace Agreement shall prevail over those of the Contract save that any refinement to the Template Order Form and Template Contract Terms permitted for the purposes of a Contract under Clause 4 and DMP Schedule 5 (Call for Competition Procedure) shall prevail over DMP Schedule 4 (Template Order Form and Template Contract Terms).

## **2. DUE DILIGENCE**

- 2.1 The Supplier acknowledges that:
- 2.1.1 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance or its obligations under this Dynamic Marketplace Agreement;
  - 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy of the Due Diligence Information;
  - 2.1.3 it has raised all relevant due diligence questions with the Authority before the DMP Commencement Date, has undertaken all necessary due diligence and has entered into this Dynamic Marketplace Agreement in reliance on its own due diligence alone;
  - 2.1.4 it shall not be excused from the performance of any of its obligations under this Dynamic Marketplace Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any:
    - (a) misrepresentation of the requirements of the Supplier in the SQ or elsewhere;
    - (b) failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or

(c) failure by the Supplier to undertake its own due diligence.

### **3. SUPPLIER'S ADMITTANCE**

- 3.1 The Authority hereby admits the Supplier to the Dynamic Marketplace as a potential provider of the Goods and/or Services and the Supplier shall be eligible to be considered for the award of Contracts by the Authority and Other Contracting Authorities during the Dynamic Marketplace Period.
- 3.2 In consideration of the Supplier agreeing to enter into this Dynamic Marketplace Agreement and to perform its obligations under it the Authority agrees to pay and the Supplier agrees to accept on the signing of this Dynamic Marketplace Agreement the sum of one pound (£1.00) sterling (receipt of which is hereby acknowledged by the Supplier).

### **4. SCOPE OF DYNAMIC MARKETPLACE AGREEMENT**

- 4.1 Without prejudice to Clause 45 (Third Party Rights), this Dynamic Marketplace Agreement governs the relationship between the Authority and the Supplier in respect of the provision of the Goods and/or Services by the Supplier.
- 4.2 The Supplier acknowledges and agrees that:
- 4.2.1 there is no obligation whatsoever on the Authority or on any Other Contracting Authority to invite or select the Supplier to provide any Goods and/or Services and/or to purchase any Goods and/or Services under this Dynamic Marketplace Agreement; and
- 4.2.2 in entering into this Dynamic Marketplace Agreement no form of exclusivity has been conferred on the Supplier nor volume or value guarantee granted by the Authority and/or Other Contracting Authorities in relation to the provision of the Goods and/or Services by the Supplier and that the Authority and Other Contracting Authorities are at all times entitled to enter into other contracts and agreements with other suppliers for the provision of any or all goods and/or services which are the same as or similar to the Goods and/or Services.
- 4.3 In the event that any Other Contracting Authority makes an approach to the Supplier with a request for the supply of Equivalent Goods and/or Services, the Supplier shall promptly and in any event within five (5) Working Days of the request by the Other Contracting Authority, and before any supply of Equivalent Goods and/or Services is made, inform such Other Contracting Authority of the existence of this DMP and the Other Contracting Authority's ability to award Contracts for Goods and/or Services pursuant to this Dynamic Marketplace Agreement.

### **5. CALL FOR COMPETITION PROCEDURE**

- 5.1 If the Authority or any other Contracting Authority decides to source any of the Goods and/or Services through this Dynamic Marketplace Agreement, then it shall be entitled at any time in its absolute and sole discretion during the Dynamic Marketplace Period to award Contracts for the Goods and/or

Services from the Supplier by following DMP Schedule 5 (Call for Competition Procedure).

- 5.2 The Supplier shall comply with the relevant provisions in DMP Schedule 5 (Call for Competition Procedure).

## **6. ASSISTANCE IN RELATED PROCUREMENTS**

6.1 Where a Relevant Supplier is bidding to provide New Goods and/or Services in circumstances where the Supplier or an Affiliate of the Supplier is already providing (or due to provide) Legacy Goods and/or Services to a Contracting Authority, the Supplier shall promptly provide the relevant Contracting Authority and/or the Relevant Supplier with all reasonable information and assistance as may be required from time to time to enable the relevant Contracting Authority and/or the Relevant Supplier, as appropriate, to:

- 6.1.1 carry out appropriate due diligence with respect to the provision of the New Goods and/or Services;
- 6.1.2 effect a smooth transfer and/or inter-operation (as the case may be) between the Legacy Goods and/or Services and the New Goods and/or Services;
- 6.1.3 carry out a fair Call for Competition Procedure for the New Goods and/or Services; and
- 6.1.4 make a proper assessment as to the risk related to the New Goods and/or Services.

6.2 When performing its obligations in Clause 6.1 the Supplier shall act consistently, applying principles of equal treatment and non-discrimination, with regard to requests for assistance from and dealings with each Relevant Supplier.

## **7. REPRESENTATIONS AND WARRANTIES**

7.1 Each Party represents and warrants that:

- 7.1.1 it has full capacity and authority to enter into, and to perform its obligations under, this Dynamic Marketplace Agreement;
- 7.1.2 this Dynamic Marketplace Agreement is executed by its duly authorised representative;
- 7.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Dynamic Marketplace Agreement; and
- 7.1.4 its obligations under this Dynamic Marketplace Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights

generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

- 7.2 The Supplier represents and warrants that:
- 7.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
  - 7.2.2 it has obtained and will maintain all licences, authorisations, permits, necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into and perform its obligations under this Dynamic Marketplace Agreement;
  - 7.2.3 it has not committed or agreed to commit a Prohibited Act and has no knowledge that an agreement has been reached involving the committal by it or any of its Affiliates of a Prohibited Act, save where details of any such arrangement have been disclosed in writing to the Authority before the DMP Commencement Date;
  - 7.2.4 its execution, delivery and performance of its obligations under this Dynamic Marketplace Agreement does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a breach of any agreement by which it is bound;
  - 7.2.5 as at the DMP Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, its SQ Response, and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Dynamic Marketplace Agreement;
  - 7.2.6 if the Charges payable under this Dynamic Marketplace Agreement exceed or are likely to exceed five (5) million pounds, as at the DMP Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
  - 7.2.7 it has and shall continue to have all necessary Intellectual Property Rights including in and to any materials made available by the Supplier (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Dynamic Marketplace Agreement;
  - 7.2.8 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Authority's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Authority and/or Other Contracting Authorities.

- 7.2.9 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Dynamic Marketplace Agreement;
  - 7.2.10 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, have been or are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
  - 7.2.11 for the duration of this Dynamic Marketplace Agreement and any Contracts and for a period of twelve (12) Months after the termination expiry this Dynamic Marketplace Agreement or, if later, any Contracts, the Supplier shall not employ or offer employment to any staff of the Authority or the staff of any Contracting Authority who has been associated with the procurement and/or provision of the Goods and/or Services without Approval or the prior written consent of the relevant Contracting Authority which shall not be unreasonably withheld;
  - 7.2.12 in performing its obligations under this Dynamic Marketplace Agreement and any Contract, the Supplier shall not (to the extent possible in the circumstances) discriminate between Contracting Authorities on the basis of their respective sizes;
  - 7.2.13 if the Supplier is a training provider or End Point Assessment Provider, it is registered on the Apprenticeship Provider and Assessment Register (APAR); and
  - 7.2.14 it will comply with the Funding Rules as amended or updated from time to time and any successor versions of the Funding Rules.
- 7.3 Each of the representations and warranties set out in Clauses 7.1 and 7.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Dynamic Marketplace Agreement.
- 7.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 7.1 and 7.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 7.5 For the avoidance of doubt, the fact that any provision within this Dynamic Marketplace Agreement is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of the breach of that provision by the Supplier which constitutes a material Default of this Dynamic Marketplace Agreement.

- 7.6 Each time that a Contract is entered into, the warranties and representations in Clauses 7.1 and 7.2 shall be deemed to be repeated by the Supplier with reference to the circumstances existing at the time.

## **8. GUARANTEE**

- 8.1 Where the Authority has notified the Supplier that the award of this DMP Agreement is conditional upon receipt of the execution of the first Contract Agreement the Supplier shall provide a valid DMP Guarantee, then on or prior to the execution of the DMP Agreement, as a condition for the award of this DMP Agreement, the Supplier must have delivered to the Authority:
- 8.1.1 an executed DMP Guarantee from a DMP Guarantor; and
  - 8.1.2 a certified copy extract of the board minutes and/or resolution of the DMP Guarantor approving the execution of the DMP Guarantee.
- 8.2 Where a Contracting Authority has notified the Supplier that the award of a Contract Agreement by that Contracting Authority shall be conditional upon receipt of a valid Contract Guarantee, then, on or prior to the execution of that Contract Agreement, as a condition for the award of this DMP Agreement, the Supplier must have delivered to the Contracting Authority:
- 8.2.1 an executed Contract Guarantee from a Contract Guarantor; and
  - 8.2.2 a certified copy extract of the board minutes and/or resolution of the Contract Guarantor approving the execution of the Contract Guarantee.

## **9. CYBER ESSENTIALS SCHEME CONDITION**

- 9.1 Where the Authority has notified the Supplier that the award of this Dynamic Marketplace Agreement is conditional upon the Supplier holding a valid Cyber Essentials Scheme Basic Certificate or equivalent, as a condition for the award of this Dynamic Marketplace Agreement, the Supplier must have delivered to the Authority evidence of the same.
- 9.2 Where the Supplier continues to Process Cyber Essentials Scheme Data during the Dynamic Marketplace Period or the contract period of any Contract the Supplier shall deliver to the Authority evidence of renewal of a valid Cyber Essentials Scheme Basic Certificate or equivalent on each anniversary of the first applicable certificate obtained by the Supplier under Clause 9.1.
- 9.3 Where the Supplier is due to Process Cyber Essentials Scheme Data after the commencement date of the first Contract but before the end of the Dynamic Marketplace Period or contract period of the last Contract, the Supplier shall deliver to the Authority evidence of:
- 9.3.1 a valid Cyber Essentials Scheme Basic Certificate or equivalent (before the Supplier Processes any such Cyber Essentials Scheme Data); and

- 9.3.2 renewal of a valid Cyber Essentials Scheme Basic Certificate or equivalent on each anniversary of the first Cyber Essentials Scheme certificate obtained by the Supplier under Clause 9.3.1.
- 9.4 In the event that the Supplier fails to comply with Clauses 9.2 or 9.3 (as applicable), the Authority reserves the right to terminate this Dynamic Marketplace Agreement for material Default.

## **B. DURATION OF DYNAMIC MARKETPLACE AGREEMENT**

### **10. DYNAMIC MARKETPLACE PERIOD**

- 10.1 This Dynamic Marketplace Agreement shall take effect on the DMP Commencement Date and shall expire, unless it is terminated earlier in accordance with the terms of this Dynamic Marketplace Agreement or otherwise by the operation of Law, either;
- 10.1.1 at the end of the Initial DMP Period; or
- 10.1.2 where the Authority elects to extend the Initial DMP Period of 4 years (48 months) in accordance with Clause 10.1.2 below;
- 10.2 The Authority may extend the duration of this Dynamic Marketplace Agreement for any period or periods up to a maximum of 2 years (24 months) in total from the expiry of the Initial Dynamic Marketplace Period by giving the Supplier no less than three (3) Months written notice.
- 10.3 The Authority acknowledges that the DMP will not be terminated within the initial first six (6) months from the DMP commencement date.

## **C. DYNAMIC MARKETPLACE AGREEMENT PERFORMANCE**

### **11. DYNAMIC MARKETPLACE AGREEMENT PERFORMANCE**

- 11.1 The Supplier shall perform its obligations under this Dynamic Marketplace Agreement in accordance with:
- 11.1.1 the requirements of this Dynamic Marketplace Agreement, including DMP Schedule 8 (DMP Management);
- 11.1.2 the terms and conditions of the respective Contracts;
- 11.1.3 Good Industry Practice;
- 11.1.4 all applicable Quality Standards; and
- 11.1.5 in compliance with all applicable Law.
- 11.2 The Supplier shall bring to the attention of the Authority any conflict between any of the requirements of Clause 11.1 and shall comply with the Authority's decision on the resolution of any such conflict.

### **12. KEY PERFORMANCE INDICATORS**

- 12.1 The Supplier shall at all times during the Dynamic Marketplace Period comply with the Key Performance Indicators and achieve the KPI Targets

set out in Part B of DMP Schedule 2 (Goods and/or Services and Key Performance Indicators).

### **13. QUALITY STANDARDS**

- 13.1 The Supplier shall comply with the Quality Standards at all times during the performance by the Supplier of the Dynamic Marketplace Agreement and any Contract, including any Quality Standards set out in Part A of DMP Schedule 2 (Goods and/or Services and Key Performance Indicators).
- 13.2 Throughout the Dynamic Marketplace Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, or the receipt by a Contracting Authority under a Contract, of the Goods and/or Services. The adoption of any such new or emergent standard, or changes to existing Quality Standards, shall be agreed in accordance with the Variation Procedure.
- 13.3 Where a new or emergent standard is to be developed or introduced by the Authority, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or a Contracting Authority's receipt under a Contract, of the Goods and/or Services is explained to the Authority and the Contracting Authority (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.
- 13.4 Where Quality Standards referenced conflict with each other or with best professional or industry practice adopted after the DMP Commencement Date, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require Approval and shall be implemented within an agreed timescale.
- 13.5 Where a standard, policy or document is referred to in DMP Schedule 2 (Goods and/or Services and Key Performance Indicators) by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall agree the impact of such change.

### **14. MINIMUM STANDARDS OF RELIABILITY**

- 14.1 No Contract with an anticipated contract value in excess of £20 million (excluding VAT) shall be awarded to the Supplier if it does not show that it meets the Minimum Standards of Reliability at the time of the proposed award of that Contract.
- 14.2 The Authority shall assess the Supplier's compliance with the Minimum Standards of Reliability:
  - 14.2.1 upon the request of any Contracting Authority; or
  - 14.2.2 otherwise, whenever it considers (in its absolute discretion) that it is appropriate to do so.
- 14.3 In the event that the Supplier does not demonstrate that it meets the Minimum Standards of Reliability in an assessment carried out pursuant to Clause 14.2, the Authority shall so notify the Supplier (and any Contracting

Authority in writing) and the Authority reserves the right to terminate this Dynamic Marketplace Agreement for material Default.

## **15. CONTINUOUS IMPROVEMENT**

15.1 The Supplier shall at all times during the Dynamic Marketplace Period comply with its obligations to continually improve the Goods and/or Services and the manner in which it provides the Goods and/or Services as set out in DMP Schedule 12 (Continuous Improvement).

## **16. CONTRACT PERFORMANCE UNDER DYNAMIC MARKETPLACE AGREEMENT**

16.1 The Supplier shall perform all its obligations under all Contracts:

16.1.1 in accordance with the requirements of this Dynamic Marketplace Agreement;

16.1.2 in accordance with the terms and conditions of the respective Contracts.

16.2 The Supplier shall draw any conflict in the application of any of the requirements of Clauses 16.1.1 and 16.1.2 to the attention of the Authority and shall comply with the Authority's decision on the resolution of any such conflict.

## **D. DYNAMIC MARKETPLACE AGREEMENT GOVERNANCE**

### **17. DYNAMIC MARKETPLACE AGREEMENT MANAGEMENT**

17.1 The Parties shall manage this Dynamic Marketplace Agreement in accordance with DMP Schedule 8 (DMP Management).

### **18. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA**

18.1 The Supplier shall keep and maintain, until the later of:

18.1.1 seven (7) years after the date of termination or expiry of this Dynamic Marketplace Agreement; or

18.1.2 seven (7) years after the date of termination or expiry of the last Contract to expire or terminate; or

18.1.3 such other date as may be agreed between the Parties,

full and accurate records and accounts of the operation of this Dynamic Marketplace Agreement, including the Contracts entered into with Contracting Authorities, the Goods provided pursuant to the Contracts, and the amounts paid by each Contracting Authority under the Contracts and those supporting tests and evidence that underpin the provision of the annual Self Audit Certificate and supporting Audit Report.

18.2 The Supplier shall keep the records and accounts referred to in Clause 18.1 in accordance with Good Industry Practice and Law.

18.3 The Supplier shall provide the Authority with a completed and signed annual Self Audit Certificate in respect of each Contract Year. Each Self Audit

Certificate shall be completed and signed by an authorised senior member of the Supplier's management team or by the Supplier's external auditor and the signatory must be professionally qualified in a relevant audit or financial discipline.

- 18.4 Each Self Audit Certificate should be based on tests completed against a representative sample of 10% of transactions carried out during the period of being audited or 100 transactions (whichever is less) and should provide assurance that:
- 18.4.1 Orders are clearly identified as such in the order processing and invoicing systems and, where required, Orders are correctly reported in the MI Reports;
  - 18.4.2 all related invoices are completely and accurately included in the MI Reports;
  - 18.4.3 all Charges to Contracting Authorities comply with any requirements under this Dynamic Marketplace Agreement on maximum mark-ups, discounts, charge rates, fixed quotes (as applicable); and
  - 18.4.4 an additional sample of twenty (20) public sector orders identified from the Supplier's order processing and invoicing systems as orders not placed under this Dynamic Marketplace Agreement have been correctly identified as such and that an appropriate and legitimately tendered procurement route has been used to place those orders, and those orders should not otherwise have been routed via centralised mandated procurement processes executed by the Authority.
- 18.5 Each Self Audit Certificate should be supported by an Audit Report that provides details of the methodology applied to complete the review, the sampling techniques applied, details of any issues identified and remedial action taken.
- 18.6 The Supplier shall afford any Auditor access to the records and accounts referred to in Clause 18.1 at the Supplier's premises and/or provide such records and accounts or copies of the same, as may be required and agreed with any of the Auditors from time to time, in order that the Auditor may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Dynamic Marketplace Agreement, including in order to:
- 18.6.1 verify the accuracy of the Charges and any other amounts payable by a Contracting Authority under a Contract (including proposed or actual variations to them in accordance with this Dynamic Marketplace Agreement);
  - 18.6.2 verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;
  - 18.6.3 verify the Open Book Data;

- 18.6.4 verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
  - 18.6.5 identify or investigate actual or suspected Prohibited Acts, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
  - 18.6.6 identify or investigate any circumstances which may impact upon the financial stability of the Supplier the DMP Guarantor, Contract Guarantor and/or any Sub-Contractors or their ability to perform the Services;
  - 18.6.7 obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
  - 18.6.8 review any books of account and the internal contract management accounts kept by the Supplier in connection with this Dynamic Marketplace Agreement;
  - 18.6.9 carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
  - 18.6.10 enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
  - 18.6.11 verify the accuracy and completeness of any Management Information delivered or required by this Dynamic Marketplace Agreement;
  - 18.6.12 review any MI Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
  - 18.6.13 review the integrity, confidentiality and security of the Authority Personal Data; and/or
  - 18.6.14 received from the Supplier on request summaries of all central government public sector expenditure placed with the Supplier including through routes outside the DMP in order to verify that the Supplier's practice is consistent with the Government's transparency agenda which requires all public sector bodies to publish details of expenditure on common goods and services.
- 18.7 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Goods and/or Services pursuant to the Contracts, save insofar as the Supplier accepts and acknowledges that control over the

conduct of Audits carried out by the Auditors is outside of the control of the Authority.

- 18.8 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including by providing:
- 18.8.1 all information within the scope of the Audit requested by the Auditor;
  - 18.8.2 reasonable access to any sites controlled by the Supplier and to equipment used in the provision of the Goods and/or Services; and
  - 18.8.3 access to the Supplier Personnel.
- 18.9 If an Audit reveals that the Supplier has underpaid an amount equal to or greater than one per cent (1%) of the Management Levy due in respect of any one Contract Year or year of any Contracts then, without prejudice to the Authority's other rights under this Dynamic Marketplace Agreement, the Supplier shall reimburse the Authority its reasonable costs incurred in relation to the Audit.
- 18.10 If an Audit reveals that:
- 18.10.1 the Supplier has underpaid an amount equal to or greater than five per cent (5%) of the Management Levy due during any Contract Year of this Dynamic Marketplace Agreement and any Contract; and/or
  - 18.10.2 a material Default has been committed by the Supplier;
- then the Authority shall be entitled to terminate this Dynamic Marketplace Agreement.
- 18.11 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause, save as specified in Clause 18.9.

## 19. CHANGE

### 19.1 Variation Procedure

- 19.1.1 Subject to the provisions of this Clause 19 the Authority may, at its own instance or where in its sole and absolute discretion it decides to having been requested to do so by the Supplier, request a variation to this Dynamic Marketplace Agreement provided always that such variation does not amount to a material change of this Dynamic Marketplace Agreement within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".
- 19.1.2 The Authority may request a Variation by completing, signing and sending the Variation Form as set out in DMP Schedule 19 (Variation Form) to the Supplier giving sufficient information for the Supplier to assess the extent of the proposed Variation and any additional cost that may be incurred.

19.1.3 The Supplier shall respond to the Authority's request pursuant to Clause 19.1.2 within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Authority having regard to the nature of the proposed Variation.

19.1.4 In the event that the Supplier is unable to agree to or provide the Variation the Authority may:

- (a) agree to continue to perform its obligations under this Dynamic Marketplace Agreement without the Variation; or
- (b) terminate this Dynamic Marketplace Agreement with immediate effect.

## 19.2 **Legislative Change**

19.2.1 The Supplier shall not be relieved of its obligations under this Dynamic Marketplace Agreement as the result of:

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Goods and/or Services is reasonably foreseeable at the DMP Commencement Date.

19.2.2 If a Specific Change in Law occurs or will occur during the DMP Period (other than as referred to in Clause 19.2.1(b)), the Supplier shall notify the Authority as soon as reasonably practicable of the likely effects of that change including whether any Variation is required to the Goods and or Services of this Dynamic Marketplace Agreement.

19.2.3 Any relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 19.2.1(b) shall be implemented in accordance with Clause 19.1(Variation Procedure).

## **E. MANAGEMENT LEVY, TAXATION AND VALUE FOR MONEY PROVISIONS**

### **20. MANAGEMENT LEVY**

20.1 In consideration of the establishment and award of this Dynamic Marketplace Agreement and the management and administration by the Authority of the same, the Supplier agrees to pay to the Authority the Management Levy in accordance with this Clause 20.

20.2 The Authority shall be entitled to submit invoices to the Supplier in respect of the Management Levy due each Month based on the Management Information provided pursuant to DMP Schedule 9 (Management Information).

20.3 Unless otherwise agreed in writing, the Supplier shall pay by BACS (or by such other means as the Authority may from time to time reasonably require)) the amount stated in any invoice submitted under Clause 20.2 to

such account as shall be stated in the invoice (or otherwise notified from time to time by the Authority to the Supplier) within thirty (30) calendar days of the date of issue of the invoice.

- 20.4 The Management Levy shall apply to the full Charges as specified in each and every Contract.
- 20.5 The Supplier shall not pass through or recharge to, or otherwise recover from any Contracting Authority the cost of the Management Levy in addition to the Charges. The Management Levy shall be exclusive of VAT. In addition to the Management Levy, the Supplier shall pay the VAT on the Management Levy at the rate and in the manner prescribed by Law from time to time.
- 20.6 Interest shall be payable on any late payments of the Management Levy under this Dynamic Marketplace Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 20.7 The Supplier acknowledges and agrees that the Authority may at any time during the Dynamic Marketplace Period and upon serving two months' written notice, introduce a new electronic system to monitor and collect the Management Levy (the "**System**") and upon receipt of the written notice the Supplier shall use its best endeavours to implement the System.
- 20.8 In the event that any new electronics system to monitor and collect is introduced, the Authority reserves the right to revert to a manual system to monitor and collect the Management Levy, upon providing two months' written notice to the Supplier.

## **21. PROMOTING TAX COMPLIANCE**

- 21.1 This Clause 21 shall apply if the Charges payable under this Dynamic Marketplace Agreement are or are likely to exceed five (5) million pounds during the Dynamic Marketplace Period.
- 21.2 If, at any point during the Dynamic Marketplace Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
  - 21.2.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
  - 21.2.2 promptly provide to the Authority:
    - (a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance, together with any mitigating factors that it considers relevant; and
    - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 21.3 In the event that the Supplier fails to comply with this Clause 21 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable, then the Authority reserves the right to terminate this Dynamic Marketplace Agreement for material Default.

**22. BENCHMARKING NOT USED**

**23. DMP FINANCIAL DISTRESS**

23.1 The Parties shall comply with the provisions of DMP Schedule 16 (Financial Distress) in relation to the assessment of the financial standing of the Supplier and the consequences of a change to that financial standing.

**F. DMP SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS**

**24. STAFF TRANSFER NOT USED**

**25. SUPPLY CHAIN RIGHTS AND PROTECTION**

**25.1 Appointment of Sub-Contractors**

25.1.1 The Authority has consented to the engagement of the Sub-Contractors listed in DMP Schedule 7 (Sub-Contractors).

25.1.2 Where during the Dynamic Marketplace Period the Supplier wishes to enter into a new Sub-Contract or replace a Sub-Contractor, it must obtain the prior written consent of the Authority and the Contracting Authority with whom it has entered into a Contract and shall at the time of requesting such consent, provide the Authority with the information detailed in Clause 25.1.3. The decision of the Authority to consent or not will not be unreasonably withheld or delayed. The Authority and/or the Contracting Authority may reasonably withhold their consent to the appointment of a Sub-Contractor if either of them considers that:

- (a) the appointment of a proposed Sub-Contractor may prejudice the provision of the Goods and/or Services or may be contrary to its interests;
- (b) the proposed Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
- (c) the proposed Sub-Contractor employs unfit persons.

25.1.3 The Supplier shall provide the Authority and the Contracting Authority with whom the Supplier has entered into a Contract with the following information in respect of the proposed Sub-Contractor:

- (a) the proposed Sub-Contractor's name, registered office and company registration number;
- (b) the scope/description of any Goods and/or Services to be provided by the proposed Sub-Contractor;
- (c) where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-Contract has been agreed on "arm's-length" terms; and

- 25.1.4 If requested by the Authority and/or the Contracting Authority with whom the Supplier has entered into a Contract, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Clause 25.1.3, the Supplier shall also provide:
- (a) a copy of the proposed Sub-Contract; and
  - (b) any further information reasonably requested by the Authority and/or the Contracting Authority with whom the Supplier has entered into a Contract.
- 25.1.5 The Supplier shall ensure that each new or replacement Sub-Contract shall include:
- (a) provisions which will enable the Supplier to discharge its obligations under this Dynamic Marketplace Agreement;
  - (b) a right under CRTPA for the Authority to enforce any provisions under the Sub-Contract which confer a benefit upon the Authority;
  - (c) a provision enabling the Authority to enforce the Sub-Contract as if it were the Supplier;
  - (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-Contract to the Authority;
  - (e) obligations no less onerous on the Sub-Contractor than those imposed on the Supplier under this Dynamic Marketplace Agreement in respect of:
    - (i) the data protection requirements set out in Clause 27.4 (Protection of Personal Data);
    - (ii) the FOIA requirements set out in Clause 27.3 (Transparency and Freedom of Information);
    - (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 28 (Publicity and Branding);
    - (iv) the keeping of records in respect of the goods and/or services being provided under the Sub-Contract, including the maintenance of Open Book Data; and
    - (v) the conduct of audits set out in Clause 18 (Records, Audit Access and Open Book Data);
  - (f) provisions enabling the Supplier to terminate the Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 33 (Authority Termination Rights) and 35 (Consequences of Expiry or Termination) of this Dynamic Marketplace Agreement;

- (g) a provision restricting the ability of the Sub-Contractor to Sub-Contract all or any part of the provision of the Goods and/or Services provided to the Supplier under the Sub-Contract without first seeking the written consent of the Authority;

## 25.2 **Supply Chain Protection**

25.2.1 The Supplier shall ensure that all Sub-Contracts contain a provision:

- (a) requiring the Supplier to pay any undisputed sums which are due from the Supplier to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice;
- (b) requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
- (c) conferring a right to the Authority and any Contracting Authority with whom the Supplier has entered a Contract to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.
- (d) giving the Supplier a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law; and
- (e) requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by this Clause 25.2.1.

25.2.2 The Supplier shall ensure that all Sub-Contracts with Sub-Contractors who Process Cyber Essentials Data contain provisions no less onerous on the Sub-Contractors than those imposed on the Supplier under this Dynamic Marketplace Agreement in respect of the Cyber Essentials Scheme under Clause 9.

25.2.3 The Supplier shall pay any undisputed sums which are due from the Supplier to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice.

25.2.4 Any invoices submitted by a Sub-Contractor to the Supplier shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Supplier failing to regard an invoice as valid and undisputed.

25.2.5 Notwithstanding any provision of Clauses 27.2 (Confidentiality) and 28 (Publicity and Branding) if the Supplier notifies the Authority that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late payment or non-payment (including on government websites and in the press).

### 25.3 **Termination of Sub-Contracts**

25.3.1 The Authority may require the Supplier to terminate:

- (a) a Sub-Contract where:
  - (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to any of the termination events in Clause 33 (Authority Termination Rights) except Clause 33.7 (Termination Without Cause); and/or
  - (ii) the relevant Sub-Contractor or its Affiliates embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Goods and/or Services or otherwise; and/or
- (b) a Sub-Contract where there is a Change of Control of the relevant Sub-Contractor, unless:
  - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
  - (ii) the Authority has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.

25.3.2 Where the Authority requires the Supplier to terminate a Sub-Contract or a Sub-Contract pursuant to Clause 25.3.1 above, the Supplier shall remain responsible for fulfilling all its obligations under this Dynamic Marketplace Agreement including the provision of the Goods and/or Services.

### 25.4 **Competitive Terms**

25.4.1 If the Authority is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services

used by the Supplier or the Supplier Personnel in the supply of the Goods and/or Services, then the Authority may:

- (a) require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
- (b) subject to Clause 25.3 (Termination of Sub-Contracts), enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.

25.4.2 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Goods.

## 25.5 **Retention of Legal Obligations**

25.5.1 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 24, the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

## **G. INTELLECTUAL PROPERTY AND INFORMATION**

### **26. INTELLECTUAL PROPERTY RIGHTS**

#### **26.1 Allocation of title to IPR**

26.1.1 Save as granted under this Dynamic Marketplace Agreement, neither Party shall acquire any right, title or interest in or to the Intellectual Property Rights of the other Party.

26.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 26.1.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

26.1.3 Subject to Clause 26.1.4, neither Party shall have any right to use any of the other Party's names, logos or trademarks on any of its products or services without the other Party's prior written consent.

26.1.4 Subject to full compliance with the Branding Guidance, the Supplier shall be entitled to use the Authority's logo exclusively in connection with the provision of the Goods and/or Services during the Dynamic Marketplace Period and for no other purpose.

#### **26.2 IPR Indemnity**

26.2.1 The Supplier shall ensure and procure that the availability, provision and use of the Goods and/or Services and the performance of the

Supplier's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.

26.2.2 The Supplier shall, during and after the Dynamic Marketplace Period, on written demand, indemnify the Authority against all Losses incurred by, awarded against, or agreed to be paid by the Authority (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.

26.2.3 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:

- (a) procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or
- (b) replace or modify the relevant item with non-infringing substitutes provided that:
  - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
  - (ii) the replaced or modified item does not have an adverse effect on any other Goods and/or Services;
  - (iii) there is no additional cost to the Authority; and
  - (iv) the terms and conditions of this Dynamic Marketplace Agreement shall apply to the replaced or modified Goods and/or Services.

26.2.4 If the Supplier elects to procure a licence in accordance with Clause 26.2.3(a) or to modify or replace an item pursuant to Clause 26.2.3(b), but this has not avoided or resolved the IPR Claim, then:

- (a) the Authority may terminate this Dynamic Marketplace Agreement by written notice with immediate effect; and
- (b) without prejudice to the indemnity set out in Clause 26.2.2, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

## **27. PROVISION AND PROTECTION OF INFORMATION**

### **27.1 Provision of Management Information**

27.1.1 The Supplier shall, at no charge to the Authority, submit to the Authority complete and accurate Management Information in accordance with the provisions of DMP Schedule 9 (Management Information).

27.1.2 The Supplier grants the Authority a non-exclusive, transferable, perpetual, irrevocable, royalty free licence to:

- (a) use and to share with any Other Contracting Authority and Relevant Person; and/or
- (b) publish (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA being redacted),

any Management Information supplied to the Authority for the Authority's normal operational activities including but not limited to administering this Dynamic Marketplace Agreement and/or all Contracts, monitoring public sector expenditure, identifying savings or potential savings and planning future procurement activity.

27.1.3 The Authority shall in its absolute and sole discretion determine whether any Management Information is exempt from disclosure in accordance with the provisions of the FOIA.

27.1.4 The Authority may consult with the Supplier to help with its decision regarding any exemptions under Clause 27.1.3 but, for the purpose of this Dynamic Marketplace Agreement, the Authority shall have the final decision in its absolute and sole discretion.

## 27.2 Confidentiality

27.2.1 For the purposes of this Clause 27.2, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.

27.2.2 Except to the extent set out in this Clause 27.2 or where disclosure is expressly permitted elsewhere in this Dynamic Marketplace Agreement, the Recipient shall:

- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
- (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Dynamic Marketplace Agreement or without obtaining the Disclosing Party's prior written consent;
- (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Dynamic Marketplace Agreement; and
- (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

27.2.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 27.3 (Transparency and Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
  - (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Dynamic Marketplace Agreement;
  - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of its resources; or
  - (iii) the conduct of a Central Government Body review in respect of this Dynamic Marketplace Agreement; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office;
- (d) such information was in the possession of the Disclosing Party without obligation of confidentiality prior to its disclosure by the information owner;
- (e) such information was obtained from a third party without obligation of confidentiality;
- (f) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Dynamic Marketplace Agreement or breach of a duty of confidentiality; and
- (g) the information is independently developed without access to the Disclosing Party's Confidential Information.

27.2.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

- 27.2.5 Subject to Clauses 27.2.2 and 27.2.3, the Supplier may only disclose the Confidential Information of the Authority on a confidential basis to:
- (a) Supplier Personnel who are directly involved in the provision of the Goods and/or Services and need to know the Confidential Information to enable the performance of the Supplier's obligations under this Dynamic Marketplace Agreement; and
  - (b) its professional advisers for the purposes of obtaining advice in relation to this Dynamic Marketplace Agreement.
- 27.2.6 Where the Supplier discloses the Confidential Information of the Authority pursuant to Clause 27.2.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Dynamic Marketplace Agreement by the persons to whom disclosure has been made.
- 27.2.7 The Authority may disclose the Confidential Information of the Supplier:
- (a) to any Central Government Body or Other Contracting Authority on the basis that the information may only be further disclosed to Central Government Bodies or Other Contracting Authorities;
  - (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
  - (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 27.2.7(a) for any purpose relating to or connected with this Dynamic Marketplace Agreement;
  - (e) on a confidential basis for the purpose of the exercise of its rights under this Dynamic Marketplace Agreement; or
  - (f) to a proposed transferee, assignee or novatee of, or successor in title to the Authority,
  - (g) and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 27.2.7.
- 27.2.8 For the avoidance of doubt, the Confidential Information that the Authority may disclose under Clause 27.2.7 shall include information relating to Contracts, including service levels, pricing

information (which includes information on prices tendered in a Call for Competition Procedure, even where such a Call for Competition Procedure does not result in the award of a Contract) and the terms of any Contract may be shared with any Central Government Body or Other Contracting Authority from time to time.

27.2.9 Nothing in this Clause 27.2 shall prevent a Recipient from using any techniques, ideas or Know-How which the Recipient has gained during the performance of this Dynamic Marketplace Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

27.2.10 In the event that the Supplier fails to comply with Clauses 27.2.2 to 27.2.5, the Authority reserves the right to terminate this Dynamic Marketplace Agreement for material Default.

### 27.3 **Transparency and Freedom of Information**

27.3.1 The Parties acknowledge that

- (a) the Transparency Reports; and
- (b) the content of this Dynamic Marketplace Agreement, including any changes to this Dynamic Marketplace Agreement agreed from time to time, except for –
  - (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority;

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

27.3.2 Notwithstanding any other provision of this Dynamic Marketplace Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

27.3.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with DMP Schedule 21 (Transparency Reports).

27.3.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority

acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.

- 27.3.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Dynamic Marketplace Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 27.3.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may and Open Book Data) publish such Information. The Supplier shall provide to the Authority within 5 working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
- 27.3.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its Information disclosure obligations under the FOIA and EIRs;
  - (b) transfer to the Authority all Requests for Information relating to this Dynamic Marketplace Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
  - (c) provide the Authority with a copy of all Information held on behalf of the Authority requested in the Request for Information which is in the Supplier's possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
  - (d) not respond directly to a Request for Information addressed to the Authority unless authorised in writing to do so by the Authority.
- 27.3.8 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities

under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Dynamic Marketplace Agreement) for the purpose of this Dynamic Marketplace Agreement, the Authority shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and EIRs.

#### 27.4 **Protection of Personal Data**

27.4.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in DMP Schedule 23 (Authorised Processing Template) by the Authority and may not be determined by the Supplier.

27.4.2 The Supplier shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.

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

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

27.4.4. The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this DMP Agreement:

- (a) process that Personal Data only in accordance with DMP Schedule 23 (Authorised Processing Template), unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:

- (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that :
- (i) the Supplier Personnel do not process Personal Data except in accordance with this DMP Agreement (and in particular DMP Schedule 23 (Authorised Processing Template));
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Supplier's duties under this Clause;
    - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by this DMP Agreement; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
- (i) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and

- (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
  - (e) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the DMP Agreement unless the Supplier is required by Law to retain the Personal Data.
- 27.4.5 Subject to Clause 27.4.7, the Supplier shall notify the Authority immediately if it:
  - (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this DMP Agreement;
  - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - (f) becomes aware of a Data Loss Event.
- 27.4.6 The Supplier's obligation to notify under Clause 27.4.5 shall include the provision of further information to the Authority in phases, as details become available.
- 27.4.7 Taking into account the nature of the processing, the Supplier shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 27.4.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
  - (a) the Authority with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

- (c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Authority following any Data Loss Event;
- (e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

27.4.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:

- (a) the Authority determines that the processing is not occasional;
- (b) the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

27.4.9 The Supplier shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor.

27.4.10 The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.

27.4.11 Before allowing any Sub-processor to process any Personal Data related to this DMP Agreement, the Supplier must:

- (a) notify the Authority in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Authority;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 27.4.11 such that they apply to the Sub-processor; and
- (d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

27.4.12. The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.

27.4.13 The Supplier may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming

part of an applicable certification scheme (which shall apply when incorporated by attachment to this DMP Agreement).

27.4.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Supplier amend this DMP Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **28. PUBLICITY AND BRANDING**

- 28.1 Subject to Clause 29 (Marketing), the Supplier shall not:
- 28.1.1 make any press announcements or publicise this Dynamic Marketplace Agreement in any way; or
  - 28.1.2 use the Authority's name or brand in any promotion or marketing or announcement of Orders,
- without Approval (the decision of the Authority to Approve or not shall not be unreasonably withheld or delayed).
- 28.2 Each Party acknowledges to the other that nothing in this Dynamic Marketplace Agreement either expressly or by implication constitutes an approval and/or endorsement of any products or services of the other Party (including the Goods and/or Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval and/or endorsement.
- 28.3 The Authority shall be entitled to publicise this Dynamic Marketplace Agreement in accordance with any legal obligation upon the Authority, including any examination of this Dynamic Marketplace Agreement by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

## **29. MARKETING**

- 29.1 The Supplier shall undertake marketing of this Dynamic Marketplace Agreement and the Goods and/or Services on behalf of the Authority to Other Contracting Authorities in accordance with the provisions of DMP Schedule 11 (Marketing).
- 29.2 The Supplier shall obtain the Authority's Approval prior to publishing any content in relation to this Dynamic Marketplace Agreement using any media, including on any electronic medium, and the Supplier will ensure that such content is regularly maintained and updated. In the event that the Supplier fails to maintain or update the content, the Authority may give the Supplier notice to rectify the failure and if the failure is not rectified to the reasonable satisfaction of the Authority within one (1) Month of receipt of such notice, the Authority shall have the right to remove such content itself or require that the Supplier immediately arranges the removal of such content.

## **H. LIABILITY AND INSURANCE**

## 30. LIABILITY

- 30.1 Neither Party excludes or limits its liability for:
- 30.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
  - 30.1.2 bribery or Fraud by it or its employees; or
  - 30.1.3 any liability to the extent it cannot be excluded or limited by Law.
- 30.2 The Supplier does not exclude or limit its liability in respect of the indemnity in Clause 26.2 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the indemnity therein.
- 30.3 Subject to Clauses 30.1 and 30.2, each Party's total aggregate liability in respect of all Losses incurred under or in connection with this Dynamic Marketplace Agreement as a result of Defaults or Authority Cause (as the case may be) shall in no event exceed:
- 30.3.1 in relation to any Default or Authority Cause (as the case may be) occurring from the DMP Commencement Date to the end of the first Contract Year, the sum equal to one hundred thousand pounds (£100,000);
  - 30.3.2 in relation to any Default or Authority Cause (as the case may be) occurring in each subsequent Contract Year following the end of the first Contract Year, that commences during the remainder of the Dynamic Marketplace Period, the sum equal to one hundred thousand pounds (£100,000); and
- in relation to any Default or Authority Cause occurring in each Contract Year that commences after the end of the Dynamic Marketplace Period, the sum equal to one hundred thousand pounds (£100,000) in such contract year.
- 30.4 Subject to Clause 30.1, neither Party shall be liable to the other Party for any:
- 30.4.1 indirect, special or consequential Loss;
  - 30.4.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 30.5 Subject to Clause 30.3, and notwithstanding Clause 30.4, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:
- 30.5.1 any Management Levy which are due and payable to the Authority;
  - 30.5.2 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
  - 30.5.3 any wasted expenditure or charges;

- 30.5.4 the additional cost of procuring Replacement Goods and/or Services for the remainder of the Dynamic Marketplace Period, which shall include any incremental costs associated with such Replacement Goods and/or Services above those which would have been payable under this Dynamic Marketplace Agreement;
- 30.5.5 any compensation or interest paid to a third party by the Authority;
- 30.5.6 any fine, penalty or costs incurred by the Authority pursuant to Law.
- 30.6 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Dynamic Marketplace Agreement.
- 30.7 NOT USED
- 30.8 For the avoidance of doubt, the Parties acknowledge and agree that this Clause 30 shall not limit the Supplier's liability to a Contracting Authority under any Contract and the Supplier's liability under a Contract shall be as provided for in that Contract only.

## **31. INSURANCE**

- 31.1 The Supplier shall effect and maintain insurances in relation to the performance of its obligations under this Dynamic Marketplace Agreement and any Contract, and shall procure that Subcontractors shall effect and maintain insurances in relation to the performance of their obligations under any Sub-Contract, in accordance with DMP Schedule 14 (Insurance Requirements).
- 31.2 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities arising under this Dynamic Marketplace Agreement or any Contracts.

## **I. REMEDIES**

### **32. AUTHORITY REMEDIES**

- 32.1 Without prejudice to any other rights or remedies arising under this Dynamic Marketplace Agreement, including under Clause 33.2 (Termination on Material Default), if the Supplier fails to achieve a KPI Target on two or more occasions within any twelve (12) Month rolling period, the Supplier acknowledges and agrees that the Authority shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedial actions:
  - 32.1.1 The Authority shall be entitled to require the Supplier, and the Supplier agrees to prepare and provide to the Authority, an Improvement Plan within ten (10) Working Days of a written request by the Authority for such Improvement Plan. Such Improvement Plan shall be subject to Approval and the Supplier will be required to implement any Approved Improvement Plan, as soon as reasonably practicable.

- 32.1.2 The Authority shall be entitled to require the Supplier, and the Supplier agrees to attend, within a reasonable time one (1) or more meetings at the request of the Authority in order to resolve the issues raised by the Authority in its notice to the Supplier requesting such meetings.
- 32.1.3 The Authority shall be entitled to serve an Improvement Notice on the Supplier and the Supplier shall implement such requirements for improvement as set out in the Improvement Notice.
- 32.1.4 In the event that the Authority has, in its absolute and sole discretion, invoked one or more of the remedies set out above and the Supplier either:
- (a) fails to implement such requirements for improvement as set out in the Improvement Notice; and/or
  - (b) fails to implement an Improvement Plan Approved by the Authority;
- then (without prejudice to any other rights and remedies of termination provided for in this Dynamic Marketplace Agreement), the Authority shall be entitled to terminate this Dynamic Marketplace Agreement for material Default.

## **J. TERMINATION AND SUSPENSION**

### **33. AUTHORITY TERMINATION RIGHTS**

#### **33.1 Termination in Relation To Guarantee**

- 33.1.1 Where the Authority has procured a DMP Guarantee from the Supplier under Clause 8.1 (Guarantee), the Authority may terminate this DMP Agreement by issuing a Termination Notice to the Supplier where:
- (a) the DMP Guarantor withdraws the DMP Guarantee for any reason whatsoever;
  - (b) the DMP Guarantor is in breach or anticipatory breach of the DMP Guarantee;
  - (c) an Insolvency Event occurs in respect of the DMP Guarantor;
  - (d) the DMP Guarantee becomes invalid or unenforceable for any reason whatsoever; or
  - (e) the Supplier fails to provide the documentation required by Clause 8.1 by the date so specified by the Authority;

and in each case the DMP Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Authority.

33.1.2 Where a Contracting Authority has procured a Contract Guarantee from the Supplier under Clause 8.2 (Guarantee), the Authority may terminate this DMP Agreement by issuing a Termination Notice to the Supplier where:

- (a) the Contract Guarantor withdraws the Contract Guarantee for any reason whatsoever;
- (b) the Contract Guarantor is in breach or anticipatory breach of the Contract Guarantee;
- (c) an Insolvency Event occurs in respect of the Contract Guarantor; or
- (d) the Contract Guarantee becomes invalid or unenforceable for any reason whatsoever;
- (e) the Supplier fails to provide the documentation required by Clause 8.2 by the date so specified by the Contracting Authority;

and in each case the Contract Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Contracting Authority and/or Authority.

### 33.2 **Termination on Material Default**

33.2.1 The Authority may terminate this Dynamic Marketplace Agreement for material Default by issuing a Termination Notice to the Supplier where:

- (a) the Supplier fails to accept a Contract pursuant to paragraph 8.2 of DMP Schedule 5 (Call for Competition Procedure);
- (b) a Contracting Authority terminates a Contract for the Supplier's breach of that Contract;
- (c) an Audit reveals that the Supplier has underpaid an amount equal to or greater than five per cent (5%) of the Management Levy due;
- (d) the Authority conducts an assessment pursuant to Clause 14.2 and concludes that the Supplier has not demonstrated that it meets the Minimum Standards of Reliability;
- (e) the Supplier refuses or fails to comply with its obligations as set out in DMP Schedule 12 (Continuous Improvement);
- (f) in the event of two or more failures by the Supplier to meet the KPI Targets whether the failures relate to the same or different KPI targets, in any rolling period of three (3) months;

- (g) the Authority expressly reserves the right to terminate this Dynamic Marketplace Agreement for material Default including pursuant to:
- (i) Clause 9.4 (Cyber Essentials Scheme Condition)
  - (ii) Clause 19.1.4(b) (Variation Procedure);
  - (iii) Clause 32.1.4 (Authority Remedies);
  - (iv) Clause 27.2.10 (Confidentiality);
  - (v) Clause 40.6.2 (Prevention of Fraud and Bribery);
  - (vi) Clause 36.1.2 (Compliance with the Law);
  - (vii) Clause 41.3 (Conflicts of Interest);
  - (viii) Schedule 9 (Management Information); and/or
  - (ix) anywhere that is stated in this Dynamic Marketplace Agreement that the Supplier by its act or omission will have committed a material Default;
- (h) the Supplier commits a material Default of any of the following Clauses or DMP Schedules:
- (i) Clause 7 (Representations and Warranties) except Clause 7.2.6;
  - (ii) Clause 11 (Dynamic Marketplace Agreement Performance);
  - (iii) [Clause 14 (Minimum Standards of Reliability);]
  - (iv) Clause 18 (Records, Audit Access and Open Book Data);
  - (v) Clause 20 (Management Levy);
  - (vi) Clause 21 (Promoting Tax Compliance);
  - (vii) Clause 24 (Supply Chain Rights and Protection);
  - (viii) Clause 27.1 (Provision of Management Information);
  - (ix) Clause 27.3 (Transparency and Freedom of Information);
  - (x) Clause 27.4 (Protection of Personal Data); and/or
  - (xi) paragraph 1.2 of Part B of DMP Schedule 2 (Goods and/or Services and Key Performance Indicators).
- (i) the representation and warranty given by the Supplier pursuant to Clause 7.2.6 is materially untrue or misleading, and the Supplier fails to provide details of proposed

mitigating factors which in the reasonable opinion of the Authority are acceptable;

- (j) the Supplier commits any material Default which is not, in the reasonable opinion of the Authority, capable of remedy; and/or
- (k) the Supplier commits a Default, including a material Default, which in the opinion of the Authority is remediable but has not remedied such Default to the satisfaction of the Authority within twenty (20) Working Days, or such other period as may be specified by the Authority, after issue of a written notice from the Authority to the Supplier specifying the remediable Default and requesting it to be remedied in accordance with any instructions of the Authority.

### **33.3 Termination in Relation to Financial Standing**

33.3.1 The Authority may terminate this Dynamic Marketplace Agreement by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Authority there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:

- (a) adversely impacts on the Supplier's ability to supply the Goods and/or Services under this Dynamic Marketplace Agreement; or
- (b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Goods and/or Services under this Dynamic Marketplace Agreement;

### **33.4 Termination on Insolvency**

33.4.1 The Authority may terminate this Dynamic Marketplace Agreement by issuing a Termination Notice to the Supplier where an Insolvency Event affecting the Supplier occurs.

### **33.5 Termination on Change of Control**

33.5.1 The Supplier shall notify the Authority immediately in writing and as soon as the Supplier is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.

33.5.2 The Supplier shall ensure that any notification made pursuant to Clause 33.5.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

33.5.3 The Authority may terminate this Dynamic Marketplace Agreement under Clause 33.5 by issuing a Termination Notice to the Supplier within six (6) Months of:

- (a) being notified in writing that a Change of Control is anticipated or is in contemplation or has occurred; or
- (b) where no notification has been made, the date that the Authority becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

### **33.6 Termination for breach of Regulations**

33.6.1 The Authority may terminate this Dynamic Marketplace Agreement by issuing a Termination Notice to the Supplier on the occurrence of any of the statutory provisos contained in Regulation 73 (1) (a) to (c).

### **33.7 Termination Without Cause**

33.7.1 The Authority shall have the right to terminate this Dynamic Marketplace Agreement with effect from at any time following six (6) months after the DMP Commencement Date by giving at least three (3) Months written notice to the Supplier.

### **33.8 Partial Termination**

33.8.1 Where the Authority has the right to terminate this Dynamic Marketplace Agreement, the Authority is entitled to terminate all or part of this Dynamic Marketplace Agreement pursuant to this Clause 33.8 provided always that, if the Authority elects to terminate this Dynamic Marketplace Agreement in part, the parts of this Dynamic Marketplace Agreement not terminated or suspended can, in the Authority's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Dynamic Marketplace Agreement.

33.8.2 The Parties shall endeavour to agree the effect of any Variation necessitated by a partial termination in accordance with Clause 19.1 (Variation Procedure) including the effect that the partial termination may have on the on the provision of any other Goods and/or Services and the Supplier shall not be entitled to reject the Variation.

## **34. SUSPENSION OF SUPPLIER'S APPOINTMENT**

34.1 If the Authority is entitled to terminate this Dynamic Marketplace Agreement pursuant to Clause 33 (Authority Termination Rights), the Authority may instead elect in its sole discretion to suspend the Supplier's ability to accept Orders under this Dynamic Marketplace Agreement by giving notice in writing to the Supplier, and the Supplier agrees that it shall not be entitled to enter into any new Contract during the period specified in the Authority's notice.

- 34.2 Any suspension under Clause 34.1 shall be without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Authority.
- 34.3 The Parties acknowledge that suspension shall not affect the Supplier's obligation to perform any existing Contracts concluded prior to the suspension notice.
- 34.4 If the Authority provides notice to the Supplier in accordance with this Clause 34.1, the Supplier's appointment under this Dynamic Marketplace Agreement shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Authority in writing from time to time.
- 34.5 For the avoidance of doubt, no period of suspension under this Clause 34 shall result in an extension of the Dynamic Marketplace Period.

### **35. CONSEQUENCES OF EXPIRY OR TERMINATION**

- 35.1 Notwithstanding the service of a notice to terminate this Dynamic Marketplace Agreement, the Supplier shall continue to fulfil its obligations under this Dynamic Marketplace Agreement until the date of expiry or termination of this Dynamic Marketplace Agreement or such other date as required under this Clause 35.
- 35.2 Termination or expiry of this Dynamic Marketplace Agreement shall not cause any Contracts to terminate automatically. For the avoidance of doubt, all Contracts shall remain in force unless and until they are terminated or expire in accordance with the provisions of the Contract and the Supplier shall continue to pay any Management Levy due to the Authority in relation to such Contracts, notwithstanding the termination or expiry of this Dynamic Marketplace Agreement.
- 35.3 If the Authority terminates this Dynamic Marketplace Agreement under Clause 33.2 (Termination on Material Default) and then makes other arrangements for the supply of the Goods and/or Services to Contracting Authorities, the Supplier shall indemnify the Authority in full upon demand for the cost of procuring, implementing and operating any alternative or replacement goods and/or services to the Goods and/or Services and no further payments shall be payable by the Authority until the Authority has established and recovered from the Supplier the full amount of such cost.
- 35.4 Within ten (10) Working Days of the date of termination or expiry of this Dynamic Marketplace Agreement, the Supplier shall return to the Authority any and all of the Authority's Confidential Information in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Authority, and any other information and all copies thereof owned by the Authority, save that it may keep one copy of any such data or information to the extent reasonably necessary to comply with its obligations under this Dynamic Marketplace Agreement or under any Law, for a period of up to twelve (12) Months (or such other period as Approved by the Authority and is reasonably necessary for such compliance).

- 35.5 Termination or expiry of this Dynamic Marketplace Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Dynamic Marketplace Agreement prior to termination or expiry.
- 35.6 Termination or expiry of this Dynamic Marketplace Agreement shall be without prejudice to the survival of any provision of this Dynamic Marketplace Agreement which expressly (or by implication) is to be performed or observed notwithstanding termination or expiry of this Dynamic Marketplace Agreement, including the provisions of:
- 35.6.1 Clauses 1 (Definitions and Interpretation), 7 (Representations and Warranties), 9 (Cyber Essentials Scheme Condition), 11 (Dynamic Marketplace Agreement Performance), 18 (Records, Audit Access and Open Book Data), 20 (Management Levy), 22 (Financial Distress), 26 (Intellectual Property Rights), 27.1 (Provision of Management Information), 27.2 (Confidentiality), 27.3 (Transparency), 27.3 (Transparency and Freedom of Information), 27.4 (Protection of Personal Data), 30 (Liability), 31 (Insurance), 35 (Consequences of Expiry or Termination), 36 (Compliance), 38 (Waiver and Cumulative Remedies), 40 (Prevention of Fraud and Bribery), 42 (Severance), 44 (Entire Agreement), 45 (Third Party Rights), 46 (Notices), 47 (Complaints Handling), 48 (Dispute Resolution) and 49 (Governing Law and Jurisdiction); and
- 35.6.2 DMP Schedules 2 (Goods and/or Services and Key Performance Indicators), 7 (Sub-Contractors), 8 (DMP Management), 9 (Management Information), 10 (Annual Self Audit Certificate), 12 (Continuous Improvement), 13 (Guarantee), 14 and (Insurance requirements).

## **K. MISCELLANEOUS AND GOVERNING LAW**

### **36. COMPLIANCE**

#### **36.1 Compliance with Law**

- 36.1.1 The Supplier shall comply with all applicable Law in connection with the performance of this Dynamic Marketplace Agreement.
- 36.1.2 In the event that the Supplier or the Supplier Personnel fails to comply with Clause 36.1.1, this shall be deemed to be a material Default and the Authority reserves the right to terminate this Dynamic Marketplace Agreement by giving notice in writing to the Supplier.

#### **36.2 Equality and Diversity**

- 36.2.1 The Supplier shall:
- (a) perform its obligations under this Dynamic Marketplace Agreement (including those in relation to the provision of the Goods and/or Services) in accordance with:

- (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
  - (ii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law;
- (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

### 36.3 **Official Secrets Act and Finance Act**

36.3.1 The Supplier shall comply with the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

## 37. **ASSIGNMENT AND NOVATION**

37.1 The Supplier shall not assign, novate, or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Dynamic Marketplace Agreement or any part of it without Approval.

37.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Dynamic Marketplace Agreement or any part thereof to:

37.2.1 any Other Contracting Authority; or

37.2.2 any Central Government Body or other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or

37.2.3 any private sector body which substantially performs the functions of the Authority,

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 37.2.

37.3 A change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to Clause 37.4 affect the validity of this Dynamic Marketplace Agreement and this Dynamic Marketplace Agreement shall be binding on any successor body to the Authority.

37.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Dynamic Marketplace Agreement to a body which is not a Contracting Authority or if a body which is not a Contracting Authority succeeds the Authority (both "**Transferee**" in the rest of this Clause) the right of termination of the Authority in Clause 33.3 (Financial Standing) shall be available to the Supplier in the event of the

insolvency of the Transferee (as if the references to Supplier in Clause 33.4 (Termination on Insolvency)) and to Supplier, Dynamic Marketplace Guarantor or Contract Guarantor in the definition of Insolvency Event were references to the Transferee.

### **38. WAIVER AND CUMULATIVE REMEDIES**

- 38.1 The rights and remedies under this Dynamic Marketplace Agreement may be waived only by notice in accordance with Clause 46 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Dynamic Marketplace Agreement or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise thereof.
- 38.2 Unless otherwise provided in this Dynamic Marketplace Agreement, rights and remedies under this Dynamic Marketplace Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

### **39. RELATIONSHIP OF THE PARTIES**

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

### **40. PREVENTION OF FRAUD AND BRIBERY**

- 40.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the DMP Commencement Date:
- 40.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - 40.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 40.2 The Supplier shall not during the Dynamic Marketplace Period:
- 40.2.1 commit a Prohibited Act; and/or
  - 40.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

- 40.3 The Supplier shall during the Dynamic Marketplace Period:
- 40.3.1 establish, maintain and enforce policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
  - 40.3.2 require that its Sub-Contractors establish, maintain and enforce the policies and procedures referred to in Clause 40.3.1;
  - 40.3.3 keep appropriate records of its compliance with its obligations under Clause 40.3.1 and make such records available to the Authority on request;
  - 40.3.4 if so required by the Authority, within twenty (20) Working Days of the DMP Commencement Date, and annually thereafter, certify in writing to the Authority, the compliance with this Clause 40.3 of all persons associated with the Supplier or its Sub-Contractors who are responsible for supplying the Goods and/or Services in connection with this Dynamic Marketplace Agreement. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request; and
  - 40.3.5 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
- 40.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clauses 40.1, 40.2 and 40.3.2, or has reason to believe that it has or any of the Supplier Personnel has:
- 40.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 40.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - 40.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Dynamic Marketplace Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Dynamic Marketplace Agreement has committed or attempted to commit a Prohibited Act.
- 40.5 If the Supplier makes a notification to the Authority pursuant to Clause 40.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 18 (Records, Audit Access and Open Book Data).
- 40.6 If the Supplier breaches Clause 40.1 the Authority may by notice:

- 40.6.1 require the Supplier to remove from the performance of this Dynamic Marketplace Agreement any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
- 40.6.2 immediately terminate this Dynamic Marketplace Agreement for material Default.
- 40.7 Any notice served by the Authority under Clause 40.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Dynamic Marketplace Agreement shall terminate).

#### **41. CONFLICTS OF INTEREST**

- 41.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor the Supplier Personnel are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or the Supplier Personnel and the duties owed to the Authority and Other Contracting Authorities under the provisions of this Dynamic Marketplace Agreement or any Contract.
- 41.2 The Supplier shall promptly notify and provide full particulars to the Authority or the relevant Other Contracting Authority if such conflict referred to in Clause 41.1 arises or may reasonably be foreseen as arising.
- 41.3 The Authority reserves the right to terminate this Dynamic Marketplace Agreement immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Dynamic Marketplace Agreement or any Contract. The action of the Authority pursuant to this Clause 41.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

#### **42. SEVERANCE**

- 42.1 If any provision of this Dynamic Marketplace Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Dynamic Marketplace Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Dynamic Marketplace Agreement shall not be affected.
- 42.2 In the event that any deemed deletion under Clause 42.1 is so fundamental as to prevent the accomplishment of the purpose of this Dynamic Marketplace Agreement or materially alters the balance of risks and rewards in this Dynamic Marketplace Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Dynamic Marketplace Agreement so that, as amended, it is valid

and enforceable, preserves the balance of risks and rewards in this Dynamic Marketplace Agreement and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.

- 42.3 If the Parties are unable to resolve any Dispute arising under this Clause 42 within twenty (20) Working Days of the date of the notice given pursuant to Clause 42.2, this Dynamic Marketplace Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Dynamic Marketplace Agreement is terminated pursuant to this Clause 42.3.

#### **43. FURTHER ASSURANCES**

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

#### **44. ENTIRE AGREEMENT**

- 44.1 This Dynamic Marketplace Agreement constitutes the entire agreement between the Parties in respect of the subject matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 44.2 Neither Party has been given, nor entered into this Dynamic Marketplace Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Dynamic Marketplace Agreement.
- 44.3 Nothing in this Clause 44 shall exclude any liability in respect of misrepresentations made fraudulently.

#### **45. THIRD PARTY RIGHTS**

- 45.1 The provisions of:
- 45.1.1 Clauses: 4 (Scope of Dynamic Marketplace Agreement), 5 (Call For Competition Procedure), 6 (Assistance in Related Procurements), 7 (Representations and Warranties), 8 (Guarantee), 15 (Contract Performance Under Dynamic Marketplace Agreement Performance), 18 (Records, Audit Access and Open Book Data), 27.4 (Protection of Personal Data), 31 (Insurance), 36.2 (Equality and Diversity) and 45 (Third Party Rights); and
- 45.1.2 DMP Schedules 5 (Call for Competition Procedure), 13 (Guarantee) and 14 (Insurance Requirements).

(together “**Third Party Provisions**”) confer benefits on persons named in such provisions other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

- 45.2 Subject to Clause 45.1, a person who is not Party to this Dynamic Marketplace Agreement has no right to enforce any term of this Dynamic Marketplace Agreement under the CRTPA but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA.
- 45.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without Approval, which may, if given, be given on and subject to such terms as the Authority may determine.
- 45.4 Any amendments or modifications to this Dynamic Marketplace Agreement may be made, and any rights created under Clause 45.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.
- 45.5 The Authority may act as agent and trustee for each Third Party Beneficiary and/or enforce on behalf of that Third Party Beneficiary any Third Party Provision and/or recover any Loss suffered by that Third Party Beneficiary in connection with a breach of any Third Party Provision.

#### 46. NOTICES

- 46.1 Except as otherwise expressly provided within this Dynamic Marketplace Agreement, any notices issued under this Dynamic Marketplace Agreement must be in writing. For the purpose of this Clause 46, an e-mail is accepted as being "in writing".
- 46.2 Subject to Clause 46.3, the following table sets out the method by which notices may be served under this Dynamic Marketplace Agreement and the respective deemed time and proof of service:

| Manner of delivery  | Deemed time of delivery  | Proof of Service  |
|---|--|---|
| Email (Subject to Clause 46.3)  | 9.00am on the first Working Day after sending  | Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message |
| Personal delivery   | On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day   | Properly addressed and delivered as evidenced by signature of a delivery receipt                    |
| Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery | At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if | Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt            |

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|  | delivery before 9.00am) or on the next Working Day (if after 5.00pm) |  |
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- 46.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 46.2 within twenty four (24) hours of transmission of the email:
- 46.3.1 any Termination Notice under Clause 33 (Authority Termination Rights), including in respect of partial termination;
- 46.3.2 any notice in respect of:
- (a) Suspension of Supplier's appointment (Clause 34)
  - (b) Waiver (Clause 38);
  - (c) Default or Authority Cause; and
- 46.3.3 any Dispute Notice.
- 46.4 Failure to send any original notice in accordance with Clause 46.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 46.2) or, if earlier, the time of response or acknowledgement by the receiving Party to the email attaching the notice.
- 46.5 This Clause 46 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under DMP Schedule 18 (Dispute Resolution Procedure).
- 46.6 For the purposes of this Clause 46, the address of each Party shall be:
- 46.6.1 For the Authority:
- Crown Commercial Service**  
9th Floor  
The Capital  
Old Hall Street  
Liverpool  
L3 9PP
- For the attention of: CCS
- 46.6.2 For the Supplier:
- As stated within the RM6102 Apprenticeship Training Dynamic Marketplace SQ.
- 46.7 Either Party may change its address for service by serving a notice in accordance with this Clause 46.
- 46.8 This Clause 46 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other

method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure).

#### **47. COMPLAINTS HANDLING**

- 47.1 Either Party shall notify the other Party of any Complaints made by Other Contracting Authorities, which are not resolved by operation of the Supplier's usual complaints handling procedure within five (5) Working Days of becoming aware of that Complaint and, if the Supplier is the Party providing the notice, such notice shall contain full details of the Supplier's plans to resolve such Complaint.
- 47.2 Without prejudice to any rights and remedies that a complainant may have at Law (including under this Dynamic Marketplace Agreement and/or a Contract), and without prejudice to any obligation of the Supplier to take remedial action under the provisions of this Dynamic Marketplace Agreement and/or a Contract, the Supplier shall use its best endeavours to resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.
- 47.3 Within two (2) Working Days of a request by the Authority, the Supplier shall provide full details of a Complaint to the Authority, including details of steps taken to achieve its resolution.

#### **48. DISPUTE RESOLUTION**

- 48.1 The Parties shall resolve Disputes arising out of or in connection with this Dynamic Marketplace Agreement in accordance with the Dispute Resolution Procedure.
- 48.2 The Supplier shall continue to provide the Goods in accordance with the terms of this Dynamic Marketplace Agreement until a Dispute has been resolved.

#### **49. GOVERNING LAW AND JURISDICTION**

- 49.1 This Dynamic Marketplace Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 49.2 Subject to Clause 48 (Dispute Resolution) and DMP Schedule 18 (Dispute Resolution Procedure) (including the Authority's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Dynamic Marketplace Agreement or its subject matter or formation. 0.

## DMP SCHEDULE 1: DEFINITIONS

1. In accordance with Clause 1.1 (Definitions), in this Dynamic Marketplace Agreement including its Recitals the following expressions shall have the following meanings:

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| <b>“Additional Services”</b>                                    | means any services required by a Contracting Authority and referred to as such in Annex 1 of Call Off Schedule 2 (Goods and Services);   |
| <b>"Affiliates"</b>   | means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;   |
| <b>“Apprenticeship Provider and Assessment Register” (APAR)</b> | means the register of apprenticeship training providers and end point assessment organisations established by the ESFA;  |
| <b>"Approval"</b>   | means the prior written consent of the Authority and <b>"Approve"</b> and <b>"Approved"</b> shall be construed accordingly;  |
| <b>"Audit"</b>  | means an audit carried out pursuant to Clause 18 (Records, Audit Access and Open Book Data);   |
| <b>"Audit Report"</b>   | means a report summarising the testing completed and the actions arising following an Audit;   |
| <b>"Auditor"</b>  | means the Authority, and/or Other Contracting Authority who is a party to a Contract, and/or the National Audit Office and/or any auditor appointed by the Audit Commission, and /or the representatives of any of them;   |
| <b>"Authority"</b>  | means <b>THE MINISTER FOR THE CABINET OFFICE ("Cabinet Office")</b> as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;  |
| <b>“Authority Cause”</b>  | means any breach of the obligations of the Authority (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Authority in connection with or in relation to this Dynamic Marketplace Agreement or the subject matter of this Dynamic Marketplace Agreement and in respect of which the Authority is liable to the Supplier; |
| <b>"Authority Personal Data"</b>                                | means any Personal Data supplied for the purposes of or in connection with this Dynamic Marketplace Agreement by the Authority to the Supplier;  |

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| <b>"Authority Representative"</b>             | means the representative appointed by the Authority from time to time in relation to this Dynamic Marketplace Agreement;  |
| <b>"Authority's Confidential Information"</b> | means all Authority Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know How, personnel, and suppliers of the Authority and/or Other Contracting Authorities, including all IPR, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably to be considered to be confidential; |
| <b>"Branding Guidance"</b>                    | means the Authority's guidance in relation to the use of branding available at <a href="https://www.gov.uk/topic/government-digital-guidance/content-publishing">https://www.gov.uk/topic/government-digital-guidance/content-publishing</a>  |
| <b>"Competition Award Criteria"</b>           | means the award criteria set out in Part B of DMP Schedule 6 (Award Criteria);  |
| <b>"Competition Procedure"</b>                | means the Competition procedure(s) described in paragraph 2 of DMP Schedule 5 (Call for Competition Procedure);   |
| <b>"Contract"</b>                             | means a legally binding agreement (entered into pursuant to the provisions of this Dynamic Marketplace Agreement) for the provision of the Goods and/or Services made between a Contracting Authority and the Supplier pursuant to DMP Schedule 5 (Call for Competition Procedure);   |
| <b>"Contract Guarantee"</b>                   | means a deed of guarantee in favour of a Contracting Authority in the form set out in DMP Schedule 13 (Guarantee) and granted pursuant to Clause 4 of the Template Contract terms;  |
| <b>"Contract Guarantor"</b>                   | means the person acceptable to a Contracting Authority to give a Contract Guarantee;  |
| <b>"Controller"</b>                           | has the meaning given in the GDPR;  |
| <b>"CEDR"</b>                                 | means the Centre for Effective Dispute Resolution;  |
| <b>"Central Government Body"</b>              | means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> <li>a) Government Department;</li> <li>b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>c) Non-Ministerial Department; or</li> </ul>                                      |

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|                            | d) Executive Agency;   |
| "Change in Law"            | means any change in Law which impacts on the supply of the Goods and/or Services and performance of the Template Contract Terms which comes into force after the DMP Commencement Date;  |
| "Change of Control"        | means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;   |
| "Charges"                  | means the charges raised under or in connection with a Contract from time to time, including but not limited to of applicable ESFA funding;  |
| "Comparable Supply"        | means the supply of Goods and/or Services to another customer of the Supplier that are the same or similar to the Goods and/or Services;   |
| "Complaint"                | means any formal written complaint raised by a Contracting Authority in relation to the performance of this Dynamic Marketplace Agreement or any Contract in accordance with Clause 47 (Complaints Handling);  |
| "Confidential Information" | means the Authority's Confidential Information and/or the Supplier's Confidential Information, as the context requires;  |
| "Contract Year"            | means a consecutive period of twelve (12) Months commencing on the DMP Commencement Date or each anniversary thereof;  |
| "Contracting Authorities"  | means the bodies listed in the OJEU Notice and " <b>Contracting Authority</b> " shall be construed accordingly;  |
| "Control"                  | means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and " <b>Controlled</b> " shall be construed accordingly;   |
| "Crown"                    | means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf; |
| "Crown Body"               | means any department, office or executive agency of the Crown;   |
| "CRTPA"                    | means the Contracts (Rights of Third Parties) Act 1999;  |
| "Cyber Essentials Scheme"  | means the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats. Details of the Cyber Essentials Scheme can be found here:   |

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|  | <a href="https://www.gov.uk/government/publications/cyber-essentials-scheme-overview">https://www.gov.uk/government/publications/cyber-essentials-scheme-overview</a>  |
| <b>“Cyber Essentials Scheme Basic Certificate”</b> | means the certificate awarded on the basis of self-assessment, verified by an independent certification body, under the Cyber Essentials Scheme and is the basic level of assurance;   |
| <b>“Cyber Essentials Scheme Data”</b>              | means sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme;   |
| <b>“DPA” or “Data Protection Act”</b>              | means the Data Protection Act 2018 as amended from time to time;   |
| <b>"Data Protection Legislation"</b>               | means: <ul style="list-style-type: none"> <li>i. the GDPR, the LED and any applicable national implementing Laws as amended from time to time;</li> <li>ii. The DPA to the extent that it relates to processing of personal data and privacy;</li> </ul> all applicable Law about the processing of personal data and privacy;   |
| <b>“Data Protection Officer”</b>                   | has the meaning given in the GDPR;   |
| <b>"Data Subject"</b>                              | has the meaning given in the GDPR;   |
| <b>"Data Subject Access Request"</b>               | means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;  |
| <b>"Default"</b>                                   | means any breach of the obligations of the Supplier (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Supplier or the Supplier Personnel in connection with or in relation to this Dynamic Marketplace Agreement or the subject matter of this Dynamic Marketplace Agreement and in respect of which the Supplier is liable to the Authority; |
| <b>“Disclosing Party”</b>                          | means a Party which discloses or makes available directly or indirectly its Confidential Information to the Recipient;   |
| <b>"Dispute"</b>                                   | means any dispute, difference or question of interpretation arising out of or in connection with this Dynamic Marketplace Agreement, including any dispute, difference or question of interpretation relating to the Goods and/or Services, failure to agree in accordance with the procedure for variations in Clause 19.1 (Variation Procedure) or any matter where this Dynamic Marketplace Agreement directs the Parties to  |

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|  | resolve an issue by reference to the Dispute Resolution Procedure;  |
| <b>"Dispute Notice"</b>  | means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;   |
| <b>"Dispute Resolution Procedure"</b>                                      | means the dispute resolution procedure set out in DMP Schedule 18 (Dispute Resolution Procedure);   |
| <b>"DOTAS"</b>   | means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992; |
| <b>"Due Diligence Information"</b>   | means any information supplied to the Supplier by or on behalf of the Authority prior to the DMP Commencement Date;   |
| <b>Dynamic Purchasing "DPS" System "Dynamic Marketplace" or "DMP"</b>      | means the arrangements established by the Authority for the provision of the Goods to Contracting Authorities by suppliers (including the Supplier) pursuant to the OJEU Notice;  |
| <b>"Dynamic Marketplace Agreement"</b>                                     | means this agreement consisting of the Clauses together with the DMP Schedules and any appendices and annexes to the same;  |
| <b>"Dynamic Marketplace Commencement Date " or "DMP Commencement Date"</b> | means the date that the supplier is appointed to the DMP.   |
| <b>"Dynamic Marketplace Period" or "DMP Period"</b>                        | means the period from the DMP Commencement Date until the expiry (as set out in Clause 10) or earlier termination of this Dynamic Marketplace Agreement;  |
| <b>"DMP Schedules"</b>   | means the schedules to this Dynamic Marketplace Agreement;  |
| <b>"DMP Suppliers"</b>   | means the suppliers (including the Supplier) admitted under this Dynamic Marketplace Agreement or agreements on the   |

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|  | same or similar terms to this Dynamic Marketplace Agreement as part of the DMP;  |
| <b>"Environmental Information Regulations or EIRs"</b> | means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;   |
| <b>"Equivalent Goods and/or Services"</b>              | means goods and/or services which the Supplier can supply which are the same or similar to the Goods and/or Services;  |
| <b>"ESFA"</b>  | means the Education and Skills Funding Agency  |
| <b>"FOIA"</b>  | means the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation; |
| <b>"Fraud"</b>   | means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;  |
| <b>"Funding Rules"</b>                                 | means the in force ESFA Funding Rules as published by ESFA from time to time<br>and any subsequent versions of the Funding Rules.  |
| <b>"Competition Award Criteria"</b>                    | means the award criteria set out in Part B of DMP Schedule 6 (Award Criteria);   |
| <b>"Competition Procedure"</b>                         | means the Competition procedure described in paragraph 2 of DMP Schedule 5 (Call for Competition Procedure);   |
| <b>"Initial DMP Period"</b>                            | means the period from the DMP commencement date until its fourth anniversary;  |
| <b>"General Anti-Abuse Rule"</b>                       | means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;   |
| <b>"General Change in Law"</b>                         | means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;  |
| <b>"GDPR" or "General Data Protection Regulation"</b>  | means the General Data Protection Regulation (Regulation (EU) 2016/679);   |

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| <b>"Good Industry Practice"</b>             | means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;  |
| <b>"Goods"</b>                              | means the goods described in DMP Schedule 2 (Goods and/or Services and Key Performance Indicators) which the Supplier shall make available to Contracting Authorities;   |
| <b>"Goods and/or Services Requirements"</b> | means the requirements of the Authority or any other Contracting Authority (as appropriate) for the Goods and/or Services from time to time;   |
| <b>"Government"</b>                         | means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;   |
| <b>"Halifax Abuse Principle"</b>            | means the principle explained in the CJEU Case C-255/02 Halifax and others;  |
| <b>"Holding Company"</b>                    | has the meaning given to it in section 1159 of the Companies Act 2006;   |
| <b>"Improvement Plan"</b>                   | means the plan required by the Authority from the Supplier which shall detail how the Supplier will improve the provision of the Goods and/or Services pursuant to Clause 32.1.1 (Authority Remedies);   |
| <b>"Improvement Notice"</b>                 | means the notice issued by the Authority to the Supplier pursuant to Clause 32.1.3 (Authority Remedies) which will detail how the Supplier shall improve the provision of the Goods and/or Services;   |
| <b>"Information"</b>                        | has the meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time;  |
| <b>"Insolvency Event"</b>                   | means, in respect of the Supplier or Dynamic Marketplace Guarantor or Contract Guarantor (as applicable): <ul style="list-style-type: none"> <li>a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or</li> <li>b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as</li> </ul> |

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|  | <p>part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or</p> <p>c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or</p> <p>d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</p> <p>e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or</p> <p>f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</p> <p>g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or</p> <p>h) where the Supplier or Dynamic Marketplace Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or</p> <p>i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;</p> |
| <b>"Intellectual Property Rights" or "IPR"</b> | <p>means:</p> <p>copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>all other rights having equivalent or similar effect in any country or jurisdiction;</p>   |
| <b>"Sub-Contract"</b>                          | means each Sub-Contract with a Sub-Contractor;  |
| <b>"Sub-Contractor"</b>                        | means any Sub-Contractor which is listed in DMP Schedule 7 (Sub-Contractors), that in the opinion of the Authority,   |

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|   | performs (or would perform if appointed) a critical role in the provision of all or any part of the Goods and/or Services;   |
| <b>"IPR Claim"</b>                            | means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority in the fulfilment of its obligations under this Dynamic Marketplace Agreement;                             |
| <b>"Key Performance Indicators" or "KPIs"</b> | means the performance measurements and targets set out in Part B of DMP Schedule 2 (Goods and/or Services and Key Performance Indicators);   |
| <b>"Know-How"</b>                             | means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Goods and/or Services but excluding know-how already in the other Party's possession before the DMP Commencement Date;  |
| <b>"KPI Target"</b>                           | means the acceptable performance level for a KPI as set out in relation to each KPI;   |
| <b>"Law"</b>                                  | means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply; |
| <b>"Legacy Goods and/or Services"</b>         | means goods and/or services similar to the New Goods and/or Services and/or goods and/or services which interface with or are intended to interface with or be replaced by the New Goods and/or Services;  |
| <b>"Losses"</b>                               | means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and <b>"Loss"</b> shall be interpreted accordingly;   |
| <b>"Management Levy"</b>                      | means the sum payable by the Supplier to the Authority being an amount equal to (1%) of all Charges for the Goods and/or Services invoiced to the Contracting Authorities by the Supplier (net of VAT) in each Month throughout the Dynamic Marketplace Period and thereafter until the expiry or earlier termination of all Contracts entered pursuant to this Dynamic Marketplace Agreement;           |

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| <b>"Management Information" or "MI"</b>   | means the management information specified in DMP Schedule 9 (Management Information);  |
| <b>"MI Failure"</b>                       | means when an MI report: <ul style="list-style-type: none"> <li>a) contains any material errors or material omissions or a missing mandatory field; or</li> <li>b) is submitted using an incorrect MI reporting Template</li> </ul>   |
| <b>"Minimum Standards of Reliability"</b> | means the minimum standards of reliability as set out in the OJEU Notice;   |
| <b>"MI Report"</b>                        | means a report containing Management Information submitted to the Authority in accordance with DMP Schedule 9 (Management Information);   |
| <b>"MI Reporting Template"</b>            | means the form of report set out in the Annex to DMP Schedule 9 (Management Information) setting out the information the Supplier is required to supply to the Authority;   |
| <b>"Ministry of Justice Code"</b>         | means the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 as amended from time to time;  |
| <b>"Month"</b>                            | means a calendar month and <b>"Monthly"</b> shall be interpreted accordingly;   |
| <b>"New Goods and/or Services"</b>        | means goods and/or services which a Contracting Authority wishes to procure from a third party which are the same or similar to the Goods and/or Services;  |
| <b>"Nil Return"</b>                       | has the meaning given to it in paragraph 3.3 of DMP Schedule 9 (Management Information);  |
| <b>"Occasion of Tax Non –Compliance"</b>  | means where: <p>any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:</p> <ul style="list-style-type: none"> <li>a) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax abuse principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax abuse principle;</li> <li>b) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS</li> </ul> |

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|                         | <p>or any equivalent or similar regime in any jurisdiction; and/or</p> <p>c) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the DMP Commencement Date or to a civil penalty for fraud or evasion;</p>   |
| <b>"OJEU Notice"</b>    | has the meaning given to it in Recital A to this Dynamic Marketplace Agreement;  |
| <b>"Open Book Data"</b> | <p>means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the Dynamic Marketplace Period and term of any Contracts, including details and all assumptions relating to:</p> <p>a) the Supplier's Costs broken down against each Good and/or Service and/or deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all goods and/or services;</p> <p>b) operating expenditure relating to the provision of the Goods and/or Services including an analysis showing:</p> <ol style="list-style-type: none"> <li>i. the unit costs and quantity of Goods and any other consumables and bought-in goods and services;</li> <li>ii. manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;</li> <li>iii. a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin;</li> </ol> <p>c) Overheads;</p> <ol style="list-style-type: none"> <li>i. all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;</li> <li>ii. the Supplier Profit achieved over the Dynamic Marketplace Period and term of any Contracts and on an annual basis;</li> <li>iii. confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than</li> </ol> |

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|  | <p>such methods applied generally by the Supplier;</p> <p>iv. an explanation of the type and value of risk and contingencies associated with the provision of the Goods and/or Services, including the amount of money attributed to each risk and/or contingency; and</p> <p>v. the actual Costs profile for each Service Period under any Contracts;</p>  |
| <b>"Order"</b>                         | means an order for the provision of the Goods and/or Services placed by a Contracting Authority with the Supplier under a Contract;   |
| <b>"Other Contracting Authorities"</b> | means all Contracting Authorities except the Authority and <b>"Other Contracting Authority"</b> shall be construed accordingly;   |
| <b>"Overhead"</b>                      | means those amounts which are intended to recover a proportion of the Supplier's or the Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of "Costs";  |
| <b>"Party"</b>                         | means the Authority or the Supplier and <b>"Parties"</b> shall mean both of them;   |
| <b>"Personal Data"</b>                 | has the meaning given in the GDPR;  |
| <b>"Personal Data Breach"</b>          | has the meaning given in the GDPR;  |
| <b>"Processor"</b>                     | has the meaning given in the GDPR;  |
| <b>"Prohibited Act"</b>                | <p>means any of the following:</p> <p>to directly or indirectly offer, promise or give any person working for or engaged by a Contracting Authority or any other public body a financial or other advantage to:</p> <p>induce that person to perform improperly a relevant function or activity; or</p> <p>reward that person for improper performance of a relevant function or activity;</p> <p>to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; or</p> |

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|  | <p>committing any offence:</p> <p>under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or</p> <p>under legislation or common law concerning fraudulent acts; or</p> <p>defrauding, attempting to defraud or conspiring to defraud a Contracting Authority or other public body; or</p> <p>any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</p> |
| <b>“Protective Measures”</b>               | <p>means appropriate technical and organisational measures which may include:</p> <p>pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;</p>  |
| <b>“Recipient”</b>                         | <p>mean the Party which receives or obtains directly or indirectly Confidential Information from the Disclosing Party;</p>  |
| <b>"Regulations"</b>                       | <p>means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 and/or the Procurement (Scotland) Regulations 2016 (as the context requires) as amended from time to time;</p>   |
| <b>"Relevant Person"</b>                   | <p>means any employee, agent, servant, or representative of the Authority, or of any Other Contracting Authority or other public body;</p>  |
| <b>"Relevant Requirements"</b>             | <p>means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;</p>  |
| <b>"Relevant Tax Authority"</b>            | <p>means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;</p>   |
| <b>"Relevant Supplier"</b>                 | <p>means a third party bidding to provide New Goods and/or Services;</p>  |
| <b>"Replacement Goods and/or Services"</b> | <p>means any goods and/or services which are substantially similar to any of the Goods and/or Services and which are received in substitution for the Goods and/or Services following the expiry or termination of this Dynamic Marketplace Agreement;</p>  |

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| <b>"Replacement Supplier"</b>    | means any third party provider of Replacement Goods and/or Services appointed by or at the direction of the Authority from time to time;  |
| <b>"Reporting Date"</b>          | means the 7th day of each Month following the Month to which the relevant Management Information relates, or such other date as may be agreed between the Parties;  |
| <b>"RMI"</b>                     | means 'Report Management Information'. Sign in and access <a href="https://reportMI@crowncommercial.gov.uk">https://reportMI@crowncommercial.gov.uk</a> provided by the Authority for collection and receipt of Management Information;   |
| <b>"Request for Information"</b> | means a request for information relating to this Dynamic Marketplace Agreement or the provision of the Goods and/or Services or an apparent request for such information under the FOIA or the EIRs;  |
| <b>"Restricted Countries"</b>    | means a country outside the European Economic Area or any country which is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC;  |
| <b>"Self Audit Certificate"</b>  | means the certificate in the form as set out in DMP Schedule 10 (Annual Self Audit Certificate) to be provided to the Authority in accordance with Clause 18 (Records, Audit Access and Open Book Data);  |
| <b>"Service Period"</b>          | has the meaning given to it in DMP Schedule 4 (Template Order Form and Template Contract Terms) as refined by a Contracting Authority in a Contract between that Contracting Authority and the Supplier;  |
| <b>"Services"</b>                | means the services described in DMP Schedule 2 (Goods and/or Services and Key Performance Indicators) which the Supplier shall make available to Contracting Authorities;   |
| <b>"Specific Change in Law"</b>  | means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;  |
| <b>"SQ"</b>                      | has the meaning given to it in Recital B of this Dynamic Marketplace Agreement;   |
| <b>"SQ Response"</b>             | has the meaning given to it in Recital B of this Dynamic Marketplace Agreement;   |
| <b>"Quality Standards"</b>       | means: <ul style="list-style-type: none"> <li>a) any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the</li> </ul> |

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|                                    | <p>same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;</p> <p>b) any standards detailed in the specification in DMP Schedule 2 (Goods and/or Services and Key Performance Indicators);</p> <p>c) any Quality Standards detailed by a Contracting Authority in a Contract following a Call for Competition Procedure;</p> <p>d) any relevant Government codes of practice and guidance applicable from time to time.</p> |
| <b>"Statement of Requirements"</b> | means a statement issued by the Authority or any Other Contracting Authority detailing its Goods and/or Services Requirements issued in accordance with the Call for Competition Procedure;  |
| <b>"Sub-Contract"</b>              | <p>means any contract or agreement (or proposed contract or agreement) to which a third party:</p> <p>(a) provides the Goods and/or Services (or any part of them);</p> <p>(b) provides facilities or services necessary for the provision of the Goods and/or Services (or any part of them); and/or</p> <p>(c) is responsible for the management, direction or control of the provision of the Goods and/or Services (or any part of them);</p>  |
| <b>"Sub-Contractor"</b>            | means any person other than the Supplier who is a party to a Sub-Contract and the servants or agents of that person;   |
| <b>"Sub-processor"</b>             | means any third party appointed to process Personal Data on behalf of the Supplier related to this agreement;  |
| <b>"Supplier"</b>                  | means the person, firm or company stated in the preamble to this Dynamic Marketplace Agreement;  |
| <b>"Supplier Action Plan"</b>      | means a document, maintained by the Authority, capturing information about the relationship between the Parties including, but not limited to strategic objectives, actions, initiatives, communication channels, risks and supplier performance;  |
| <b>"Supplier Personnel"</b>        | means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of its obligations under this Dynamic Marketplace Agreement or any Contracts;  |
| <b>"Supplier Profit"</b>           | means, in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions (as defined in Contract Schedule 1 (Definitions)))   |

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|  | and total Costs (in nominal cash flow terms) in respect of any Contracts for the relevant period;   |
| <b>"Supplier Profit Margin"</b>              | means, in relation to a period, the Supplier Profit for the relevant period divided by the total Charges over the same period in respect of any Contracts and expressed as a percentage;  |
| <b>"Supplier Representative"</b>             | means the representative appointed by the Supplier from time to time in relation to this Dynamic Marketplace Agreement;   |
| <b>"Supplier's Confidential Information"</b> | means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential; |
| <b>"System"</b>                              | means an electronic system to monitor and collect the Management Levy;  |
| <b>"Template Contract Terms"</b>             | means the template terms and conditions in Annex 2 to DMP Schedule 4 (Template Order Form and Template Contract terms);   |
| <b>"Template Order Form"</b>                 | means the template form in Annex 1 to DMP Schedule 4 (Template Order Form and Template Contract terms);   |
| <b>"Termination Notice"</b>                  | means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination;  |
| <b>"Transparency Reports"</b>                | means the information relating to the Services and performance of this DMP Agreement which the Supplier is required to provide to the Authority in accordance with the reporting requirements in DMP Agreement Schedule 21  |
| <b>"Variation"</b>                           | has the meaning given to it in Clause 19.1.1 (Variation Procedure);   |
| <b>"Variation Form"</b>                      | means the form that will be completed and signed by the Parties to effect a Variation which shall be in the form set out in DMP Schedule 19 (Variation Form);   |
| <b>"Variation Procedure"</b>                 | means the procedure for carrying out a Variation as set out in Clause 19.1 (Variation Procedure);   |
| <b>"VAT"</b>                                 | means value added tax in accordance with the provisions of the Value Added Tax Act 1994;  |

**"Working Days"**

means any day other than a Saturday, Sunday or public holiday in England and Wales.

SAMPLE

## DMP SCHEDULE 2: GOODS AND/OR SERVICES AND KEY PERFORMANCE INDICATORS

### PART A – GOODS AND/OR SERVICES

#### GENERAL

The purpose of this Part A of DMP Schedule 2 (Goods and/or Services and Key Performance Indicators) is to lay down the characteristics of the Goods and/or Services that the Supplier will be required to make available to all Contracting Authorities under this Dynamic Marketplace Agreement (including, if applicable, in each Lot) together with any specific Quality Standards applicable to the Goods and/or Services.

The Goods and/or Services and any Quality Standards set out in paragraph 2 below may be refined (to the extent permitted and set out in DMP Schedule 5 (Call for Competition Procedure)) by a Contracting Authority during a Call for Competition Procedure to reflect its Goods and/or Services Requirements for entering a particular Contract.

#### 1. SPECIFICATION

##### 1.1. Our priorities

- 1.1.1. Crown Commercial Service (CCS) key priorities are to build and increase capacity of high quality apprenticeship training and related services through the creation of a dynamic commercial model which is able to respond to the changing needs of public sector customers, the introduction of new Apprenticeship Standards, and the evolving supply market.
- 1.1.2. The aim is to make it quick and easy for any public sector employer to source and transact with an Apprenticeship Training Provider and or End-point Assessment Organisation (EPAO) whilst complying with both the Public Procurement Regulations, ESFA Apprenticeship Funding Rules and Conditions for organisations on the register (APAR).

##### 1.2. Scope

- 1.2.1. This RM6102 DMP Agreement shall include services that can be supplied by the successful Suppliers over the life of the DMP and within the scope of SASE frameworks and Apprenticeship Standards, EPAs, related training and services. The Supplier shall provide products and services as detailed in this DMP Schedule 2 (Key Performance Indicators and Services) of RM6102 DMP Agreement.
- 1.2.2. **Core Requirements:** The Supplier shall offer either one or a combination of the following core services on a national scale or across multiple and single locations:

###### 1.2.2.1. SASE Frameworks

- The SASE Frameworks on this DMP will be listed as per the 'LIVE' SASE frameworks on the ESFA website:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/752583/Apprenticeships\\_framework\\_delivery\\_list\\_Oct\\_2018\\_v3.xlsx](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752583/Apprenticeships_framework_delivery_list_Oct_2018_v3.xlsx)

- The Supplier shall deliver the SASE frameworks to support the relevant requirements, including the knowledge, competence skills and qualifications as detailed in each of the SASE framework documents. The provider will ensure that all qualifications and certification that is relevant for the SASE framework is met.

#### 1.2.2.2. **Apprenticeship Standards**

- The Apprenticeship Standards on this DMP Agreement will be listed as per the 'APPROVED' standards on the Institute of Apprenticeships website:

<https://www.instituteforapprenticeships.org/apprenticeship-standards/?includeApprovedForDelivery=true>

- The Supplier shall deliver the Apprenticeship Standards to support the relevant requirements, including the knowledge, skills and behaviours as detailed in each of the Apprenticeship Standard documents. The Supplier will ensure that all qualifications and certification that is relevant for the standard is met.

#### 1.2.2.3. **End-point Assessment (EPA)**

- Suppliers can be a Training Provider for SASE frameworks, Apprenticeships Standards and or EPAs on this DMP Agreement. However unless the assessment plans states otherwise employers cannot select their apprentices' training organisation to be the end-point assessment organisation.
- The Supplier, in agreement with the Customer, shall select an organisation to deliver the EPA from the RoEPAO. The list can be found at:  
<https://download.apprenticeships.education.gov.uk/apar>
- The Supplier shall ensure that the registered EPAO and the assessor is independent of, and separate from, the training provided by the Supplier and Customer in accordance with the ESFA Funding Rules. The Customer will have the final sign off the EPAO.

The EPA will be carried out in accordance with the assessment plan for the relevant standard outlined on the Institute for Apprenticeships website.

- The Supplier will include all EPA costs within their charging models.
  - In addition this DMP enables the Customer to procure an EPA independently from the apprenticeship provider. As detailed in Attachment 1b RM6102 Apprenticeship Training Dynamic Marketplace –End-point Assessment (EPA) Services Matrix.
  - It is expected that the list of apprenticeship standards, for which EPAs are required, independently from the apprenticeship training provider, will grow throughout the duration of the RM6102 DMP Agreement.
- 1.2.3. **Optional Requirements:** Customers may include within their requirements supplementary service requirements. These are a Customer’s optional ancillary requirements that enhance or otherwise supplement the core requirement(s).
- 1.2.4. The Supplier may provide supplementary service requirement(s) that fall within the scope of the requirements of the DMP Agreement and which Customers may require to deliver their Apprenticeships schemes.
- 1.2.5. The supplementary service requirements may include, but not limited to the following:
- Delivery of apprenticeship training and management of the funding administration in accordance with the funding rules within the devolved administrations, either directly, or through Training Providers registered with the devolved administration;
  - Supporting the sourcing, selection and assessment, recruitment and administration of the Apprentices; including drafting job descriptions, attracting candidates, skills screening, long-listing and shortlisting, interview scheduling and references;
  - Bespoke, contextualise and/or package the Apprenticeship learning to suit the specific needs of the Apprentice and meet with the Customer requirements. In all cases the integrity of the learning outcome to the relevant SASE framework or Apprenticeship Standard shall be maintained.
  - Associated training related to the Apprenticeship Standard to support the development of the apprentice, this may be in the form of additional training modules or programmes delivered prior to the start of the apprenticeship or alongside of it i.e. Traineeships and supplementary training modules;
  - Providing advice, guidance and support and working with Customers to establish the opportunity to co-invest in apprenticeships if there are insufficient funds in the Customers digital account.
  - Additional services that are defined within ESFA Funding Rules as eligible or ineligible apprenticeship training costs for the purposes of apprenticeship levy funding;

- Additional services that are defined within the ESFA Conditions for RoEPAO as eligible or ineligible EPA costs for the purposes of apprenticeship levy funding.
- 1.2.6. It is anticipated that some of the supplementary services may be included as added value within the Suppliers core offer and subject to no additional charge.
  - 1.2.7. The Supplier shall be aware that the Customer, were applicable, will be liable to pay the Supplier directly for any agreed charges relating to the supplementary service requirements, which exceed the funding band maximum and or are not classed as eligible costs for the purposes of the apprenticeship levy funding.
  - 1.2.8. The Supplier may only offer supplementary services to Customers who are procuring, or who have procured, a core requirement(s) under this DMP Agreement.
  - 1.2.9. The provision of any supplementary services must comply with the scope and terms of the DMP Agreement.

## **2. Mandatory Service Requirements**

The Supplier shall be required to deliver and fulfil all of the mandatory service requirements as listed for the RM6102 Apprenticeship Training Dynamic Marketplace (DMP) Agreement.

### **2.1. Statutory Requirements**

- 2.1.1. The Supplier shall will be registered on the ESFA Apprenticeship Provider and Assessment Register (APAR) via the main application route to deliver Apprenticeship Training Services and shall deliver the services in accordance with the ESFA Funding Rules for Training Providers. Further information can be found at:  
<https://www.gov.uk/guidance/apprenticeship-funding-rules>
- 2.1.2. The Supplier shall be registered on ESFA APAR to deliver End-point Assessments and shall deliver the services in accordance with the conditions for organisations on the register of end-point assessment organisations. Further information can be found at:  
<https://download.apprenticeships.education.gov.uk/apar>
- 2.1.3. The Supplier shall have in place a financial strategy that is simple, clear and in line with Department for Education DfE and ESFA funding policy. Further information can be found can be found at:  
<https://www.gov.uk/government/publications/apprenticeship-funding>

2.1.4. The Supplier and or Customer shall arrange for the delivery of the apprentice EPA, which must be conducted by an organisation listed on the ESFA RoEPAO.

2.1.5. The Supplier and or Customer, shall select an organisation to deliver the EPA from the RoEPAO. The list can be found at <https://download.apprenticeships.education.gov.uk/apar>.

## **2.2. Apprenticeship Training Service Delivery**

2.2.1. The Supplier shall provide the Customers with a named Account Manager if required, with the level of account management provided by the Supplier being proportionate to the size and requirements of the Customers contract.

2.2.2. The Supplier shall work in partnership with Customers to ensure that robust, consistent and appropriate management, training, and administrative processes are in place to support the delivery of apprenticeships programmes and EPAs across the Customers organisation.

2.2.3. The Supplier shall lead on all aspects of programme administration including venue booking for off-site training, production of learning materials, apprentice and line manager communications.

2.2.4. The Supplier shall ensure that any facilities including rooms, training centres etc. are appropriate for the SASE framework / apprenticeship standard being delivered and are suitable for the apprentice in terms of hygiene.

2.2.5. The Supplier shall provide support to the Customer in their funding and management of their apprenticeship digital accounts and ensure where relevant they support the Customer to ensure that apprenticeship levy funds are managed accurately.

2.2.6. The Supplier shall add apprentices onto the digital account once approval is received from the Customer, it is the responsibility of the Supplier to ensure that all apprentices are setup on the system prior to the start of the apprenticeship.

2.2.7. The Supplier shall develop and deliver high quality training throughout the duration of the apprenticeship programme. This will include, and shall not be limited to all elements defined in the published Apprenticeship Standards and or SASE Frameworks covering the relevant knowledge, skills, behaviours, competence and qualifications.

2.2.8. The Supplier shall support the Customer in evidencing that the apprentice spends the mandatory minimum of their working hours learning off-the-job and provide a delivery mix in a way that best works for apprentices and Customers.

2.2.9. The Supplier shall ensure the delivery of the minimum off the job training in accordance with the ESFA Funding Rules. Guidance on off the job training can be supported by the link below and should be applied by the Supplier when delivering off-the-job training:

<https://www.gov.uk/government/publications/apprenticeships-off-the-job-training>

- 2.2.10. The Supplier shall ensure that the training programme content is relevant, technically accurate, engaging and up-to-date and is regularly refreshed to align with any changes to the Apprenticeship Standards.
- 2.2.11. The Supplier shall ensure all coaches have a professional qualification and a minimum of 2 years' experience in a role related to the apprenticeship subject area and can provide Customers with the relevant curriculum vitae as evidence.
- 2.2.12. The Supplier shall ensure that coaches, programme tutors, trainers and demonstrate a high level of competence, relevant experience of the Apprenticeship programme requirements and that their Apprenticeship subject area knowledge is kept up-to-date.
- 2.2.13. The Supplier shall have adequate contingency plans in place should there be an issue with a coach, programme tutor, trainer and or a delivery location etc. If a coach, programme tutor or trainer is taken ill then the appropriate cover or arrangements should be made by the Supplier.
- 2.2.14. The Supplier shall have in place an effective quality assurance process, which includes monitoring and reviewing coach, programme tutor and trainer performance.
- 2.2.15. The Supplier shall ensure that adequate and appropriate resources are available at all times to ensure that Service Levels for Customers are not compromised, particularly during times of peak demand.
- 2.2.16. The Supplier shall provide a range of formal and informal feedback mechanisms to evaluate both the Customer and Apprentice satisfaction levels, so as to measure the success of the programme and the experiences of the Apprentices.
- 2.2.17. The Supplier shall use the Customer and Apprentice feedback to reflect back on future programmes to enable continuous improvement in the Apprenticeship programme.
- 2.2.18. The Supplier shall maintain Individual Learner Records (ILR) that comply with the ESFA requirements.
- 2.2.19. The Supplier shall have in place a clear process and schedule for the payment of each element of the Apprenticeship and End-point Assessment (EPA).

### **2.3. Apprentice Service Delivery**

- 2.3.1. The Supplier shall carry out a full, robust initial assessment to ensure that Apprentices are on the right programme and at the right level for the Apprentice.
- 2.3.2. The Supplier shall make arrangements to provide additional support for Apprentices identified as needing it through initial assessment or e.g. through an education, health and care plan.

- 2.3.3. The Supplier shall identify relevant needs for reasonable adjustment at the point of application for the Apprenticeship. The Customer will have responsibility for meeting those needs in the workplace.
- 2.3.4. The Supplier shall provide a detailed timetable of support, including Information, Advice and Guidance (IAG) for each Apprentice setting out a plan for each individual Apprenticeship pathway. The Supplier shall ensure IAG continues throughout the Apprenticeship programme to help keep the Apprentice on track and aware of what they need to do to progress.
- 2.3.5. The Supplier shall allocate specific support to each Apprentice, in the form of a programme tutor, from enrolment on the Apprenticeship through to EPA qualification. The Supplier shall have in place a process to ensure the consistency and the quality of the line manager support provided.
- 2.3.6. The Supplier shall ensure, for consistency, that, wherever possible, the same coaches, programme tutors and trainers and other supporting staff will be assigned to an apprentice for the entire duration of the training programme and in the event that this is not possible the Supplier shall ensure a like for like replacement in terms of qualifications, knowledge, skills and expertise.
- 2.3.7. The Supplier shall conduct interim and formal progress reviews with the Apprentice and with input from trainers, assessors and Customer employers, this shall not be limited to;
- Organising a schedule of regular progress review meetings. The format and frequency of reviews will be agreed with the Customer;
  - Involving the Apprentice and the workplace supervisor in the reviews;
  - Identifying progress for learning aims – both to date and between reviews;
  - Reflecting on and recording progress made towards the Apprentice's learning goals;
  - Reviewing the Apprentice's Individual Learning Plan and monitoring the achievement of agreed milestones;
  - Agreeing and recording actions and targets between reviews;
  - Monitoring and tracking the Apprentice's progress to ensure they are meeting their targets and identify at an early stage those Apprentices requiring additional support and amending the training plan accordingly;
  - Ensuring the workplace supervisor is involved throughout the Apprentice learner journey and the assessment of the Apprentice suitability for entry into the 'Gateway';
  - Assessing that an Apprentice has reached the 'Gateway' and determine the Apprentice's readiness for the End-point Assessment (EPA); and
  - Ensuring the Apprentice and the workplace supervisor have a copy of the record of the reviews.

2.3.8. The Supplier shall support Apprentice's that may require additional interventions, intensive coaching and monitoring to ensure they successfully complete the apprenticeship.

## **2.4. End-point Assessment (EPA) Service Delivery**

2.4.1. The Supplier and or Customer shall ensure the Apprentice undergoes an EPA at the very end of the on-programme phase of training when the Customer and Supplier are satisfied that they have met the "Gateway" criteria to undertake the assessment.

2.4.2. The Supplier shall ensure the EPA is conducted in accordance with the requirements set out in the assessment plan that accompanies each Apprenticeship Standard.

2.4.3. The Supplier shall ensure transparency around costs and Service Level agreements for the touch points in the EPA pathway. This will include a full library of products and the timeline and process for issuing. This library will include, but is not limited to, the following:

- an induction programme;
- an Apprentice handbook;
- a line manager guide;
- a detailed summary of the delivery model;
- a detailed summary of the Apprenticeship learner journey process;
- a detailed summary of the costing model; and
- a detailed summary of the payment process

2.4.4. The Supplier shall provide a robust assessment process for assessment of the Apprenticeship Standard and any related qualifications and this shall include but is not limited to, the following:

- Defining the cost of the EPA (this will clarify what proportion of overall costs are charged by the Training Provider for their services and the EPA respectively);
- Providing assessment criteria/guidance at the start of the Apprenticeship for Apprentices and line managers to work with;
- Providing training to ensure quality, standardisation and consistency for all EPA panel members;
- Giving the Apprentice at least one month advance notification of their assessment appointment, to enable them to prepare;
- Assessing all individuals who have embarked on their Apprenticeship no later than 8 weeks from the end of their Apprenticeship period;
- Conducting the assessment in the Apprentices 'home' office location where possible, or as a minimum regionally as agreed with the Customer;
- Wherever possible undertake multiple assessments in a single day in order to maximise delivery and minimise costs;
- Providing a meaningful written narrative containing detailed feedback for each assessment which will be provided to both the Apprentice and their

Line Manager within one week of the assessment taking place. The feedback must indicate any areas that need to be addressed by individuals who fall into the Fail category; and

- Allowing flexibility for any adjustments in the assessment standards and for these to be reflected in the assessment process itself should that standard change for any reason.

2.4.5. The Supplier shall support Apprentices to reflect on what they have learnt on the apprenticeship programme and consider their next steps. This will mean working with Customers to make apprentices aware of the progression opportunities available to them.

## 2.5. Digital Delivery

2.5.1. The Supplier shall deliver a flexible and proportionate model of digital support to Apprentices to develop and improve their skills and abilities to enable them to meet the Apprenticeship Standard and or Framework within the terms of their Apprenticeship agreement.

2.5.2. The Supplier shall ensure that the digital 'online' Apprenticeship system build meets the Digital by Default Service Standard, details of which can be found at: <https://www.gov.uk/service-manual/digital-by-default>

2.5.3. The Supplier shall ensure that any training is compatible with IT standards of Government departments as specified in the Government Digital Service Standard 10 (or any successor standard).

2.5.4. The Supplier shall ensure that their Learning Management System (LMS) can be modified to meet the specific Information Technology (IT) requirements of individual Customers.

2.5.5. **CCS recognises that it needs to ensure that its ICT products and services can be used by everyone (who is designated as an authorised user), whether Customer internal staff or external customers from a population of the widest range of characteristics and capabilities.** In order to achieve this the European Standard 'EN 301 549 Accessibility requirements suitable for public procurement of ICT products and services in Europe' (which includes extending the Web Content Accessibility Guidelines 2.0, success criterion AA (WCAG v2 AA) to non-web systems) has been adopted as the minimum accessibility standard.

2.5.6. The Supplier shall not be required to achieve the EN301 549 standard, however the LMS system must have functionality to meet key accessibility elements of the standard. This may need to be achieved through the use of hardware and/or software being added or connected to a system that increases accessibility for an individual.

## **2.6. Data Security**

- 2.6.1. The Supplier shall be required to have their own security operating procedures that shall be made available, on request, to the CCS and/or Customers to provide assurance of data security.
- 2.6.2. The Supplier shall ensure that Customers' information and data (electronic and physical) shall be collected, held and maintained in a secure and confidential manner and in accordance with the Terms of the RM6102 DMP Agreement for any individual contracts awarded.
- 2.6.3. The Supplier shall ensure that all Supplier Personnel involved in the performance of any individual contracts awarded under this RM6102 DMP Agreement shall comply with all customer data security and confidentiality requirements.
- 2.6.4. The Supplier shall ensure appropriate security standard, controls and measures are in place such as access to premises.
- 2.6.5. The Supplier shall provide secure premises for all individual contracts awarded under the DMP Agreement which meet Contacting Authorities individual security protocols.
- 2.6.6. The Supplier shall comply with the specific Customers personnel and physical security requirements, where a Supplier delivers all or part of the Service from a Customers site.
- 2.6.7. The Supplier shall ensure that any suspected or actual security breaches are reported to the Customers' representative immediately.
- 2.6.8. The Supplier shall provide details of their personnel security procedures and upon request by Customers, details of all personnel that they intend to use in the delivery of the Goods and Services.
- 2.6.9. The Supplier shall ensure that Customers information and data is secured in a manner that complies with the Government Security Classification Policy rating.
- 2.6.10. The Supplier shall ensure that the Government Security Classification Policy rating is also applied when information and data is transmitted across all applicable networks and/or in line with the Customers' requirements.
- 2.6.11. For further information, the Government Security Classification 2014 may be accessed here: <https://www.gov.uk/government/publications/government-security-classifications>

## **2.7. Security Vetting and Clearance**

- 2.7.1. The Supplier shall ensure that all Supplier Personnel security vetting procedures, under the DMP Agreement and individual Contracts entered into under it by Customers and Suppliers, are conducted in line with the Cabinet Office Security Policy Framework (SPF). Full details of the Cabinet Office SPF can be viewed via the link below:

<https://www.gov.uk/government/collections/government-security>

2.7.2. The Supplier shall have in place security vetting and clearance which meets the differing requirements of Customers, and shall ensure compliance with the standards set out in the following link:

2.7.3. <https://www.gov.uk/government/publications/hmg-personnel-security-controls>

2.7.4. The Supplier shall where applicable provide details of its Supplier Personnel security procedures to Customers and contact details of all Supplier Personnel who will be involved in the delivery of the Services, when requested by Customers.

2.7.5. The Supplier shall ensure that all employees and key representatives of the Supplier working on DMP Agreement or related Contracts shall comply with the Customers security clearance requirements.

2.7.6. The Supplier shall be aware that customers may perform audits which may include checking compliance with the security requirements above and/or the additional requirements specified by Customers.

## **2.8. Confidentiality Agreement**

2.8.1. The Supplier shall ensure that each of its employees and subcontractors are briefed on organisational security procedures and the provisions of the Official Secrets Act 1911-1989 and the Customer may require the Supplier to sign a Confidentiality Agreement that affirms that they understand the provisions of the Official Secrets Act and the consequences of a breach of it. Suppliers' employees and subcontractors must not disclose any privileged information they may come across in the course of their work.

2.8.2. The Supplier shall ensure that line managers maintain the standards of security expected and brief employees about the protection of assets and processes under their control. In particular, the Supplier shall identify potential difficulties or conflicts of interests among employees and report any concerns to the Customer.

## **2.9. Customer Support Service**

2.9.1. The Supplier shall be required to provide and maintain a dedicated customer service team which will act as the first point of contact and focal point for all enquiries from Customers.

2.9.2. The Supplier shall provide a free of charge dedicated helpdesk service that shall comply with the following:

- Provision of a customer service helpdesk which shall be open to answer general enquiries and shall operate as a minimum from office hours 08:30 until 17:30 Monday to Friday throughout the year excluding England and Wales public holidays.

- 2.9.3. The Supplier shall ensure that all Supplier Personnel appointed to the helpdesk have the relevant skills, experience and knowledge of the services offered under the DMP Agreement and have the capability to manage Customer relations in a professional manner.
- 2.9.4. The Supplier shall provide support to all Customer queries, which will include but not be limited to providing:
- Advice and support employers to claim any additional employer incentive payments (compilation, age etc.);
  - Advice on their individual requirements;
  - Plan most cost effective delivery model (agree locations of cohorts etc.); and
  - Resolve any issues.
- 2.9.5. The Supplier shall be responsible in ensuring that all enquiries received from Customers are dealt with and resolved in accordance with the Service Level Agreement.

## **2.10. Complaints Handling**

- 2.10.1. The Supplier shall have a robust and auditable complaints procedure for logging, investigating, managing and escalating and resolving complaints initiated by Customers and their apprentices.
- 2.10.2. The supplier shall ensure its complaints procedure complies to the following;
- All complaints shall be logged and acknowledged within twenty four 24 hours of receipt;
  - 90% of complaints shall be resolved within 10 working days of receipt and 100% within 20 working days of receipt unless otherwise agreed with the Contracting Authorities;
  - All complaints shall be recorded, together with the actions and timescales taken to resolve the complaint.

- 2.10.3. The Supplier shall ensure that the level and nature of complaints arising and proposed corrective action that are under way or completed will be reviewed by the parties periodically, as appropriate according to the numbers of complaints arising, and in any event at intervals of not less than one (1) month if required by the customer.
- 2.10.4. The Supplier shall analyse and identify any pattern of complaints and bring these to the attention of the Customer during supplier performance review meetings.
- 2.10.5. The Supplier shall provide the Customer with a consolidated report at a frequency agreed with the Customer, for the duration of the contract capturing all complaints. These reports shall include the date the complaint was received and resolved, complainant contact details, the nature of the complaint and actions agreed and taken to resolve the complaint and any changes to the programme and lessons learnt.

## **2.11. Supplier ESFA Management Information and Data Reporting**

- 2.11.1. The Supplier shall have appropriate management information systems in place to collect, check, manage and return monthly data to the ESFA through the Individual Learner Record (ILR) and other learner data collection as specified in the link below:
- <https://www.gov.uk/government/collections/individualised-learner-record-ilr>

## **2.12. Supplier Customer Management Information and Data Reporting**

- 2.12.1. The Supplier shall provide regular, secure and accurate MI to Customers to monitor starts, completions and progress against apprenticeship and end-point assessments. This must be provided on the basis of the cohort as a whole and for individual apprentices and adhere to General Data Protection Regulations (GDPR), records and retention policies, data transfer agreements with the employer and information security requirements.
- 2.12.2. The Supplier shall provide MI, on a frequency to be agreed with the Customer, which will detail the number of Apprentices assessed in week/month and by rolling total to date, highlighting any re-sits. Further reporting MI will include, but shall not be limited to:
- Number of passes, distinctions and fails in week and by rolling total, highlighting any re-sits in amongst these;
  - Total numbers of Apprentices scheduled for assessment and broken down by region and Customer organisation, highlighting any re-sits in amongst these;
  - Number of Apprentices not yet scheduled for assessment, by region and by Customer, highlighting any re-sits in amongst these;
  - Full details of Apprentices who have needed to reschedule their assessment (name/ organisation/ location/ employment contract end date etc.), highlighting any re-sits in amongst these;

- Full details of any Apprentices who are unavailable for assessment at any point full within 6 weeks of the expiration of the period of their Apprenticeship;
  - Precise details of any Apprentices who fail to attend their scheduled assessment appointment.
- 2.12.3. The Supplier shall have the flexibility to produce for the Customer any requested tailored / non-standard MI reports free of charge on a number of different levels, including but not limited to the Apprentice and Customer scheme.
- 2.12.4. The Supplier shall provide data, reports and information on request from Customer on an ad hoc basis to assist with Freedom of Information (FOI) requests, Parliamentary Questions (PQs) or other committee requests.

### **2.13. Other Data Reporting**

- 2.13.1. The Supplier shall provide CCS, on request, case studies, for the duration of this DMP Agreement, which will evidence benefits and/or added value of this DMP Agreement, subject to the agreement of the relevant Customer.
- 2.13.2. The Supplier shall comply with CCS and/or Customers equality and diversity data collection and monitoring requirements. The Supplier will be required to provide such data and information if applicable and as specified by the Customer.

## PART B – KEY PERFORMANCE INDICATORS

### 1. General

- 1.1 The purpose of this Part B is to set out the KPIs by which the Supplier’s overall performance under this Dynamic Marketplace Agreement shall be monitored and managed. The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the Dynamic Marketplace Period, however any significant changes to KPIs shall be agreed between the Authority and the Supplier in accordance with Clause 19.1 (Variation Procedure).
- 1.2 The Supplier shall comply with all its obligations related to KPIs set out in this Dynamic Marketplace Agreement including DMP Schedule 8 (DMP Management) and shall use all reasonable endeavours to meet the KPI Targets identified in the table below.
- 1.3 The KPIs from which performance by the Supplier of this Dynamic Marketplace Agreement will be reported against are set out below:

| Key Performance Indicator (KPI)   | KPI Target | Measured by  |
|---|------------|--|
| <b>1. DMP MANAGEMENT</b>  |            |  |
| 1.1 MI returns: All MI returns, reporting spend under the DMP, to be returned to CCS; MI can be submitted up to and including the 7th day of each month | 100%       | Confirmation of receipt and time of receipt by the Authority (as evidenced within the Authority’s data warehouse (RMI) system) |
| 1.2 All undisputed invoices to be paid within 30 calendar days of issue   | 100%       | Confirmation of receipt and time of receipt by the Authority (as evidenced within the Authority’s CODA system)                 |
| 1.3 Supplier self-audit certificate (DMP Schedule 10) to be issued to the   | 100%       | Confirmation of receipt and time of  |

|  |      |  |
|--|------|--|
| Authority in accordance with the Dynamic Marketplace Agreement   |      | receipt by the Authority   |
| 1.4 Actions identified in an Audit Report to be delivered by the dates set out in the Audit Report   | 100% | Confirmation by the Authority of completion of the actions by the dates identified in the Audit Report   |
| 1.5 Supplier to report to CCS annually on all competitions in which they have participated; report to include competition date, customer, brief description and whether supplier was successful or not.  | 100% | Confirmation of receipt by the Authority   |
| 1.6 Supplier to report to CCS annually on failure to accept Rapid Awards or participate in Further Competitions and Request for Quotes for reasons other than 'Conflict(s) of Interest' or 'Lack of availability of Resource' must remain as six (6) or fewer occurrences in any rolling twelve (12) month period. | 100% | Confirmation of receipt by the Authority   |
| 1.7 Supplier to maintain accurate contact information for both the Authority and Contracting Authority.  | 100% | Confirmation by Supplier that they have kept the Authority up to date with any key contact personal changes. Confirmation by the Authority that no issues have arisen resulting from inaccurate/out of date Supplier contact information |

### **DMP SCHEDULE 3: DMP PRICES AND CHARGING STRUCTURE**

1. The Dynamic Marketplace Prices and Charging Structure shall be determined by the Contacting Authority at Call for Competition stage.

SAMPLE

SAMPLE

**PART A**

## Pricing Matrix Quarterly Adjustment Schedule

Please note: You will have the opportunity to be update the 'Percentage Discount of Levy Funding' in your pricing matrix(s) on a quarterly basis, as per the dates specified in the 'Pricing Matrix Quarterly Adjustment Schedule' below.

Failure to update your 'Percentage Discount of Levy Funding' on the specified quarterly date(s) will mean you will not be able to update your prices until the following quarter.

| <b>Day</b>  | <b>Month</b> | <b>Year</b> |
|---|--------------|-------------|
| 2 <sup>nd</sup>   | July         | 2019        |
| 1 <sup>st</sup>   | October      | 2019        |
| 2 <sup>nd</sup>   | January      | 2020        |
| 1 <sup>st</sup>   | April        | 2020        |
| 1 <sup>st</sup>   | July         | 2020        |
| 1 <sup>st</sup>   | October      | 2020        |
| 4 <sup>th</sup>   | January      | 2021        |
| 1 <sup>st</sup>   | April        | 2021        |
| 1 <sup>st</sup>   | July         | 2021        |
| 1 <sup>st</sup>   | October      | 2021        |
| 3 <sup>rd</sup>   | January      | 2022        |
| 1 <sup>st</sup>   | April        | 2022        |
| 1 <sup>st</sup>   | July         | 2022        |
| 3 <sup>rd</sup>   | October      | 2022        |
| 2 <sup>nd</sup>   | January      | 2023        |
| The Authority may extend the duration of this Dynamic Marketplace Agreement for any period or periods up to a maximum of 2 years (24 months) in total from the expiry of the Initial Dynamic Marketplace Period in this instance the following dates will apply |              |             |
| 3 <sup>rd</sup>   | April        | 2023        |
| 2 <sup>nd</sup>   | July         | 2023        |
| 2 <sup>nd</sup>   | October      | 2023        |
| 2 <sup>nd</sup>   | January      | 2024        |
| 1 <sup>st</sup>   | April        | 2024        |
| 1 <sup>st</sup>   | July         | 2024        |
| 1 <sup>st</sup>   | October      | 2024        |
| 2 <sup>nd</sup>   | January      | 2025        |

**DMP SCHEDULE 4: TEMPLATE ORDER FORM AND TEMPLATE CONTRACT TERMS**

**CCS INSERT CONTRACT TERMS AND CONTRACT ORDER FORM HERE**

SAMPLE

## **DMP SCHEDULE 5: CALL FOR COMPETITION PROCEDURE**

### **1. AWARD PROCEDURE**

- 1.1 If the Authority or any Other Contracting Authority decides to source the Goods and/or Services through this Dynamic Marketplace Agreement then it will award its Goods and/or Services Requirements in accordance with the procedure in this DMP Schedule 5 (Call for Competition Procedure) and the requirements of the Regulations and the Guidance. For the purposes of this DMP Schedule 5, "**Guidance**" shall mean any guidance issued or updated by the Authority from time to time in relation to the Regulations.

### **2. CALL FOR COMPETITION PROCEDURES**

#### **Contracting Authority's Obligations**

- 2.1 Any Contracting Authority awarding a Contract under this Dynamic Marketplace Agreement must do so through either the Rapid Award Procedure, the Standard Award Procedure or an Online Call for Competition Procedure.
- 2.2 Online Call for Competition Procedure
- 2.2.1 The Authority may develop an entirely new Online Call for Competition Procedure. Any consequential amendments to this Agreement in order to implement the new Online Call for Competition Procedure will be made in accordance with the change and variation clauses set out in this agreement, including clause 19.
- 2.2.2 The Contracting Authority will record their decision making reasons for award in the online tool and be provided with a journey confirmation note detailing the filters they applied.
- 2.3 Rapid Award Procedure.
- 2.3.1 The Contracting Authority shall at the beginning of the procurement journey confirm and record their Statement of Requirements in the Supplier Registration Service (SRS) within the auto generated free text box to be provided.
- 2.3.2 The Contracting Authority shall select award filters in accordance with their service requirements.
- 2.3.3 The award filters can be accessed within Attachments 1a (Apprenticeship Services Matrix) and 1b (End-point Assessment Matrix) of the RM6102 Apprenticeship Training Dynamic marketplace bid pack contained within the SRS.
- 2.3.4 The Authority may from time to time develop and innovate new award filters. Any consequential amendments to this Agreement in order to implement further award filters will be made in accordance with the change and variation clauses set out in this agreement.
- 2.3.5 Following completion of the award filters the Contracting Authority will be presented with a list of potential suppliers together with price information a prospectus and a short summary confirming general supplier and supplier identity information.

- 2.3.6 Each supplier prospectus will contain, but shall not be limited to, the following information: Supplier Information (organisation name, apprenticeship training services, Ofsted link, QAA link, office locations); Supplier overview (about this Supplier, experience in training, experience in apprenticeship training); Additional Services (recruitment and administration support, flexibility to bespoke, added value); and Additional Information (industry recognition, assurance certification, security management system and control).
- 2.3.7 The Contracting Authority will apply the contract award criteria set out at DMP Schedule 6 (Award Criteria) as the basis for the decision to award a Contract for its Statement of Requirements.
- 2.4 Standard Award procedure
- 2.4.1 The Contracting Authority shall at the beginning of the procurement journey confirm and record their Statement of Requirements in the Supplier Registration Service (SRS) within the auto generated free text box to be provided.
- 2.4.2 The Contracting Authority shall complete the award filters.
- 2.4.3 The award filters can be accessed within Attachments 1a (Apprenticeship Services Matrix) and 1b (End-point Assessment Matrix) of the RM6102 Apprenticeship Training Dynamic marketplace bid pack contained within the SRS.
- 2.4.4 The Authority may from time to time develop and innovate new award filters. Any consequential amendments to this Agreement in order to implement further award filters will be made in accordance with the change and variation clauses set out in this agreement.
- 2.4.5 The Contracting Authority shall:
- 2.4.6 amend or refine the Template Contract Form and Template Contract Terms to reflect its Statement of Requirements only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;
- 2.4.7 invite tenders by conducting a Call for Competition Procedure for its Statement of Requirements in accordance with the Regulations and Guidance.
- 2.4.8 apply the Competition Award Criteria to the DMP Suppliers' compliant tenders submitted through the Call for Competition Procedure as the basis of its decision to award a Contract for its Statement of Requirements;
- 2.4.9 on the basis set out above, award its Contract to the successful DMP Supplier in accordance with paragraph 6 which Contract shall:
- (a) state the Goods and/or Services Requirements;
  - (b) state the tender submitted by the successful DMP Supplier;
  - (c) state the charges payable for the Goods and/or Services Requirements in accordance with the tender submitted by the successful DMP Supplier; and

- (d) incorporate the Template Contract Form and Template Contract Terms (as may be amended or refined by the Contracting Authority in accordance with paragraph 2.4.6 above) applicable to the Goods and/or Services,
- 2.4.10 provide unsuccessful DMP Suppliers with written feedback in relation to the reasons why their tenders were unsuccessful.

### **The Supplier's Obligations**

- 2.5 The Supplier shall in writing, by the time and date specified by the Contracting Authority following an invitation to tender pursuant to paragraph 2.4.7 above, provide the Contracting Authority with either:
- 2.5.1 a statement to the effect that it does not wish to tender in relation to the relevant Statement of Requirements; or
  - 2.5.2 the full details of its tender made in respect of the relevant Statement of Requirements. In the event that the Supplier submits such a tender, it should include, as a minimum:
    - (a) an email response subject line to comprise unique reference number and Supplier name, so as to clearly identify the Supplier;
    - (b) a brief summary, in the email (followed by a confirmation letter), stating that the Supplier is bidding for the Statement of Requirements;
    - (c) a proposal covering the Goods and/or Services Requirements;
  - 2.5.3 The Supplier agrees that:
    - (a) all tenders submitted by the Supplier in relation to a Call for Competition Procedure held pursuant to this paragraph 2 shall remain open for acceptance by the Contracting Authority for ninety (90) Working Days (or such other period specified in the invitation to tender issued by the relevant Contracting Authority in accordance with the Call for Competition Procedure); and
    - (b) all tenders submitted by the Supplier are made and will be made in good faith and that the Supplier has not fixed or adjusted and will not fix or adjust the price of the tender by or in accordance with any agreement or arrangement with any other person. The Supplier certifies that it has not and undertakes that it will not:
      - (i) communicate to any person other than the person inviting these tenders the amount or approximate amount of the tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain quotations required for the preparation of the tender; and

- (ii) enter into any arrangement or agreement with any other person that he or the other person(s) shall refrain from submitting a tender or as to the amount of any tenders to be submitted.

**3. E-AUCTIONS – NOT USED**

**4. NO AWARD**

- 4.1 Notwithstanding the fact that the Contracting Authority has followed a procedure as set out above in clause 2 (Call for Competition Procedure(s)), the Contracting Authority shall be entitled at all times to decline to make an award for its Goods and/or Services Requirements. Nothing in this Dynamic Marketplace Agreement shall oblige any Contracting Authority to award any Contract.

**5. RESPONSIBILITY FOR AWARDS**

- 5.1 The Supplier acknowledges that each Contracting Authority is independently responsible for the conduct of its award of Contracts under this Dynamic Marketplace Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:
  - 5.1.1 the conduct of Other Contracting Authorities in relation to this Dynamic Marketplace Agreement; or
  - 5.1.2 the performance or non-performance of any Contracts between the Supplier and Other Contracting Authorities entered into pursuant to this Dynamic Marketplace Agreement.

**6. CONTRACT AWARD PROCEDURE – ONLINE**

- 6.1 In accordance with clause 2.2 of this schedule and clause 19 of the agreement the Authority may develop an entirely online call for completion procedure and will also develop an online Contract Award Procedure.

**7. CONTRACT AWARD PROCEDURE – RAPID AWARD PROCESS**

- 7.1 Subject to paragraphs 1 to 5 above, a Contracting Authority may award a Contract with the Supplier by sending (including electronically) a signed order form substantially in the form (as may be amended or refined by the Contracting Authority in accordance with paragraph 2.4.6 above) of the Template Order Form set out in DMP Schedule 4 (Template Order Form and Template Contract Terms). The Parties agree that any document or communication (including any document or communication in the apparent form of a Contract) which is not as described in either paragraph 6 or this paragraph 7 shall not constitute a Contract under this Dynamic Marketplace Agreement.
- 7.2 On receipt of an order form as described in paragraph 8.1 from a Contracting Authority the Supplier shall accept the Contract by promptly signing and returning (including by electronic means) a copy of the order form to the Contracting Authority concerned.
- 7.3 On receipt of the signed order form from the Supplier, the Contracting Authority shall send (including by electronic means) a written notice of

receipt to the Supplier within two (2) Working Days and a Contract shall be formed.

## **8. CONTRACT AWARD PROCEDURE – STANDARD AWARD PROCESS**

- 8.1 Subject to paragraphs 1 to 5 above, a Contracting Authority may award a Contract with the Supplier by sending (including electronically) a signed order form substantially in the form (as may be amended or refined by the Contracting Authority in accordance with paragraph 2.4.6 above) of the Template Order Form set out in DMP Schedule 4 (Template Order Form and Template Contract Terms). The Parties agree that any document or communication (including any document or communication in the apparent form of a Contract) which is not as described in either paragraph 6 or this paragraph 7 shall not constitute a Contract under this Dynamic Marketplace Agreement.
- 8.2 On receipt of an order form as described in paragraph 8.1 from a Contracting Authority the Supplier shall accept the Contract by promptly signing and returning (including by electronic means) a copy of the order form to the Contracting Authority concerned.
- 8.3 On receipt of the signed order form from the Supplier, the Contracting Authority shall send (including by electronic means) a written notice of receipt to the Supplier within two (2) Working Days and a Contract shall be formed.

## **DMP SCHEDULE 6: AWARD CRITERIA**

### **1. GENERAL**

- 1.1 This DMP Schedule 6 is designed to assist Contracting Authorities seeking to award a Contract through a Competition Procedure in accordance with the Call for Competition Procedure.
- 1.2 A Contract shall be awarded on the basis of most economically advantageous tender ("MEAT") from the point of view of the Contracting Authority.
- 1.3 This DMP Schedule 6 includes details of the evaluation criteria and any weightings that will be applied to that criteria.

SAMPLE

PART A: NOT USED

SAMPLE

**PART B**

**STANDARD AWARD PROCESS COMPETITION**

- 1.1 Contracting Authorities shall apply the relevant pass / fail award filter criteria, which can be accessed within Attachments 1a (Apprenticeship Services Matrix) and 1b (End-point Assessment Matrix), to the Goods and/or Services set out in the Suppliers' compliant tenders submitted through the Standard Award Process Competition.
- 1.2 Following the application of the pass/fail award filter criteria noted at 1.1 above, Contracting Authorities shall apply the relevant additional criteria to the Goods and/or Services set out in the Suppliers' compliant tenders submitted through the Standard Award Process Competition:

| Criteria Number | Criteria  | Percentage Weightings (or rank order of importance where applicable) - to be set by the Contracting Authority conducting the Competition |
|-----------------|---|--|
| 1               | Quality<br>which consists of the following criteria: <ul style="list-style-type: none"> <li>• Added value / innovation</li> <li>• Social value</li> <li>• Approach to delivery of the Services</li> <li>• Implementation Approach to training provision.</li> </ul> |  |
| 2               | Recruitment and Administration Support  |  |
| 3               | Flexibility to bespoke  |  |
| 4               | Security Management Systems and Controls  |  |
| 5               | Price   |  |

- 1.3 Weightings and sub-weightings for the evaluation criteria will be set by the Customer and shall add up to 100%.

## RAPID AWARD PROCESS COMPETITION

- 1.4 Contracting Authorities shall apply the relevant pass / fail award filter criteria, which can be accessed within Attachments 1a (Apprenticeship Services Matrix) and 1b (End-point Assessment Matrix), to the Goods and/or Services set out in the Suppliers' compliant tenders submitted through the Standard Award Process Competition.
- 1.5 Following the application of the pass/fail award filter criteria noted at 1.4 above, Contracting Authorities shall apply the relevant additional criteria to the Goods and/or Services set out in the Suppliers' compliant tenders prospectus and pricing matrix.

| Criteria Number | Criteria   | Percentage Weightings (or rank order of importance where applicable) - to be set by the Contracting Authority conducting the Competition |
|-----------------|--|--|
| 1               | <p>Quality</p> <p>[which consists of the following criteria:</p> <ul style="list-style-type: none"> <li>• Added value / innovation</li> <li>• Social value</li> <li>• Approach to delivery of the Services</li> <li>• Implementation</li> <li>• Approach to training provision.</li> </ul> |  |
| 2               | Recruitment and Administration Support   |  |
| 3               | Flexibility to bespoke   |  |
| 4               | Security Management Systems and Controls   |  |
| 5               | Price  |  |

- 1.6 Weightings and sub-weightings for the evaluation criteria will be set by the Customer and shall add up to 100%.

## **DPP SCHEDULE 7: SUB-CONTRACTORS**

1. In accordance with Clause 25.1 (Appointment of Sub-Contractors), the Supplier is entitled to sub-contract its obligations under this Dynamic Marketplace Agreement and any Contracts entered into pursuant to this Dynamic Marketplace Agreement, to the Sub-Contractors listed as part of your Selection Questionnaire and RM6102 Bid Pack – Attachment 4 (Additional Sub-contractors).

SAMPLE

## **DMP SCHEDULE 8: DMP MANAGEMENT**

### **1. INTRODUCTION**

1.1 The following definitions shall apply in addition to the definitions contained in the DMP Schedule 1 (Definitions):

|                                   |  |
|-----------------------------------|--|
| <b>"Supplier DMP Manager"</b>     | has the meaning given to it in paragraph 2.1.1 of this DMP Schedule 8; and |
| <b>"Supplier Review Meetings"</b> | has the meaning given to it in paragraph 2.2.1 of this DMP Schedule 8.     |

1.2 The successful delivery of this DMP Agreement will rely on the ability of the Supplier and the Authority to develop DMP relationships DMP Period.

1.3 This DMP Schedule 8 outlines the general structures and management activities that the Parties shall follow during the DMP Period.

### **2. DMP MANAGEMENT**

#### **2.1 DMP Management Structure:**

2.1.1 The Supplier shall provide a suitably qualified nominated contact (the **"Supplier DMP Manager"**) who will take overall responsibility for delivering the Goods and/or Services required within this DMP Agreement, as well as a suitably qualified deputy to act in their absence.

2.1.2 The Supplier shall put in place a structure to manage the DMP in accordance with DMP Schedule 2 (Goods and/or Services and Key Performance Indicators).

#### **2.2 Supplier Review Meetings**

2.2.1 Proportionate review meetings will take place at the Authority's premises where appropriate throughout the DMP Period and thereafter until the DMP Termination or Expiry Date (**"Supplier Review Meetings"**).

2.2.2 The exact timings and frequencies of such Supplier Meetings will be determined by the Authority

2.2.3 The purpose of the Supplier Meetings will be to review the Supplier's performance under this DMP Agreement.

2.2.4 The Supplier Review Meetings shall be attended, as a minimum, by the Authority Representative(s) and the Supplier DMP Manager.

### **3. KEY PERFORMANCE INDICATORS**

3.1 The KPIs applicable to this DMP Agreement are set out in DMP Schedule 2 (Goods and/or Services and Key Performance Indicators).

3.2 The Supplier shall establish processes to monitor its performance against the agreed KPIs. The Supplier shall at all times ensure compliance with the standards set by the KPIs.

3.3 The Authority shall review progress against these KPIs to evaluate the effectiveness and efficiency of which the Supplier performs its obligations to fulfil this DMP Agreement.

- 3.4 The Supplier's achievement of KPIs shall be reviewed during the Supplier Review Meetings, in accordance with paragraph 2.2 above, and the review and ongoing monitoring of KPIs will form a key part of the DMP management process as outlined in this DMP Schedule 8.
- 3.5 The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the DMP Period, however any significant changes to KPIs shall be agreed between the Authority and the Supplier.
- 3.6 The Authority reserves the right to use and publish the performance of the Supplier against the KPIs without restriction.

#### **4. EFFICIENCY TRACKING PERFORMANCE MEASURES**

- 4.1 The Supplier shall cooperate in good faith with the Authority to develop efficiency tracking performance measures for this DMP Agreement. This shall include but is not limited to:
  - 4.1.1 tracking reductions in product volumes and product costs, in order to demonstrate that Contracting Bodies are consuming less and buying more smartly;
  - 4.1.2 developing additional KPIs to ensure that the DMP Agreement supports the emerging target operating model across central government (particularly in line with centralised sourcing and category management, procurement delivery centres and payment processing systems and shared service centres).
- 4.2 The list in paragraph 4.1 is not exhaustive and may be developed during the DMP Period.
- 4.3 The metrics that are to be implemented to measure efficiency shall be developed and agreed between the Authority and the Supplier. Such metrics shall be incorporated into the list of KPIs set out in DMP Schedule 2 (Goods and/or Services and Key Performance Indicators).
- 4.4 The ongoing progress and development of the efficiency tracking performance measures shall be reported through DMP management activities as outlined in this DMP Schedule 8.

#### **5. ESCALATION PROCEDURE**

- 5.1 In the event that the Authority and the Supplier are unable to agree the performance score for any KPI during a Supplier Review Meeting, the disputed score shall be recorded and the matter shall be referred to the Authority Representative and the Supplier Representative in order to determine the best course of action to resolve the matter (which may involve organising an ad-hoc meeting to discuss the performance issue specifically).
- 5.2 In cases where the Authority Representative and the Supplier Representative fail to reach a solution within a reasonable period of time, the matter shall be dealt with in accordance with the procedure set out in Clause 48 (Dispute Resolution).

## **DMP SCHEDULE 9: MANAGEMENT INFORMATION**

### **1. GENERAL REQUIREMENTS**

- 1.1 The Supplier shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver timely and accurate Management Information to the Authority in accordance with the provisions of this DMP Schedule 9.
- 1.2 The Supplier shall also supply such Management Information as may be required by a Contracting Authority in accordance with the terms of a Contract.

### **2. MANAGEMENT INFORMATION AND FORMAT**

- 2.1 The Supplier agrees to provide timely, full, accurate and complete MI Reports to the Authority which incorporates the data, in the correct format, required by the MI Reporting Template. The initial MI Reporting Template is set out in the Annex to this DMP Schedule 9.
- 2.2 The Authority may from time to time make changes to the MI Reporting Template including to the data required or format of the report and issue a replacement version of the MI Reporting Template to the Supplier. The Authority shall give notice in writing of any such change to the MI Reporting Template and shall specify the date from which the replacement MI Reporting Template must be used for future MI Reports which date shall be at least thirty (30) calendar days following the date of the notice.
- 2.3 If the MI Reporting Template is amended by the Authority at any time, then the Supplier agrees to provide all future MI Reports in accordance with the most recent MI Reporting Template issued by the Authority.
- 2.4 The Authority may provide the Supplier with supplemental guidance for completing the MI Reporting Template or submitting MI Reports from time to time which may for example indicate which fields are mandatory and which are optional. The Supplier agrees to complete the Monthly MI Report in accordance with any such guidance.
- 2.5 The Supplier may not make any amendment to the current MI Reporting Template without the prior Approval of the Authority.
- 2.6 The Authority shall have the right from time to time (on reasonable written notice) to amend the nature of the Management Information which the Supplier is required to supply to the Authority.

### **3. FREQUENCY AND COVERAGE**

- 3.1 All MI Reports must be completed by the Supplier using the MI Reporting Template and returned to the Authority on or prior to the Reporting Date each month in which there is spend to report, during the Dynamic Marketplace Period and thereafter, until all transactions relating to Contracts have permanently ceased.
- 3.2 The MI Report should be used (among other things) to report work invoiced in the previous monthly period, regardless of when the order was taken and work completed. Each invoice issued by the Supplier must be reported only once when the invoice is raised. In the case of Apprenticeship Training funded by ESFA it is expected that Suppliers could be potentially reporting

MI two months behind (no more than two calendar months is acceptable) due to the rules and draw down of the ESFA apprenticeship funding levy.

- 3.3 The Supplier is not obliged to report MI to the Authority if there are no invoices to report from the previous monthly period. Suppliers must submit a nil return if there is nothing to report for that particular calendar month.
- 3.4 The Supplier must inform the Authority of any errors or corrections to the Management Information:
  - 3.4.1 in the next MI Report due immediately following discovery of the error by the Supplier; or
  - 3.4.2 as a result of the Authority querying any data contained in an MI Report.

#### **4. SUBMISSION OF THE MONTHLY MI REPORT**

- 4.1 The completed MI Report shall be completed electronically and returned to the Authority by uploading the electronic MI Report computer file to RMI in accordance with the instructions provided in RMI, or any subsequent replacement electronic system.
- 4.2 The Authority reserves the right (acting reasonably) to specify that the MI Report be submitted by the Supplier using an alternative communication to that specified in paragraph 4.1 above such as email. The Supplier agrees to comply with any such instructions provided they do not materially increase the burden on the Supplier.

#### **5. DEFECTIVE MANAGEMENT INFORMATION**

- 5.1 The Supplier acknowledges that it is essential that the Authority receives timely and accurate Management Information pursuant to this Dynamic Marketplace Agreement because Management Information is used by the Authority to inform strategic decision making and allows it to calculate the Management Levy.
- 5.2 Following an MI Failure the Authority may issue reminders to the Supplier or require the Supplier to rectify defects in the MI Report provided to the Authority. The Supplier shall rectify any deficient or incomplete MI Report as soon as possible and not more than five (5) Working Days following receipt of any such reminder.

##### **Meetings**

- 5.3 The Supplier agrees to attend meetings between the Parties in person to discuss the circumstances of any MI Failure(s) at the request of the Authority (without prejudice to any other rights the Authority may have). If the Authority requests such a meeting the Supplier shall propose measures to ensure that the MI Failures are rectified and do not occur in the future. The Parties shall document these measures and continue to monitor the Supplier's performance.

**ANNEX 1: MI REPORTING TEMPLATE**

**Please refer to Attachment 2 for the MI Reporting template for RM6102.**

SAMPLE

**DMP SCHEDULE 10: ANNUAL SELF AUDIT CERTIFICATE**

**[To be signed by Head of Internal Audit, Finance Director or company's external auditor]**

**[Guidance Note: Please seek guidance from the CCS audit team in relation to this point]**

Dear Sirs

In accordance with the Dynamic Marketplace Agreement entered into on [insert DMP Commencement Date dd/mm/yyyy] between [insert name of Supplier] and the Authority, we confirm the following:

1. In our opinion based on the testing undertaken [name of Supplier] has in place suitable systems for identifying and recording the transactions taking place under the provisions of the above Dynamic Marketplace Agreement.
2. We have tested the systems for identifying and reporting on DMP activity and found them to be operating satisfactorily.
3. We have tested a sample of [ ] [insert number of sample transactions tested] Orders and related invoices during our audit for the financial year ended [insert financial year] and confirm that they are correct and in accordance with the terms and conditions of the Dynamic Marketplace Agreement.
4. We have tested from the order processing and invoicing systems a sample of [ ] [Insert number of sample transactions tested] public sector orders placed outside the Dynamic Marketplace Agreement during our audit for the financial year ended [insert financial year] and confirm they have been identified correctly as orders placed outside the Dynamic Marketplace Agreement, an appropriate and legitimately tendered procurement route has been used to place those orders, and those orders should not otherwise have been routed via centralised and mandated procurement processes executed by the Authority.
5. We have also attached an Audit Report which provides details of the methodology applied to complete the review, the sampling techniques applied, details of any issues identified and remedial action taken.

**[Guidance Note: see Clause 18 (Records, Audit Access and Open Book Data) for details of what is required]**

Name:.....

Signed:.....

Head of Internal Audit/ Finance Director/ External Audit firm (delete as applicable)

Date:.....

Professional Qualification held by Signatory:.....

Note to Suppliers: where CCS identifies independently that data accuracy supporting this certificate is flawed we will consider action on a case by case basis, and in some cases where the issues identified are clearly systemic we will consider whether this

behaviour goes beyond poor commercial practice and will seek further guidance from the GLD.

SAMPLE

## **DMP SCHEDULE 11: MARKETING**

### **1. INTRODUCTION**

- 1.1 This DMP Schedule 11 describes the activities that the Supplier will carry out as part of its ongoing commitment to the marketing of the Goods and/or Services to Contracting Authorities.

### **2. MARKETING**

- 2.1 Marketing Contact - NOT USED

### **3. AUTHORITY PUBLICATIONS**

- 3.1 The Authority will periodically update and revise marketing materials. The Supplier shall supply current information for inclusion in such marketing materials when required by the Authority.
- 3.2 Such information shall be provided in the form of a completed template, supplied by the Authority together with the instruction for completion and the date for its return.
- 3.3 Failure to comply with the provisions of paragraphs 3.1 and 3.2 may result in the Supplier's exclusion from the use of such marketing materials.

### **4. SUPPLIER PUBLICATIONS**

- 4.1 Any marketing materials in relation to this Dynamic Marketplace Agreement that the Supplier produces must comply in all respects with the Branding Guidance. The Supplier will periodically update and revise such marketing materials.
- 4.2 The Supplier shall be responsible for keeping under review the content of any information which appears on the Supplier's website and which relates to this Dynamic Marketplace Agreement and ensuring that such information is kept up to date at all times.

## **DMP SCHEDULE 12: CONTINUOUS IMPROVEMENT**

### **1. BACKGROUND**

- 1.1. The Supplier acknowledges that the Authority wishes to ensure that the Goods and/or Services, represent value for money to the taxpayer throughout the Dynamic Marketplace Period.
- 1.2. This DMP Schedule 12 (Continuous Improvement) sets out the Continuous Improvement processes to ensure this Dynamic Marketplace Agreement represents value for money throughout the Dynamic Marketplace Period and subsequently while any Call Off Contracts remain in force.

### **2. CONTINUOUS IMPROVEMENT**

- 2.1. The Supplier shall adopt a policy of continuous improvement in relation to the Goods and/or Services pursuant to which it will regularly review with the Authority the Goods and/or Services and the manner in which it is providing the Goods and/or Services with a view to improving the quality and efficiency of the Goods and/or Services. The Supplier and the Authority will provide to each other any information which may be relevant to assisting the objectives of continuous improvement.
- 2.2. Without limiting paragraph 2.1, the Supplier shall produce following a request from the Authority and at the start of each Contract Year a plan for improving the provision of Goods and/or Services for the Approval of the Authority. The Continuous Improvement Plan shall include, as a minimum, proposals in respect of the following:
  - 2.2.1. identifying the emergence of new and evolving technologies which could improve the Goods and/or Services;
  - 2.2.2. baselining the quality of the Supplier's Goods and/or Services and its cost structure and demonstrating the efficacy of its Continuous Improvement Plan on each element during the Dynamic Marketplace Period; and
  - 2.2.3. measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains pertaining to the Goods and/or Services, and identifying opportunities to assist Contracting Authorities in meeting their sustainability objectives.
- 2.3. The initial Continuous Improvement Plan for the first (1st) Contract Year shall be submitted by the Supplier to the Authority for Approval within ninety (90) Working Days of the first Order or six (6) Months following the DMP Commencement Date, whichever is earlier.
- 2.4. The Authority shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. Within ten (10) Working Days of receipt of the Authority's notice of rejection and of the deficiencies of the proposed Continuous Improvement Plan, the Supplier shall submit to the Authority a revised Continuous Improvement Plan reflecting the changes required. Once Approved by the Authority, the programme shall constitute the Continuous Improvement Plan for the purposes of this Agreement.

- 2.5. Once the first Continuous Improvement Plan has been Approved in accordance with paragraph 2.4:
- 2.6. the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
- 2.7. the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Authority and the Supplier) to review the Supplier's progress against the Continuous Improvement Plan.
- 2.8. The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1st) Contract Year) in accordance with the procedure and timescales set out in paragraph 2.2.

SAMPLE

**DMP SCHEDULE 13: GUARANTEE**

**[Guidance Note: this is a draft form of guarantee which can be used to procure either a Dynamic Marketplace Guarantee or a Contract Guarantee, and so it will need to be amended to reflect the Beneficiary's requirements. See Clause 8 of the Dynamic Marketplace Agreement and Clause 4 of the Template Contract Terms.]**

**[INSERT THE NAME OF THE GUARANTOR]**

**- AND -**

**[INSERT THE NAME OF THE BENEFICIARY]**

**DEED OF GUARANTEE**

## DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the                      day of                      20[ ]

### BETWEEN:

- (1) [Insert the name of the Guarantor] [a company incorporated in England and Wales] with number [insert company no.] whose registered office is at [insert details of the Guarantor's registered office here] [OR] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] ("Guarantor"); in favour of
- (2) [The Authority] [Insert name of Contracting Authority who is Party to the Guaranteed Agreement] whose principal office is at [ ] ("Beneficiary")

**[Guidance note: Where this deed of guarantee is used to procure a Dynamic Marketplace Guarantee in favour of the Authority, this paragraph numbered (2) above will set out the details of the Authority. Where it is used to procure a Contract Guarantee in favour of a Contracting Authority this paragraph numbered (2) above will set out the details of the relevant Contracting Authority]**

### WHEREAS:

- (A) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.
- (B) It is the intention of the Parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

### 1. DEFINITIONS AND INTERPRETATION

In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- 1.2 the words and phrases below shall have the following meanings:

**[Guidance Note: Insert and/or settle Definitions, including from the following list, as appropriate to either Dynamic Marketplace Guarantee or Contract Guarantee]**

|                        |  |
|------------------------|--|
| <b>["Authority"]</b>   | has the meaning given to it in the Dynamic Marketplace Agreement;  |
| <b>["Beneficiary"]</b> | means [the Authority] [insert name of the Contracting Authority with whom the Supplier enters into a Contract] and "Beneficiaries" shall be construed accordingly; |
| <b>["Contract"]</b>    | has the meaning given to it in the Dynamic Marketplace Agreement;  |

|  |  |
|--|--|
| <b>["Dynamic Marketplace Agreement"]</b> | means the Dynamic Marketplace Agreement for the Goods and/or Services dated on or about the date hereof made between the Authority and the Supplier;]  |
| <b>["Goods"]</b>                         | has the meaning given to it in the Dynamic Marketplace Agreement;]   |
| <b>["Guaranteed Agreement"]</b>          | means [the Dynamic Marketplace Agreement] [the Contract] made between the Beneficiary and the Supplier on [insert date];]  |
| <b>"Guaranteed Obligations"</b>          | means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement; |
| <b>["Services"]</b>                      | has the meaning given to it in the Dynamic Marketplace Agreement;]   |

- 1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
- 1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.9 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
- 1.11 references to liability are to include any liability whether actual, contingent, present or future.

## **2. GUARANTEE AND INDEMNITY**

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
- 2.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
- 2.3.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
- 2.3.2 as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.
- 2.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

### **3. OBLIGATION TO ENTER INTO A NEW CONTRACT**

- 3.1 If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the

Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

#### **4. DEMANDS AND NOTICES**

4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

4.1.1 [Address of the Guarantor in England and Wales]

4.1.2 [Facsimile Number]

4.1.3 For the Attention of [insert details]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

4.2.1 if delivered by hand, at the time of delivery; or

4.2.2 if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or

4.2.3 if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.

4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.

4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

#### **5. BENEFICIARY'S PROTECTIONS**

5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:

5.2.1 it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial

- performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
- 5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
- 5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
- 5.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non-performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge

or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

## **6. GUARANTOR INTENT**

6.1 Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

## **7. RIGHTS OF SUBROGATION**

7.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

7.1.1 of subrogation and indemnity;

7.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and

7.1.3 to prove in the liquidation or insolvency of the Supplier,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Supplier and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

## **8. DEFERRAL OF RIGHTS**

8.1 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:

8.1.1 exercise any rights it may have to be indemnified by the Supplier;

8.1.2 claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement;

8.1.3 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement;

8.1.4 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or

8.1.5 claim any set-off or counterclaim against the Supplier;

- 8.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

## **9. REPRESENTATIONS AND WARRANTIES**

- 9.1 The Guarantor hereby represents and warrants to the Beneficiary that:
- 9.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
  - 9.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
  - 9.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:
    - (a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
    - (b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
    - (c) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
  - 9.1.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
  - 9.1.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

## **10. PAYMENTS AND SET-OFF**

- 10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net

amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

## **11. GUARANTOR'S ACKNOWLEDGEMENT**

11.1 The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

## **12. ASSIGNMENT**

12.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.

12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

## **13. SEVERANCE**

13.1 If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

## **14. THIRD PARTY RIGHTS**

14.1 A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## **15. GOVERNING LAW**

15.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.

15.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.

- 15.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
- 15.5 [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

**[Guidance Note: Include the above provision when dealing with the appointment of English process agent by a non English incorporated Guarantor]**

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by

[Insert name of the Guarantor] acting by [Insert/print names]

Director

Director/Secretary

## **DMP SCHEDULE 14: INSURANCE REQUIREMENTS**

### **1. OBLIGATION TO MAINTAIN INSURANCES**

- 1.1 Without prejudice to its obligations to the Authority under this Dynamic Marketplace Agreement, including its indemnity obligations, the Supplier shall for the periods specified in this Schedule 14 take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 (Required Insurances) and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that each of the Insurances is effective no later than the DMP Commencement Date.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 1.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Goods and/or Services and for which the Supplier is legally liable.

### **2. GENERAL OBLIGATIONS**

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

### **3. FAILURE TO INSURE**

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 3.2 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Authority may elect (but

shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

#### **4. EVIDENCE OF POLICIES**

4.1 The Supplier shall upon Commencement Date of the Dynamic Marketplace Agreement~~First Contract~~ and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this DMP Schedule 14. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations under this Agreement.

#### **5. AGGREGATE LIMIT OF INDEMNITY**

5.1 Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":

5.1.1 if a claim or claims which do not relate to this Dynamic Marketplace Agreement are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Supplier shall immediately submit to the Authority:

- (a) details of the policy concerned; and
- (b) its proposed solution for maintaining the minimum limit of indemnity specified; and

5.1.2 if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Dynamic Marketplace Agreement are paid by insurers, the Supplier shall:

- (a) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Dynamic Marketplace Agreement; or
- (b) if the Supplier is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Authority full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

#### **6. CANCELLATION**

6.1 The Supplier shall notify the Authority in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

#### **7. INSURANCE CLAIMS**

7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Goods and/or Services and/or this Dynamic Marketplace

Agreement for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Goods and/or Services or this Dynamic Marketplace Agreement, the Supplier shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

- 7.2 Except where the Authority is the claimant party, the Supplier shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess of [insert sum as determined by CCS relative to its contract management requirement] relating to or arising out of the provision of the Goods and/or Services or this Dynamic Marketplace Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Dynamic Marketplace Agreement or otherwise.

## **ANNEX 1: REQUIRED INSURANCES**

### **PART A: THIRD PARTY PUBLIC & PRODUCTS LIABILITY INSURANCE**

#### **1. INSURED**

1.1 The Supplier

#### **2. INTEREST**

2.1 To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

2.1.1 death or bodily injury to or sickness, illness or disease contracted by any person;

2.1.2 loss of or damage to property;

happening during the period of insurance (as specified in Paragraph 5 of this Annex 1 to this Schedule 14) and arising out of or in connection with the provision of the Goods and/or Services and in connection with this Dynamic Marketplace Agreement.

#### **3. LIMIT OF INDEMNITY**

3.1 Not less than £1,000,000.00 in respect of any one occurrence, the number of occurrences being unlimited, but £1,000,000.00 any one occurrence and in the aggregate per annum in respect of products and pollution liability.

#### **4. TERRITORIAL LIMITS**

4.1 United Kingdom

#### **5. PERIOD OF INSURANCE**

5.1 From the DMP Commencement Date for the Dynamic Marketplace Period and renewable on an annual basis unless agreed otherwise by the Authority in writing.

#### **6. COVER FEATURES AND EXTENSIONS**

6.1 Indemnity to principals clause.

#### **7. PRINCIPAL EXCLUSIONS**

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.

7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

**8. MAXIMUM DEDUCTIBLE THRESHOLD**

- 8.1 Not to exceed [£ threshold to be agreed with Supplier] for each and every third party property damage claim (personal injury claims to be paid in full).

SAMPLE

## **PART B: PROFESSIONAL INDEMNITY INSURANCE**

### **1. INSURED**

1.1 The Supplier

### **2. INTEREST**

2.1 To indemnify the Insured for all sums which the Insured shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the Insured during the Period of Insurance by reason of any negligent act, error and/or omission arising from or in connection with the provision of the Goods and/or Services.

### **3. LIMIT OF INDEMNITY**

3.1 Not less than £1,000,000.00 in respect of any one claim and in the aggregate per annum.

### **4. TERRITORIAL LIMITS**

4.1 United Kingdom

### **5. PERIOD OF INSURANCE**

5.1 From the date of this Dynamic Marketplace Agreement and renewable on an annual basis unless agreed otherwise by the Authority in writing (a) throughout the Dynamic Marketplace Period or until earlier termination of this Dynamic Marketplace Agreement and (b) for a period of 6 years thereafter.

### **6. COVER FEATURES AND EXTENSIONS**

6.1 Retroactive cover to apply to any claims made policy wording in respect of this Dynamic Marketplace Agreement or retroactive date to be no later than the DMP Commencement Date.

### **7. PRINCIPAL EXCLUSIONS**

7.1 War and related perils

7.2 Nuclear and radioactive risks

### **8. MAXIMUM DEDUCTIBLE THRESHOLD**

8.1 Not to exceed **£ threshold to be agreed with Supplier** each and every claim.

## **PART C: UNITED KINGDOM COMPULSORY INSURANCES**

### **1. GENERAL**

- 1.1 The Supplier shall meet its insurance obligations under applicable Law in full, including, UK employers' liability insurance and motor third party liability insurance.

SAMPLE

**DMP SCHEDULE 15: STAFF TRANSFER -NOT USED**

SAMPLE

## DMP SCHEDULE 16: FINANCIAL DISTRESS

**[Guidance Note: Throughout this DMP Schedule 16, delete all references to “Dynamic Marketplace Guarantor/ [and Contract Guarantor]” and “Key Sub-Contractor” highlighted in YELLOW where not applicable]**

### 1. DEFINITIONS

1.1. In this DMP Schedule 16, the following definitions shall apply:

- "Credit Rating Threshold"** means the minimum credit rating level for the Supplier [and the Dynamic Marketplace Guarantor/ [and Contract Guarantor]] as set out in Annex 2 [and for each Key Sub-Contractor as set out in your DMP SQ and Attachment X (Additional Key Sub-Contractors)]; and
- "Financial Distress Service Continuity Plan"** means a plan setting out how the Supplier will ensure the continued performance and delivery of the Goods and/or Services in accordance with this Dynamic Marketplace Agreement in the event that a Financial Distress Event occurs;
- "Rating Agencies"** means the rating agencies listed in Annex 1.

### 2. CREDIT RATING AND DUTY TO NOTIFY

- 2.1. The Supplier warrants and represents to the Authority for the benefit of the Authority that as at the DMP Commencement Date the long term credit ratings issued for the Supplier [and Dynamic Marketplace Guarantor/ [and Contract Guarantor]] by each of the Rating Agencies are as set out in Annex 2.
- 2.2. The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if there is any downgrade in the credit rating issued by any Rating Agency for either the Supplier [or the Dynamic Marketplace Guarantor/ [and Contract Guarantor]] (and in any event within five (5) Working Days of the occurrence of the downgrade).
- 2.3. If there is any downgrade credit rating issued by any Rating Agency for either the Supplier [or the Dynamic Marketplace Guarantor/ [and Contract Guarantor]], the Supplier shall ensure that the Supplier's auditors [Dynamic Marketplace Guarantor/ [and Contract Guarantor]] auditors (as the case may be) thereafter provide the Authority within 10 Working Days of the end of each Contract Year and within 10 Working Days of written request by the Authority (such requests not to exceed 4 in any Contract Year) with written calculations of the quick ratio for the Supplier [or the Dynamic Marketplace Guarantor/ [and Contract Guarantor]] as the case may be] as at the end of each Contract Year or such other date as may be requested by the Authority. For these purposes the "quick ratio" on any date means:

$$\frac{A + B + C}{D}$$

where:

- A is the value at the relevant date of all cash in hand and at the bank of the Supplier [or the Dynamic Marketplace Guarantor/ [and Contract Guarantor] (as the case may be)];
- B is the value of all marketable securities held by the Supplier [or the Dynamic Marketplace Guarantor/ [and Contract Guarantor] (as the case may be)] determined using closing prices on the Working Day preceding the relevant date;
- C is the value at the relevant date of all account receivables of the Supplier [Dynamic Marketplace Guarantor/ [and Contract Guarantor] (as the case may be)]; and
- D is the value at the relevant date of the current liabilities of the Supplier [or the Dynamic Marketplace Guarantor/ [and Contract Guarantor] (as the case may be)].

2.4. The Supplier shall:

- 2.4.1. regularly monitor the credit ratings of the Supplier [ Dynamic Marketplace Guarantor/ [and Contract Guarantor] and each Key Sub-Contractor] with the Rating Agencies; and
- 2.4.2. promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event [or Key Sub-Contractor Financial Distress Event] or any fact, circumstance or matter which could cause a Financial Distress Event [or a Key Sub-Contractor Financial Distress Event] (and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event[, the Key Sub-Contractor Financial Distress Event] or the fact, circumstance or matter which could cause a Financial Distress Event [or a Key Sub-Contractor Financial Distress Event]).

2.5. For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of paragraph 3.1.1, the credit rating of the Supplier, the [Dynamic Marketplace Guarantor/ [and Contract Guarantor] or relevant Key Sub-Contractor] (as the case may be) shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Supplier[, the Dynamic Marketplace Guarantor/ [and Contract Guarantor] or relevant Key Sub-Contractor (as the case may be)] at or below the applicable Credit Rating Threshold.

### 3. CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

3.1. In the event of:

- 3.1.1. the credit rating of the Supplier[, the Dynamic Marketplace Guarantor/ [and Contract Guarantor] or any Key Sub-Contractor] dropping below the applicable Credit Rating Threshold;
- 3.1.2. the Supplier[, the Dynamic Marketplace Guarantor/ [and Contract Guarantor] or any Key Sub-Contractor] issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;
- 3.1.3. there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier[, the Dynamic Marketplace Guarantor/ [and Contract Guarantor] or any Key Sub-Contractor];
- 3.1.4. the Supplier[, the Dynamic Marketplace Guarantor/ [and Contract Guarantor] or any Key Sub-Contractor] committing a material breach of covenant to its lenders;
- 3.1.5. a Key Sub-Contractor notifying the Authority that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute; or
- 3.1.6. any of the following:
  - (a) commencement of any litigation against the Supplier[, the Dynamic Marketplace Guarantor/ [and Contract Guarantor] or any Key Sub-Contractor] with respect to financial indebtedness or obligations under a service contract;
  - (b) non-payment by the Supplier[, the Dynamic Marketplace Guarantor/ [and Contract Guarantor] or any Key Sub-Contractor] of any financial indebtedness;
  - (c) any financial indebtedness of the Supplier[, the Dynamic Marketplace Guarantor/ [and Contract Guarantor] or any Key Sub-Contractor] becoming due as a result of an event of default; or
  - (d) the cancellation or suspension of any financial indebtedness in respect of the Supplier[, the Dynamic Marketplace Guarantor/ [and Contract Guarantor] or any Key Sub-Contractor],
  - (e) in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Goods and/or Services in accordance with this Dynamic Marketplace Agreement;

then, immediately upon notification of the Financial Distress Event (or if the Authority becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in paragraphs 3.3 to 3.6.

- 3.2. In the event of a late or non-payment of a Key Sub-Contractor pursuant to paragraph 3.1.5, the Authority shall not exercise any of its rights or remedies

under paragraph 3.3 without first giving the Supplier ten (10) Working Days to:

- 3.2.1. rectify such late or non-payment; or
  - 3.2.2. demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.
- 3.3. The Supplier shall [(and shall procure that the Dynamic Marketplace Guarantor/ [and Contract Guarantor] and/or any relevant Key Sub-Contractor shall)];
- 3.3.1. at the request of the Authority meet the Authority as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Goods and/or Services in accordance with this Dynamic Marketplace Agreement; and
  - 3.3.2. where the Authority reasonably believes (taking into account the discussions and any representations made under paragraph 3.3.1) that the Financial Distress Event could impact on the continued performance and delivery of the Goods and/or Services in accordance with this Dynamic Marketplace Agreement:
    - (f) submit to the Authority for its Approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing); and
    - (g) provide such financial information relating to the Supplier [or the Dynamic Marketplace Guarantor/ [and Contract Guarantor]] as the Authority may reasonably require.
- 3.4. The Authority shall not withhold its Approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Authority does not approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Authority within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is Approved by the Authority or referred to the Dispute Resolution Procedure pursuant to paragraph 3.5.
- 3.5. If the Authority considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.

- 3.6. Following Approval of the Financial Distress Service Continuity Plan by the Authority, the Supplier shall:
- 3.6.1. on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Goods and/or Services in accordance with this Dynamic Marketplace Agreement;
  - 3.6.2. where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with paragraph 3.6.1, submit an updated Financial Distress Service Continuity Plan to the Authority for its Approval, and the provisions of paragraphs 3.5 and 3.6 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and
  - 3.6.3. comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 3.7. Where the Supplier reasonably believes that the relevant Financial Distress Event under paragraph 3.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under paragraph 3.6.

#### **4. TERMINATION RIGHTS**

- 4.1. The Authority shall be entitled to terminate this Dynamic Marketplace Agreement for material Default if:
- 4.1.1. the Supplier fails to notify the Authority of a Financial Distress Event in accordance with paragraph 2.4;
  - 4.1.2. the Parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraphs 3.3 to 3.5; and/or
  - 4.1.3. the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph 3.6.3.

#### **5. PRIMACY OF CREDIT RATINGS**

- 5.1. Without prejudice to the Supplier's obligations and the Authority's rights and remedies under paragraph 3, if, following the occurrence of a Financial Distress Event pursuant to Paragraphs 3.1.1 to 3.1.6, the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:
- 5.1.1. the Supplier shall be relieved automatically of its obligations under paragraphs 3.3 to 3.6; and
  - 5.1.2. the Authority shall not be entitled to require the Supplier to provide financial information in accordance with paragraph (g).

**ANNEX 1: RATING AGENCIES**

[Rating Agency 1]

[Rating Agency 2]

SAMPLE

## ANNEX 2: CREDIT RATINGS & CREDIT RATING THRESHOLDS

| Entity   | Credit rating (long term) | Credit Rating Threshold |
|--|---------------------------|-------------------------|
| Supplier   |                           |                         |
| [Dynamic Marketplace Guarantor/ [and Contract Guarantor] |                           |                         |

SAMPLE

SAMPLE

## DMP SCHEDULE 18: DISPUTE RESOLUTION PROCEDURE

### 1. DEFINITIONS

1.1 In this DMP Schedule 18, the following definitions shall apply:

|                                      |   |
|--------------------------------------|---|
| <b>"CEDR"</b>                        | means the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;  |
| <b>"Counter Notice"</b>              | has the meaning given to it in paragraph 6.2;   |
| <b>"Exception"</b>                   | means a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Dynamic Marketplace Agreement or in the supply of the Goods and/or Services;                          |
| <b>"Expedited Dispute Timetable"</b> | means the accelerated timetable for the resolution of disputes as set out in paragraph 2.6;   |
| <b>"Expert"</b>                      | means the person appointed by the Parties in accordance with paragraph 5.2 of this DMP Schedule 18;   |
| <b>"Extraordinary Meeting"</b>       | a meeting, attended in person or over a conference call, held by the Parties in an attempt to resolve the Dispute in good faith in accordance with paragraphs 2.5 and 2.6 of this DMP Schedule 18;      |
| <b>"Mediator"</b>                    | means the independent third party appointed in accordance with paragraph 4.2 of this DMP Schedule 18; and   |
| <b>"Senior Officers"</b>             | are senior officials of the Authority and Supplier that have been instructed by the Authority Representative and Supplier Representative respectively to resolve the Dispute by commercial negotiation. |

### 2. INTRODUCTION

- 2.1 The Parties shall seek to resolve a Dispute:
- 2.1.1 first in good faith (as prescribed in paragraphs 2.4 to 2.8 of this DMP Schedule 18);
  - 2.1.2 where the Dispute has not been resolved by good faith, the Parties shall attempt to resolve the Dispute by commercial negotiation (as prescribed in paragraph 3 of this DMP Schedule 18);
  - 2.1.3 where the Dispute has not been resolved in good faith and commercial negotiation has been unsuccessful in resolving the Dispute, then either Party may serve a Dispute Notice and shall attempt to resolve the Dispute through mediation (as prescribed in paragraph 4 of this DMP Schedule 18); and
  - 2.1.4 if mediation is not agreed by the Parties, the Parties may proceed to arbitration (as prescribed in paragraph 6 of this DMP Schedule

18) or litigation (in accordance with Clause 49 of this Dynamic Marketplace Agreement (Governing Law and Jurisdiction)).

- 2.2 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5 of this DMP Schedule 18) where specified under the provisions of this Dynamic Marketplace Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 (Expert Determination) of this DMP Schedule 18.
- 2.3 Save in relation to paragraph 4.5, the Parties shall bear their own legal costs in resolving Disputes under this DMP Schedule 18.

#### **Good faith discussions**

- 2.4 Pursuant to paragraph 2.1.1 of this DMP Schedule 18, if any Dispute arises the Authority Representative and the Supplier Representative shall attempt first to resolve the Dispute in good faith, which may include (without limitation) either Party holding an Extraordinary Meeting.
- 2.5 Either Party may hold an Extraordinary Meeting by serving written notice. The written notice must give the receiving party at least five (5) Working Days notice of when the Extraordinary Meeting is to take place.
- 2.6 The Authority Representative and Supplier Representative shall attend the Extraordinary Meeting. The key personnel of the Parties may also attend the Extraordinary Meeting.
- 2.7 The representatives of the Parties attending the Extraordinary Meeting shall use their best endeavours to resolve the Dispute.
- 2.8 If the Dispute is not resolved at the Extraordinary Meeting then the Parties may attempt to hold additional Extraordinary Meetings in an attempt to resolve the Dispute.
- 2.9 If:
  - 2.9.1 the Extraordinary Meetings are unsuccessful in resolving the Dispute; or
  - 2.9.2 the Parties agree that good faith discussions shall not resolve the dispute; or
  - 2.9.3 the Dispute has not been resolved through good faith discussions within thirty (30) Working Days from when they first started,the Parties shall attempt to resolve the Dispute by commercial negotiation.

### **3. COMMERCIAL NEGOTIATIONS**

- 3.1 Where the Parties have been unable to resolve the Dispute in good faith under paragraphs 2.4 to 2.8 of this DMP Schedule 18, pursuant to paragraph 2.1.2, the Authority and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between Senior Officers.
- 3.2 Senior Officers shall resolve the Dispute as soon as possible and in any event thirty (30) Working Days from the date Parties agree good faith discussions were deemed unsuccessful.
- 3.3 If Senior Officers:

- 3.3.1 are of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution; or
- 3.3.2 fail to resolve the Dispute in the timelines under paragraph 3.2 of this DMP Schedule 18,

commercial negotiations shall be deemed unsuccessful and either Party may serve a Dispute Notice in accordance with paragraphs 3.4 and 3.5 of this DMP Schedule 18.

### **Dispute Notice**

- 3.4 The Dispute Notice shall set out:
  - 3.4.1 the material particulars of the Dispute;
  - 3.4.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
  - 3.4.3 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 7 of this DMP Schedule 18, the reason why.
- 3.5 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Dynamic Marketplace Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

## **4. MEDIATION**

- 4.1 Pursuant to paragraph 2.1.3 of this DMP Schedule 18, if a Dispute Notice is served, the Parties shall attempt to resolve the Dispute by way of mediation and where mediation is not agreed, the Parties may proceed to arbitration or litigation in accordance with this DMP Schedule 18.
- 4.2 Where the Parties agree to mediation, the Parties may follow the CEDR's Model Mediation Procedure which is current at the time the Dispute Notice is served (or such other version as the Parties may agree) or a mediation procedure that is agreed between the Parties.
- 4.3 If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Dispute Notice then either Party may apply to CEDR to nominate the Mediator.
- 4.4 If neither Party applies to CEDR to nominate the Mediator or an application to CEDR is unsuccessful under paragraph 4.2 of this DMP Schedule 18, either Party may proceed to:
  - 4.4.1 hold further discussions between Senior Officers; or
  - 4.4.2 an Expert determination, as prescribed in paragraph 5 of this DMP Schedule 18; or
  - 4.4.3 arbitration, as prescribed in paragraph 6 of this DMP Schedule 18; or
  - 4.4.4 litigation in accordance with Clause 49 of this Dynamic Marketplace Agreement (Governing Law and Jurisdiction).

- 4.5 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 4.6 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the procedure for variations under Clause 16.1 (Variation Procedure) where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.
- 4.7 The costs of any mediation procedure used to resolve the Dispute under this paragraph 4 of this DMP Schedule 18 shall be shared equally between the Parties.

## **5. EXPERT DETERMINATION**

- 5.1 If a Dispute relates to any aspect of the technology underlying the provision of the Goods and/or Services or otherwise relates to a technical matter of an accounting or financing nature (as the Parties may agree), either Party may request (such request shall not be unreasonably withheld or delayed by the Parties) by written notice to the other that the Dispute is referred to an Expert for determination.
- 5.2 Where the Parties agree to an expert determination, the Expert shall:
- 5.2.1 be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the relevant professional body; and
  - 5.2.2 act on the following basis:
    - 5.2.2.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
    - 5.2.2.2 the Expert's determination shall (in the absence of a material failure by either Party to follow the agreed procedures) be final and binding on the Parties;
    - 5.2.2.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his/her appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
    - 5.2.2.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;

5.2.2.5 the process shall be conducted in private and shall be confidential; and

5.2.2.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid

## 6. ARBITRATION

6.1 Either of the Parties may, at any time before court proceedings are commenced and after the Parties have attempted to resolve the Dispute in good faith, by commercial negotiation, mediation and Expert determination (if applicable), refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4 of this DMP Schedule 18. The Parties are not obliged to pursue arbitration but may choose to do so in resolving the Dispute.

6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 or be subject to the jurisdiction of the courts in accordance with Clause 49 (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.

6.3 If:

6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 shall apply;

6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 49 (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;

6.3.3 the Authority does not serve a Counter Notice within the fifteen (15) Working Day period referred to in paragraph 6.2, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 or commence court proceedings in the courts in accordance with Clause 49 (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.

6.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3, the Parties hereby confirm that:

6.4.1 all disputes, issues or claims arising out of or in connection with this Dynamic Marketplace Agreement (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("**LCIA**") (subject to paragraphs 6.4.5 and 6.4.6);

6.4.2 the arbitration shall be administered by the LCIA;

6.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be

incorporated by reference into this Dynamic Marketplace Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

- 6.4.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- 6.4.5 the arbitration proceedings shall take place in London and in the English language; and
- 6.4.6 the seat of the arbitration shall be London.

## **7. EXPEDITED DISPUTE TIMETABLE**

- 7.1 In exceptional circumstances where the use of the times in this DMP Schedule 18 would be considered unreasonable by the Parties, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 7.2 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 7.1 of this DMP Schedule 18 or is otherwise specified under the provisions of this Dynamic Marketplace Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs of this DMP Schedule 18:
  - 7.2.1 in paragraph 2.8, fourteen (14) Working Days;
  - 7.2.2 in paragraph 3.2, ten (10) Working Days;
  - 7.2.3 in paragraph 4.2, ten (10) Working Days;
  - 7.2.4 in paragraph 5.2, five (5) Working Days; and
  - 7.2.5 in paragraph 6.2, ten (10) Working Days.
- 7.3 If at any point it becomes clear that an applicable deadline under paragraph 7.2 of this DMP Schedule 18 cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the relevant deadline.
- 7.4 If, pursuant to paragraph 7.2 of this DMP Schedule 18, the Parties fail to agree within two (2) Working Days after the relevant deadline has passed, the Authority may set a revised deadline provided that it is no less than five (5) Working Days before the end of the period of time specified in the applicable paragraphs under paragraph 7.2 (or no less than two (2) Working Days in the case of Paragraph 5.2 of this DMP Schedule 18).
- 7.5 Any agreed extension under paragraph 7.2 of this DMP Schedule 18 shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

## 8. URGENT RELIEF

- 8.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
  - 8.1.1 for interim or interlocutory remedies in relation to this Dynamic Marketplace Agreement or infringement by the other Party of that Party's Intellectual Property Rights; or
  - 8.1.2 where compliance with paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period; or
  - 8.1.3 if the Parties fail to resolve the Dispute following good faith discussions and commercial negotiations and mediation (where it is agreed between the Parties) is unsuccessful within 60 working days or such period as may be agreed by the Parties then any Dispute between the Parties may be referred to the Courts.

## DMP SCHEDULE 19: VARIATION FORM

Variation Form No:

.....

BETWEEN:

**[insert name of Authority]** ("the Authority")

and

**[insert name of Supplier]** ("the Supplier")

1. This Dynamic Marketplace Agreement is varied as follows:

**[Guidance Note: Refer to Clause 19.1 and insert details of the Variation]**

2. This Variation must be agreed and signed by both Parties and shall only be effective from the date it is signed by the Authority.
3. Words and expressions in this Variation shall have the meanings given to them in the Dynamic Marketplace Agreement.
4. The Dynamic Marketplace Agreement, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Authority

Signature

Date

Name (in Capitals)

Address

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

Date

Name (in Capitals)

Address

## DMP SCHEDULE 20: CONDUCT OF CLAIMS

### 1. INDEMNITIES

- 1.1 This Schedule shall apply to the conduct by a Party from whom an indemnity is sought under this Dynamic Marketplace Agreement or any Contract (the “**Indemnifier**”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “**Beneficiary**”).
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Dynamic Marketplace Agreement or any Contract (a “**Claim**”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.
- 1.3 Subject to Paragraph 1.5, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim, and the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
  - 1.4.1 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
  - 1.4.2 the Indemnifier shall not bring the name of the Beneficiary into disrepute;
  - 1.4.3 the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
  - 1.4.4 the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Dynamic Marketplace Agreement or any Contract if:
  - 1.5.1 the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
  - 1.5.2 the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the

Beneficiary in writing that it does not intend to take conduct of the Claim; or

- 1.5.3 the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

## **2. RECOVERY OF SUMS**

2.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever the lesser is of:

2.1.1 an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and

2.1.2 the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

## **3. MITIGATION**

3.1 Each of the Authority or Contracting Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.

## DMP SCHEDULE 21: TRANSPARENCY REPORTS

### General

- 1.1 Within a period (to be agreed with Supplier) the Supplier shall submit to the Authority for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in Annex 1 of this Schedule 21 below.
- 1.2 If the Authority rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for further Approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. This process shall be repeated until the Parties have agreed versions of each Transparency Report.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1 of this Schedule 21 below.
- 1.4 Any dispute in connection with the preparation and/or approval of Transparency Reports shall be resolved in accordance with the Dispute Resolution Procedure.
- 1.5 The requirements in this Schedule 21 are in addition to any other reporting requirements set out in this DMP Agreement.

### ANNEX 1: LIST OF TRANSPARENCY REPORTS

| Title of Report                       | Content | Format | Frequency |
|---------------------------------------|---------|--------|-----------|
| [Headline Service performance]        | [ ]     | [ ]    | [ ]       |
| [Charges]                             | [ ]     | [ ]    | [ ]       |
| [Sub-Contractors]                     | [ ]     | [ ]    | [ ]       |
| [Technical]                           | [ ]     | [ ]    | [ ]       |
| [Performance management arrangements] | [ ]     | [ ]    | [ ]       |

SAMPLE

## DMP SCHEDULE 22: AUTHORISED PROCESSING TEMPLATE

1. The contact details of the Authority Data Protection Officer is:  
[TBC]
2. The contact details of the Supplier Data Protection Officer is:  
[Insert Contact details]
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

|   |  |
|---|--|
| <b>Contract Reference:</b>                  | <b>RM6102</b>  |
| <b>Date:</b>                                |  |
| <b>Description Of Authorised Processing</b> | <b>Details</b>   |
| Identity of the Controller and Processor    | <p><b>OPTION A: Authority as Controller</b></p> <p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor.</p>  |
| Subject matter of the processing            | <span style="background-color: yellow;">[This should be a high level, short description of what the processing is about i.e. its subject matter]</span>  |
| Duration of the processing                  | <span style="background-color: yellow;">[Clearly set out the duration of the processing including dates]</span>  |
| Nature and purposes of the processing       | <p><span style="background-color: yellow;">[Please be as specific as possible, but make sure that you cover all intended purposes.]</span></p> <p><span style="background-color: yellow;">The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction,</span></p> |

|                            |  |
|----------------------------|--|
|                            | <p>erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]</p>             |
| Type of Personal Data      | [Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]   |
| Categories of Data Subject | [Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc.] |
|                            | [Describe how long the data will be retained for, how it be returned or destroyed]   |

## DMP SCHEDULE 23: SECURITY MANAGEMENT

### 1 DEFINITIONS

In this DMP Schedule 23, the following definitions shall apply:

|  |   |
|--|---|
| <b>“Baseline Security Implementation Objectives”</b> | Has the meaning set out in Appendix 1 of this DMP Schedule 23.  |
| <b>“Breach of Security”</b>                          | <p>the occurrence of:</p> <p>(a) any unauthorised access to or use of the Services, the Authority’s Premises, the Sites, the Information System and/or any information or data (including the Confidential Information and the Authority Data) used by the Supplier or any Sub-Contractor in connection with this Agreement;</p> <p>(b) the loss (physical or otherwise) and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including copies of such information or data, used by the Supplier or any Sub-Contractor in connection with this Agreement; and/or</p> <p>any part of the Information System ceasing to be compliant with the Certification Requirements;</p> <p>in either case as more particularly set out in the security requirements in Schedule 2.1 (<i>Services Description</i>) and the Baseline Security Requirements;</p> |
| <b>"Certification Requirements"</b>                  | Means the requirements given in paragraph 6 of this DMP Schedule 23   |
| <b>“Information System”</b>                          | Has the meaning given in paragraph 3.1 of this DMP Schedule 23  |
| <b>“COTS Products”</b>                               | <p>is software that:</p> <p>(a) the licensor of that software makes generally available commercially prior to the date of this Agreement (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the licensor save as to price; and</p> <p>has a Non-trivial Customer Base</p>   |
| <b>“Risk Appetite”</b>                               | The security risks the Authority will accept or not accept to achieve the organizational goals  |
| <b>“Information Risk Management Approval”</b>        | Is the assessment of any information system by an independent information risk manager/professional which results in a statement that the risks to the  |

|   |   |
|---|---|
|   | information system have been appropriately considered and the residual risks reduced to an acceptable level |
| <b>“Risk Management Approval Statement”</b>     | Sets out the information risks associated with using the “THE Information System                            |
| <b>“Data”</b>                                   | All information (including pensions data) provided to the Supplier by the Authority                         |
| <b>“Security Outcomes” Delivery</b>             | Has the meaning set out in Appendix 2 of this DMP Schedule 23.  |
| <b>“Statement of Information Risk Appetite”</b> | Has the meaning given in paragraph 4.1 of this DMP Schedule 23 and Appendix 3.                              |
| <b>“Risk Management Documentation”</b>          | Has the meaning given in paragraph 5 of this DMP Schedule 23  |
| <b>“Security Management Plan”</b>               | Has the meaning given in paragraph 5.4.1 of this DMP Schedule 23  |
| <b>"Approval Date"</b>                          | Has the meaning given in paragraph 5.4.1 of this DMP Schedule 23  |
| <b>“IT Health Check”</b>                        | has the meaning given paragraph 7.1 of this DMP Schedule 23   |
| <b>“Security Tests”</b>                         | has the meaning given paragraph 7.1.4 of this DMP Schedule 23   |
| <b>"Vulnerability Correction Plans"</b>         | has the meaning given paragraph 7.2.2 of this DMP Schedule 23   |

## 1

### Introduction

- 1.1 This DMP Schedule 23 sets out the principles of protective security to be applied by the Supplier in performing its obligations under this DMP Agreement and in delivering the Services.
- 1.2 This DMP Schedule 23 also sets out:
- 1.2.1 the process which shall apply to the Information Risk Management Approval of the Information System;
  - 1.2.2 the requirement for the Supplier to ensure that:
    - (a) each Sub-Contractor who will Process the Data; and
    - (b) any ICT system which the Supplier or its Sub-Contractors will use to store, process or transmit the Data, it is and

continues to be compliant with the Certification Requirements;

- (c) the requirements on the Supplier to conduct Security Tests; and
- (d) each Party's obligations in the event of an actual or attempted Breach of Security.

## 2. Principles of Security

2.1 The Supplier shall have a Board level responsibility for proactively managing the information security risk associated with the service. This responsible Board member shall ensure:

- 2.1.1 The Authorities security approval is obtained prior to the service processing any HMG data;
- 2.1.2 The effective delivery of Security controls throughout the period of this DMP
- 2.1.3 Agreement; and
- 2.1.4 Any change to the service is subject to a security impact assessment and any which have a major impact upon the service security policy are notified to the Authority.

2.2 Each Party shall provide access to members of its information assurance personnel in accordance with the Security Management Plan to facilitate the design, implementation, operation, management and continual improvement of the Risk Management Documentation and the security of the Information System and otherwise at reasonable times on reasonable notice. The Security Plan shall address the high level Security Delivery Outcomes defined in Appendix 2.

## 3. The Information System

3.1 The information assets, ICT systems, associated business processes and/or premises which have been agreed between the parties to constitute the

system and shall be detailed in a diagram included in the Risk Management Documentation.

- 3.2 The Authority may change the scope of the Information System in accordance with the process set out in Clause 19 (Change) of this DMP Agreement.

#### 4. **Statement of Information Risk Appetite and Baseline Security Requirements**

- 4.1 The Authority has provided the Supplier with its Statement of Information Risk Appetite for the Information System and the Services (the Statement of Information Risk Appetite – Appendix 3).
- 4.2 The Authority's Baseline Security Implementation Objectives in respect of the Information System are set out in Appendix 1.
- 4.3 The Statement of Information Risk Appetite and the Baseline Security Implementation Objectives shall inform the Information Risk Management Approval of the Information System.

#### 5. **Information Risk Management Approval of the Information System**

- 5.1 The Information System shall be subject to Information Risk Management Approval in accordance with this Paragraph 5 and reviewed annually.
- 5.2 Information Risk Management Approval of the Information System shall be performed by representatives appointed by the Authority.
- 5.3 The Supplier shall prepare risk management documentation (the Risk Management Documentation") for any part of the Information System which is not subject to a separate HMG Risk Management Approval process, which shall be subject to approval by the Authority in accordance with this Paragraph 5.
- 5.4 The Risk Management Documentation shall be structured in accordance with the template as agreed with the Authority and include:
  - 5.4.1 an initial Security Management Plan which shall include:
    - (a) define compliance with the security delivery objective described in Appendix 2.
    - (b) the dates on which each subsequent iteration of the Risk Management Documentation will be delivered to the Authority for review and staged approval;
    - (c) the date by which the Information System must achieve Risk Management Approval and acceptance of residual risks ("Approval Date");
    - (d) the tasks, milestones, timescales and any dependencies on the Authority for the security approval of the Information System.
  - 5.4.2 evidence that the Supplier and each applicable Sub-Contractor is compliant with the Assurance Requirements.
- 5.5 The Authority shall, by the relevant date set out in the Security Management Plan, issue a Risk Management Approval Statement which will form part of

the Risk Management Documentation ("Risk Management Approval Statement ") confirming either:

- 5.5.1 that the Authority is satisfied that the identified risks to the Information System have been adequately and appropriately addressed and that the residual risks are understood and accepted by the Authority.
- 5.5.2 the Authority considers that the residual risks to the Information System have not been reduced to a level acceptable by the Authority.
- 5.6 The Supplier acknowledges that it shall not be permitted to use the Information System to receive, store or Process any Data until the Board Level responsible individual has confirmed that all residual risks are being managed. The Authority shall be notified of any such decision and shall be presented within 20 days of any such decision being made an agreed set of documentation to enable independent assurance that the risk which is being managed is within the Authority's Risk Appetite. If the Authority is not content that the risks are within the stated risk appetite the supplier shall be informed in writing and shall take immediate action to put in place additional security controls as directed by the Authority.
- 5.7 The Supplier shall keep the Information System and the Risk Management Documentation under review and shall update this documentation at least annually and the Supplier shall submit each update to the Information Risk Management Documentation to the Authority for approval as appropriate.
- 5.8 The Supplier shall review each request for a Variation against the Information Risk Management Documentation to establish whether the documentation would need to be amended and should an amendment be necessary to the Information Risk Management Documentation, the Supplier shall submit the updated document for consideration and approval by the Authority.
- 5.9 The Supplier shall be solely responsible for the costs associated with developing and updating the Information Risk Management Documentation and carrying out any remedial action required by the Authority as part of the Information Risk Management Approval process.

## 6. **Certification Requirements**

- 6.1 The Supplier shall ensure at all times during the DMP Period the Services are compliant with Cyber Essentials requirement and shall provide the Authority with a copy of each such Certificate of compliance. Unless otherwise agreed with the Authority the Supplier shall not be permitted to

operate the Information System to receive, store or Process any Authority Data unless such certification is in place.

6.2 The Supplier shall notify the Authority as soon as reasonably practicable and, in any event within 2 Working Days, should it cease to be compliant with the Certification Requirements and, on request from the Authority:

6.2.1 immediately ceases using the Data; and

6.2.2 promptly returns, destroys and/or erases the Data in accordance with Baseline Security Requirements.

## 7. Security Testing

7.1 The Supplier shall, at its own cost and expense, when it Processing Authority Data:

7.1.1 undertake the security assurance activities as defined in the "Authority's" Security Assurance Framework to evidence that the risk is within the Authority's risk tolerance. The Supplier can propose alternative security testing not defined in the Security Assurance Framework but shall need to demonstrate to the satisfaction of the "Authority's" security assurance lead that the proposed Security test delivers comparable level of assurance to test defined in the security assurance framework.

7.1.2 procure a Security Test of the Information System by a NCSC approved member of the CHECK Scheme once every 12 months during the DMP Period unless additional IT Health Checks are required by Paragraph 7.2;

7.1.3 commission external vulnerability scanning of the "Information System monthly;

7.1.4 conduct such other tests as are required by:

(a) any Vulnerability Correction Plans;

(b) the Information Risk Management Documentation; and

(c) the Authority following a Breach of Security or a significant change to the components or architecture of the Information System, (each a "Security Test").

7.2 In relation to each Security Test, the Supplier shall promptly, following receipt of each Security Test report:

7.2.1 provide the Authority with a copy of the Security Test report;

7.2.2 in the event that the Security Test identifies any issues, the Supplier shall define a remedial plan by the Authority (each a "Vulnerability Correction Plan") which sets out in respect of each issue identified in the Security Test report:

7.3 The Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier's ability to deliver the Services so as to meet the Service Levels, the Supplier

shall be granted relief against any resultant under-performance for the period of the Security Tests.

- 7.4 Without prejudice to any other right of audit or access granted to the Authority pursuant to this Agreement, the Authority and/or its authorised representatives shall be entitled, at any time and without giving notice to the Supplier, to carry out such tests (including security tests by CHECK certified company) as it may deem necessary in relation to the Service, the Information System and/or the Supplier's compliance with the Information Risk Management Documentation. The Authority shall take reasonable steps to notify the Supplier prior to carrying out such Security Tests to the extent that it is reasonably practicable for it to do so taking into account the nature of the Security Test.
- 7.5 The Authority shall notify the Supplier of the results of such Security Tests after completion of each such test.
- 7.6 The Security Tests shall be designed and implemented so as to minimise their impact on the delivery of the Services. If such Security Tests adversely affect the Supplier's ability to deliver the Services so as to meet the Service Levels, the Supplier shall be granted relief against any resultant under-performance to the extent directly arising as a result of the Authority and/or its authorised representatives carrying out such Security Tests.
- 7.7 Without prejudice to the provisions of Paragraph 7.2.2, where any Security Test carried out pursuant to this Paragraph 7 reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Supplier shall promptly notify the Authority of any changes to the Information System and/or the Information Risk Management Documentation (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness.
- 7.8 Where the Supplier shall implement such changes to the Information System and/or the Information Risk Management Documentation and repeat the relevant Security Tests in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible.
- 7.9 For the avoidance of doubt, where a change to the Information System and/or the Information Risk Management Documentation is required to remedy non-compliance with the Information Risk Management Documentation, the Baseline Security Requirements and/or any obligation

in this Agreement, the Supplier shall effect such change at its own cost and expense.

7.10 If any repeat Security Test carried out pursuant to Paragraph 7.7 reveals an actual or potential Breach of Security or weakness exploiting the same root cause failure, such circumstance shall constitute a material Default.

7.11 On each anniversary of the DMP Commencement Date, the Supplier shall provide to the Authority a letter from its chief executive officer (or equivalent officer) confirming that having made due and careful enquiry:

7.11.1 the Supplier has in the previous year carried out all tests and has in place all procedures required in relation to security matters under this DMP Agreement; and

7.11.2 the Supplier is confident that its security and risk mitigation procedures with respect to the Services remain effective.

## 8. Breach of Security – General Principles

8.1 If either Party becomes aware of a Breach of Security or an attempted Breach of Security it shall notify the other in accordance with the security incident management process as set out in the Information Risk Management Documentation.

8.2 Without prejudice to the security incident management process set out in the Information Risk Management Documentation, upon becoming aware of any of the circumstances referred to in Paragraph 8.1, the Supplier shall:

8.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Authority) necessary to:

(a) minimise the extent of actual or potential harm caused by such Breach of Security;

(b) remedy such Breach of Security to the extent possible and protect the integrity of the Information System against any such potential or attempted Breach of Security;

(c) apply a tested mitigation against any such Breach of Security or potential or attempted Breach of Security and, provided that reasonable testing has been undertaken by the Supplier, if the mitigation adversely affects the Supplier's ability to deliver the Services so as to meet the Service Levels, the Supplier shall be granted relief against any resultant under-performance for such period as the Authority, acting reasonably, may specify by written notice to the Supplier; and

(d) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure;

8.2.2 as soon as reasonably practicable and, in any event, within 2 Working Days, following the Breach of Security or attempted Breach of Security, provide to the Authority full details of the Breach

of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.

- 8.3 In the event that any action is taken in response to a Breach of Security or attempted Breach of Security as a result of non-compliance of the Information System and/or the Information Risk Management Documentation with the Baseline Security Requirements and/or this DMP Agreement, then such action and any required change to the Information System and/or Information Risk Management Documentation shall be at no cost to the Authority.

**9. Breach of Security – IT Environment**

- 9.1 The Supplier shall, as an enduring obligation throughout the DMP Period, use its reasonable endeavours to prevent any Breach of Security for any reason including as a result of malicious, accidental or inadvertent behaviour. In accordance with the patching policy (which shall form part of the Information Risk Management Documentation and which shall be agreed with the Authority), this shall include an obligation to use the latest versions of anti-virus definitions, firmware and software available from industry accepted anti-virus software vendors.

- 9.2 Notwithstanding Paragraph 9.1, if a Breach of Security is detected in the Authority System or the Information System, the Parties shall co-operate to reduce the effect of the Breach of Security and, particularly if the Breach of Security causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses and to restore the Ordered Services to their desired operating efficiency.

- 9.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Paragraphs 8 and 9.2 shall be borne by the Parties as follows:

- 9.3.1 by the Supplier where the Breach of Security originates from defeat of the Supplier's or any Sub-Contractor's security controls, the Supplier Software, the Third Party Software or the Data (whilst the Data was under the control of the Supplier);
- 9.3.2 by the Authority if the Breach of Security originates from defeat of the Authority's security controls or the Data (whilst the Data was under the control of the Authority); and
- 9.3.3 in all other cases each Party shall bear its own costs.

**10. Vulnerabilities and Corrective Action**

- 10.1 The Authority and the Supplier acknowledge that from time to time vulnerabilities in the Information System will be discovered which unless mitigated will present an unacceptable risk to the Data.

- 10.2 The severity of threat vulnerabilities for Supplier COTS Software and Third Party COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the Information Risk Management Documentation and using the appropriate vulnerability scoring systems including:

- 10.2.1 the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are

aligned to CVSS as set out by NIST <http://nvd.nist.gov/cvss.cfm>);  
and

- 10.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.
- 10.3 The Supplier shall procure the application of security patches to vulnerabilities in the Information System within a maximum period from the public release of such patches with those vulnerabilities categorised as 'Critical' within 7 days of release, 'Important' within 30 days of release and all 'Other' within 60 Working Days of release, except where:
  - 10.3.1 the Supplier can demonstrate that a vulnerability in the Information System is not exploitable within the context of the Services (e.g. because it resides in a software component which is not running in the service) provided vulnerabilities which the Supplier asserts cannot be exploited within the context of the Services must be remedied by the Supplier within the above timescales if the vulnerability becomes exploitable within the context of the Services;
  - 10.3.2 the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of 5 days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Authority; or
  - 10.3.3 the Authority agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the Information Risk Management Documentation.
- 10.4 The Information Risk Management Documentation shall include provisions for major version upgrades of all Supplier Software and Third Party Software which are COTS Products to be kept up to date such that all Supplier Software and Third Party Software which are COTS Products are always in mainstream support throughout the DMP Period unless otherwise agreed by the Authority in writing.
- 10.5 The Supplier shall:
  - 10.5.1 implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent Central Government Body;
  - 10.5.2 promptly notify GovCertUK of any actual or sustained attempted Breach of Security;
  - 10.5.3 ensure that the Information System is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;
  - 10.5.4 ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the Information System by actively monitoring the threat landscape during the DMP Period;
  - 10.5.5 pro-actively scan the Information System for vulnerable components and address discovered vulnerabilities through the

processes described in the Information Risk Management Documentation;

- 10.5.6 ensure that the Board person responsible shall ensure that the service is patched in accordance with the timescales specified to achieve the security outcomes
  - 10.5.7 propose interim mitigation measures to vulnerabilities in the Information System known to be exploitable where a security patch is not immediately available;
  - 10.5.8 remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the Information System); and
  - 10.5.9 inform the Authority when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the Information System and provide initial indications of possible mitigations.
- 10.6 If the Supplier is unlikely to be able to mitigate the vulnerability within the timescales under Paragraph 10, the Supplier shall immediately notify the Authority.
- 10.7 A failure to comply with Paragraph 10.3 shall constitute a material Default.

## **11 Service Decommissioning**

- 11.1 On termination of the DMP Agreement or where an Authority ceases to use the DMP agreement the Supplier shall:
- 11.1.1 on demand, provide: the Authority with all Data in an agreed open format;
  - 11.1.2 have documented processes to guarantee availability of Data in the event of the Supplier ceasing to trade;
  - 11.1.3 securely erase any or all Data held by the Supplier when requested to do so by the Authority; and
  - 11.1.4 securely destroy all media that has held Data at the end of life of that media in accordance with any specific requirements in this Agreement and, in the absence of any such requirements, in accordance with Good Industry Practice.

## **12 Audit and Monitoring**

- 12.1 The Supplier shall collect audit records which relate to security events in the service or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should be made available to the Authority, within 5 days, when requested
- 12.2 The Supplier and the Authority shall work together to establish any additional audit and monitoring requirements for the Information System.
- 12.3 The Supplier shall retain audit records collected in compliance with this provision until the Service.

## Appendix 1 - Baseline Security Requirements

### 1.1 Data Security Outcomes

The Security Policy defines the security characteristics of the Service supplied under the Contract. The Supplier shall assert, and evidence compliance, of the Service Supplied under the Contract against the Data Security Outcomes defined at Annex 1. The Security Policy describes the required security outcomes which the service shall need to achieve, in order to provide the Contracting Authority with the assurance and confidence that the Security Risk is being appropriately managed.

The Supplier shall also be cognisant of the need to support the Contracting Authorities compliance with EU data protection legislation throughout the life of the Contract.

### 1.2 Handling, Processing and Storage of OFFICIAL-SENSITIVE information

Where the Supplier is going to handle, process and store OFFICIAL-SENSITIVE information, the Supplier shall implement additional measures to secure data of this type throughout the lifecycle of the Contract. The measures defined herein are in addition to the Supplier delivering a Service where the residual risk associated with the Service Supplied under the Contract is acceptable to the Contracting Authority. For a Supplier Service to handle OFFICIAL-SENSITIVE data the residual risk associated with the additional measures defined below shall be considered acceptable to the Contracting Authority. The additional measures have been cross referenced to the relevant Security Principle headline defined within the Security Policy.

| Serial | Security Principle Headline     | Additional Measures  |
|--------|---------------------------------|--|
| 1.     | Asset Protection and Resilience | The Supplier shall provide evidence that the infrastructure devices storing any bulk Authority data shall not be directly accessible from a device hosted on the internet. The Supplier shall assure the protection afforded to bulk data addresses the NCSC guidance <a href="https://www.ncsc.gov.uk/guidance/protecting-bulk-personal-data-introduction">https://www.ncsc.gov.uk/guidance/protecting-bulk-personal-data-introduction</a>  |
| 2.     | Governance                      | The Supplier shall provide evidence of robust handling processes throughout the lifecycle of all information held on the system which conforms to the definition of personal data defined within the Data Protection Act 1998 or other UK regulatory requirements. The robust handling procedures will need to specify the procedural measures implemented to ensure: <ul style="list-style-type: none"> <li>• There are clearly defined roles associated with any access to bulk Authority data.</li> <li>• Where a role is identified as having access to bulk Authority data there shall be defined responsibilities which detail any actions which can be performed in support of maintaining Service availability.</li> <li>• There shall be a process defined which authorises Supplier staff to be able access to bulk Authority</li> </ul> |

|    |                      |   |
|----|----------------------|---|
|    |                      | <p>data for purposes of delivering and maintaining the Service availability.</p> <ul style="list-style-type: none"> <li>• Any individual being given access to bulk Authority data is aware of the HMG requirements for data protection.</li> <li>• The Supplier nominates an individual within its organisation who is independent from the programme delivery team and is responsible for ensuring the enforcement of the measures defined above.</li> </ul>  |
| 3. | Operational security | <p>This Supplier incident reporting process shall include reporting security incidents to the Data Controller and ICO</p> <p>The supplier shall agree with Authority triggers and timescales for sharing such incidents with service Contracting Authority (s) which have compromised OFFICIAL-SENSITIVE data.</p> <p>The Supplier shall publish and agreed with the Authority the content and format of security incident notifications for sharing information involving OFFICIAL SENSITIVE. The Supplier shall agree with the Authority a restricted distribution group with individuals who have a “need to know” for incident involving OFFICIAL SENSITIVE data.</p> |

## ANNEX 1: SECURITY POLICY

### Data Security Principles/Implementation Objectives Matrix

|   | Headline                          | Principle  | Sub-points | Implementation Objectives  |
|---|-----------------------------------|--|------------|--|
| 1 | <b>Data in transit protection</b> | OFFICIAL data transiting from a Contracting Authority service consumer across untrusted networks should be adequately protected against tampering and eavesdropping (integrity and confidentiality). |            | Data in transit is protected between the Contracting Authority's end user devices and the service. |
|   |                                   | OFFICIAL data transiting the Supplier's internal networks should be adequately protected against tampering and eavesdropping (integrity and confidentiality).  |            | Data in transit is protected internally within the service.  |
|   |                                   | OFFICIAL data transiting untrusted networks should be adequately protected against tampering and eavesdropping (integrity and confidentiality).  |            | Data in transit is protected between the service and other services (e.g. where APIs are exposed). |

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|---|--|--|--|---|
| 2 | <b>Asset protection and resilience</b> | <p>Contracting Authority or Contracting Authority data, and the assets storing or processing it, should be protected against physical tampering, loss, damage or seizure.</p> <p>OFFICIAL data shall be protected to a level which is comparable with that required under UK legislation</p> | Physical location and legal jurisdiction | <p>Suppliers shall ensure that the following information is made available to the Contracting Authorities:</p> <p>The geographic locations where Contracting Authority data is stored, processed or managed from.</p> <p>The applicable legal jurisdictions that the Suppliers operates within and how it provides comparable controls to those required under UK legislation.</p> <p>The Contracting Authority (where applicable) shall be informed of any changes to the above.</p> |
|   |  | <p>OFFICIAL data shall physical protection against unauthorised access, tampering, theft and /or reconfiguration of data processing services.</p>  | Datacentre security                      | Data processing locations used to deliver the service are adequately protected.   |
|   |  | <p>OFFICIAL data when stored on any type of removable media or storage within a service shall not be accessible by local unauthorised parties.</p>   | Data at rest protection                  | The Contracting Authority has confidence that removable storage media containing their data is adequately protected from unauthorised access.   |

|  |  |  |  |
|--|--|--|--|
|  | The process of provisioning, migrating and de-provisioning resources shall not result in unauthorised access to the Contracting Authority's data.  | Data sanitisation - retention period                                   | The Suppliers shall inform Contracting Authority's how long it will take to securely erase Contracting Authority data (including from any backups) from the Services.  |
|  |  | Data sanitisation - Contracting Authority on-boarding and off-boarding | The Supplier shall securely erase Contracting Authority data when components are moved or re-provisioned, upon request by the Contracting Authority or when the Contracting Authority leaves the service. The Supplier shall sanitise media in accordance with NCSC guidance <a href="https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media">https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media</a> |
|  | Once equipment used to deliver the service reaches the end of its useful life it should be disposed of in a way that does not compromise the security of the service or Contracting Authority's data | Equipment Disposal   | All equipment potentially holding Contracting Authority data, credentials, or configuration information for the service shall be identified. Storage media which has held Contracting Authority data shall be appropriately sanitised or securely destroyed at the end of its lifecycle. Accounts or credentials specific to the redundant equipment are revoked.  |
|  | The service shall have the ability to operate normally in the event of failures, incidents or attacks  | Physical resilience and availability                                   | The Supplier shall clearly articulate the availability capabilities and commitments of the service.<br><br>The service has adequate resiliency measures in place.  |

|   |                           |                |  |   |
|---|---------------------------|----------------|--|---|
| 3 | <b>Separation tenants</b> | <b>between</b> | <p>Separation should exist between Contracting Authority (s) of a service to prevent a malicious or compromised Contracting Authority from affecting the confidentiality, integrity or availability of another Contracting Authority of the service.</p> | <p>The Contracting Authority should be informed of any other Contracting Authority they share the platform or service with</p> <p>Separation between Contracting Authority (s) shall be enforced at all points within the service where the service is exposed to Contracting Authority (s). One Contracting Authority shall not be able to affect the confidentiality, integrity or availability of another Contracting Authority.</p> |
|---|---------------------------|----------------|--|---|

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|   |                   |  |                              |   |
|---|-------------------|--|------------------------------|---|
| 4 | <b>Governance</b> | The Supplier has a security governance framework that co-ordinates and directs the provider's overall approach to the management of ICT systems, services and information. | IA Risk Management Processes | <p>A clearly identified, and named, board representative (or a person with the direct delegated authority of) shall be responsible for the security of the cloud service. This is typically someone with the title Chief Security Officer, Chief Information Officer or Chief Technical Officer.</p> <p>The Supplier's security governance framework is formally documented, as are policies governing key aspects of information security relating to the service.</p> <p>Information security is incorporated into the Supplier's financial and operational risk reporting mechanisms for the service.</p> <p>The Supplier has defined roles and responsibilities for information security within the service and allocated them to named individuals. This includes a named individual with responsibility for managing the security aspects of the service.</p> <p>The Supplier has processes in place to identify and ensure compliance with applicable legal and regulatory requirements relating to the service.</p> |
|   |                   |  | IA Organisational Maturity   | The Supplier can demonstrate a sufficient degree of IA Maturity.  |

|   |                             |   |                                     |  |
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| 5 | <b>Operational security</b> | The Supplier has processes and procedures in place to ensure the operational security of the service. | Configuration and change management | The status, location and configuration of service components (including hardware and software components) shall be tracked to ensure they can be effectively managed and remain securely configured.<br>Changes to the service shall be assessed for potential security impact. They shall be managed and tracked through to completion. |
|   |                             |   | Vulnerability management            | Potential new threats, vulnerabilities or exploitation techniques which could affect the service are assessed and corrective action is taken.  |

Protective monitoring

The service shall collect data events from all relevant Contractor devices to support effective identification that all implementation objectives are operating effectively. There shall be effective automated analysis systems in place, supported by adequately trained staff, which identify and prioritise indications in the data that may be related to malicious activities. The Supplier shall provide Contracting Authority's with alerts resulting from protective monitoring which impact the implementation objectives within 24 hours. NCSC Security Operation Centre provides recommended Good Practice for the implementation of a protective monitoring solution.

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| - | -                         |  | Incident management   | <p>A defined process and contact route shall exist for reporting of security incidents by Contracting Authority (s) and external entities.</p> <p>A definition of a security incident shall be published for the service and the triggers and timescales for sharing such incidents with service Contracting Authority (s).</p> <p>The content and format of security incident notifications for sharing information with Contracting Authority (s) shall be published.</p> <p>The Supplier shall initiate investigations into incidents within five hours.</p> |
| 6 | <b>Personnel security</b> | Supplier staff should be subjected to adequate personnel security screening and security education for their role. | Contracting Authority | Supplier staff that have logical or physical access to the service shall be subjected to adequate personnel security screening for their role. At a minimum these checks shall include identity, unspent criminal convictions, and right to work checks.  |

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| 7 | <b>Secure development</b>    | Services should be designed and developed to identify and mitigate threats to their security.   |  | <p>The Supplier shall have a process in place to review new and evolving threats regularly and have development plans in place to progressively improve and reinforce the security of their service against these threats.</p> <p>Software development is carried out in line with industry good practice.</p> <p>Configuration management processes are in place to ensure the integrity of the components of any software.</p> <p>NCSC guidance on Security Design Principles for Digital Services provides best practice advice.</p>  |
| 8 | <b>Supply chain security</b> | The Supplier should ensure that its supply chain satisfactorily supports all of the security principles that the service claims to deliver. |  | <p>The Supplier shall clearly define information is shared with or accessible by its third party Contractors (and their supply chains).</p> <p>The Supplier's procurement processes shall ensure that the minimum relevant security requirements for all third party Contractors and delivery partners are explicitly documented.</p> <p>The risks to the Supplier from Sub-Contractors and delivery partners shall be regularly assessed and appropriate security controls implemented.</p> <p>The Supplier shall monitor its potential Sub-Contractor's compliance with security requirements and initiate remedial action where</p> |

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|   |   |  |  | <p>necessary.</p> <p>The Supplier's procurement process shall ensure that following contract termination all assets are returned, removed (or appropriately destroyed) and any Sub-Contractors' access rights to the Supplier's internal systems or information are removed.</p> <p>The Supplier shall categorise each Sub-Contractor as one of the following:</p> <p>Type 1 - access to aggregated Contracting Authority Consumer data<br/> Type 2 – access to limited number (less than 10) individual Contracting Authority Consumer records<br/> Type 3 – access to only part of an individual Contracting Authority Consumer records<br/> Type 4 – no access to Contracting Authority Consumer records</p> |
| 9 | <b>Contracting management Authority</b> | The Contracting Authority should be provided with tools to enable them to securely manage their service. | Authentication of Contracting Authority management interfaces to | <p>Only properly authorised individuals from the Contracting Authority organisation can authenticate to, and access management tools for the service.</p> <p>Only authorised individuals from the Contracting Authority are able to perform actions affecting the service through support channels</p>  |

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|    |                                      |  | Separation of Contracting Authority within management interfaces | <p>No other Contracting Authority service consumer can access management tools for the service.</p> <p>The contracting shall be able to constrain permissions granted to authorised individuals from the Contracting Authority to perform actions affecting the service.</p> |
|    |                                      |  | Secure Contracting Authority Service Change Authorisation        | A Supplier support procedures shall identify when a support action is security related (such as altering a user's access permissions, or changing user credentials) and ensure appropriate authorisation is in place for this change.  |
| 10 | <b>Identity and Authentication</b>   | Contracting Authority and Supplier access to all service interfaces should be constrained to authenticated and authorised individuals. |  | The Supplier shall implement controls which provide confidence that a user has authorisation to access a specific interface.   |
| 11 | <b>External protection interface</b> | All external interfaces of the service should be identified and have appropriate protections to defend against attacks through them.   |  | The service controls and protects access to elements of the service by Contracting Authority (s) and outsiders.  |

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| 12 | <b>Secure administration service</b> | The methods used by the Supplier's administrators to manage the operational service (monitor system health, apply patches, update configuration etc.) should be designed to mitigate any risk of exploitation which could undermine the security of the service. |  | <p>The networks and devices used to perform administration /management of the service shall be appropriate to protect the Contracting Authority 's data</p> <p>End user devices used for administration shall be enterprise managed assets and shall be securely configured. CESG's EUD Security Guidance provides recommended good practice for configuration of a range of different end user device platforms which can be used to inform the configuration of these devices.</p> <p>NCSC guidance on implementation of system administration architectures provides best practice.</p> |
| 13 | <b>Audit information for tenants</b> | Contracting Authority (s) should be provided with the audit records they need in order to monitor access to their service and the data held within it.   |  | <p>Audit information shall be retained for a minimum of two years or until the Contracting Authority leaves the service. The audit information shall be accessible online for a minimum of six months from the point of event collection.</p> <p>The Supplier shall make tenants aware of:</p> <p>The audit information that will be provided.</p> <p>The format of the data and the schedule by which it will be provisioned (e.g. on demand, daily etc.).</p>  |

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| 14 | <b>Security use of the Service by the consumer</b> | Service consumers are clear on their responsibilities when accessing the service. |  | <p>The Service consumer understands any service configuration options available to them and the security implications</p> <p>The Service consumer understands the security requirements on their processes, uses and infrastructure related to use of the service.</p> <p>The Contracting Authority is able to educate its privileged users in how to use it safely and securely.</p> |
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SAMPLE

## Appendix 2 – Security Delivery Objectives

### Security Governance

- Security Working Group

- Security Management Plan

- Security Risk Register

### Security Risk Acceptance

- Risk Management Document

- Privacy Impact Assessment

### Security Assurance

- Security Assurance Plan

- Cyber Essential Scheme Certification

### Operational Security

- Operational Security Management Report

## Appendix 3 – The Statement of Information System Risk Appetite

- 1.1. The data held by the system (once fully operational) will consist of:
  - Personal Data
  - Commercial Information
  - Departmental Corporate Information
- 1.2. The risk appetite is applicable to the Information System service and the provision of the Ordered Services.
- 1.3. The Information System will hold a large amount of aggregated with potentially SENSITIVE personal data sets. There is also assessed to be a risk from an integrity perspective of these data sets and user access controls need to be put in place to ensure that there are strict control over who is able to access these. This intent should be satisfied by the Supplier of the System adequately applying the controls from a competent supplier who has been certified under an appropriate security governance regime; ISO27001, Cyber Essential or equivalent standard, and putting additional controls around any potential download and transmission of aggregated data from The Information System. In addition, a robust Protective Monitoring regime should be in place to detect any attempt to download data and export it.
- 1.4. In addition, the programme will implement appropriate and proportionate controls to maintain the integrity and accuracy of data help on the service and supporting systems. Good practice and proportionate baseline security controls will be implemented including the segregation of roles and access to update/amend data.
- 1.5. While these measures will be put in place to mitigate any risk to the confidentiality of the service data where appropriate. The service shall also ensure appropriate protection in in place to mitigate the risk associated with a compromise of the availability as well as the Integrity of the data.
- 1.6. The risk appetite for the service is **CAUTIOUS** (see the treasury definitions on GOV.UK) as accepted by the service Senior Programme Executive, the service SRO and the HMG Department Office Senior Information Risk Owner (SIRO).