

FIRST-TIER TRIBUNAL (INFORMATION RIGHTS)
UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000

EA/2011/0081

BETWEEN:-

DAVID MOSS

Appellant

-and-

THE INFORMATION COMMISSIONER

Respondent

-and-

THE HOME OFFICE

Second Respondent

WITNESS STATEMENT OF JACKIE KEANE

JK1

This is the exhibit marked JK1 referred to in the witness statement of Jackie Keane.

Document	Pages
1. Confidentiality, FOIA and Data Protection provisions of the NBIS Service Agreement	1 - 15.
2. Confidentiality, FOIA and Data Protection provisions of the NIS SSG Framework Agreement	16 - 28
3. Note of meeting between David Moss and representatives from UKBA and IPS, 23 February 2010	29 - 33.

46.2 The Agency and the Supplier shall attempt to resolve all Framework Multi-Party Disputes using the Framework Dispute Resolution Procedure except where a Party seeks urgent injunctive relief or when an issue can be dealt with under Schedule 3 (Governance, Partnering and Framework Management) of the Framework Agreement.

SECTION G – CONFIDENTIALITY, DATA AND INTELLECTUAL PROPERTY

47. Confidentiality

47.1 Except to the extent set out in this Clause 47 or where disclosure is expressly permitted elsewhere in this Service Agreement, each Party shall (and in the case of the Supplier, shall procure that the Subcontractors shall):

47.1.1 treat the other Parties' Confidential Information (and in the case of the Supplier, the Customer 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);

47.1.2 not disclose the other Parties' Confidential Information (and in the case of the Supplier, the Customer Confidential Information) to any other person without the owner's Prior Written Consent;

47.1.3 immediately Notify the relevant Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of such Party's Confidential Information (and in the case of the Supplier, of the Customer Confidential Information); and

47.1.4 the Supplier shall not, (and shall procure that the Subcontractors shall not), use or copy any of the Customer Confidential Information other than for the purposes of this Service Agreement.

47.2 Clause 47.1 shall not apply to the extent that:

47.2.1 disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIRs pursuant to Clause 49;

47.2.2 the information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

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- 47.2.3 the information was obtained from a third party without obligation of confidentiality;
 - 47.2.4 the information was already in the public domain at the time of disclosure otherwise than by a breach of this Service Agreement; or
 - 47.2.5 the information is independently developed without access to the relevant Party's Confidential Information (and in the case of the Supplier, without access to the Customer Confidential Information).
- 47.3 If the Agency, the Supplier or any Subcontractor (in this Clause 47.3, the "disclosing person") is required by Law to make a disclosure of Confidential Information, the disclosing person shall as soon as reasonably practicable:
- 47.3.1 notify the other 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;
 - 47.3.2 supply to the other a legal opinion indicating that disclosure is necessary (which may include a note of advice from an in-house legal adviser of the disclosing person or advice from its solicitors);
 - 47.3.3 consult with the other as to the possible steps to avoid or limit disclosure and take those steps, provided that they do not result in significant adverse consequences to the Parties;
 - 47.3.4 to the extent reasonably possible, seek confidentiality undertakings from the body which is to receive the Confidential Information; and
 - 47.3.5 agree with the other in advance the particulars of the Confidential Information to be disclosed including, in the case of any stock exchange announcement, the relevant wording.

In this Clause 47.3, where a disclosing person is required to give Notice to or discharge any other obligation to the Agency, it shall also give Notice to and discharge such obligation in respect of any relevant Customer.

- 47.4 The Supplier shall (and shall procure that the Subcontractors shall):
- 47.4.1 implement security practices against any unauthorised copying, use, disclosure (whether that disclosure is oral, in writing or in any other form), access and damage or destruction of Customer Confidential

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Information including the implementation of and compliance with those security requirements Notified by the Agency from time to time after the Effective Date pursuant to the Change Control Procedure;

- 47.4.2 ensure that all copies of Confidential Information which contain Protectively Marked Information shall be marked clearly in accordance with the security marking classification as required by Schedule 4 (Security and Information Assurance) or as otherwise Notified by the Agency from time to time; and
 - 47.4.3 ensure that the Customer Confidential Information can be separately identified from the Supplier's own information for the purposes of any Audit and the Supplier's obligations to return and destroy such information on termination or expiry of this Service Agreement in accordance with Clause 47.11.
- 47.5 Subject to Clauses 47.1.2 and 47.2 and Clauses 47.6 and/or 47.7 the Supplier may disclose the Customer Confidential Information only to:
- 47.5.1 the Supplier Personnel who need to know the information to enable performance of their obligations relating to this Service Agreement, and shall ensure that such Supplier Personnel are aware of and shall comply with these obligations as to confidentiality;
 - 47.5.2 the Supplier's professional advisers;
 - 47.5.3 the Supplier's insurers or insurance agents to the extent necessary to enable the Supplier to meet its obligations to such insurers (upon first obtaining from such insurers a written undertaking of confidentiality in relation to the Customer Confidential Information in question, on the same terms as are contained in this Service Agreement); and
 - 47.5.4 any bank or financial institution from whom it is seeking or obtaining finance (upon first obtaining from such bank or institution a written undertaking of confidentiality in relation to the Customer Confidential Information in question, on terms no less onerous than those contained in this Service Agreement).
- 47.6 The Supplier may at any time, and shall following a written request from the Agency procure that, before commencing any work under this Service Agreement or at any time during their conduct of work under this Service Agreement, Supplier Personnel who shall be involved in the provision of any Services under this Service Agreement sign a confidentiality undertaking in the form set out in

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Annex 1 (Confidentiality Undertaking) and, if also required, an ICA acknowledgement in the form set out in Annex 4 (ICA Acknowledgement) of Schedule 28 (Governance, Partnering and Service Agreement Management). Where the Supplier Personnel in question are employees of the Supplier or a Material Subcontractor then, if the Supplier can demonstrate that such employees are already under obligations of confidentiality no less onerous than those in the confidentiality undertaking, the Supplier shall not be required to procure (or procure that a Material Subcontractor procures) that such employees sign a confidentiality undertaking in the form set out in Annex 1 (Confidentiality Undertaking) to Schedule 28 (Governance, Partnering and Service Agreement Management).

47.7 Other than in relation to Supplier Personnel who have signed a confidentiality undertaking and/or a ICA acknowledgement as required under Clause 47.6, the Supplier shall give prompt advance Notice of any disclosure of any of the Customer Confidential Information to the Supplier Personnel and shall give the Agency reasonable opportunity to comment on the nature and extent of the disclosure and shall take account of any reasonable comment made by the Agency. The Agency and/or the relevant Customer shall have the right to prohibit the disclosure of the Customer Confidential Information to any person and the Supplier shall not make any such disclosure to any such person so prohibited. Any disclosure made pursuant to this Clause shall require the Supplier to ensure that the relevant persons are made fully aware of the Supplier's obligations of confidentiality under this Service Agreement and if required by the Agency to procure that such persons sign a confidentiality undertaking in the form set out in Annex 1 (Confidentiality Undertaking) and, if also required, an ICA acknowledgement in the form set out in Annex 4 (ICA Acknowledgement) of Schedule 28 (Governance, Partnering and Service Agreement Management).

47.8 Without limiting Clause 47.7, the Supplier shall:

47.8.1 notify the Agency of all persons to whom Protectively Marked Information may be disclosed or who may (through the provision of the Services) become aware of Protectively Marked Information before those persons are permitted access to such Protectively Marked Information; and

47.8.2 if required by the Agency:

(a) arrange for those persons identified in Clause 47.8.1 to sign a confidentiality undertaking in the form set out in Annex 1 (Confidentiality Undertaking) and, if also required, an ICA acknowledgement in the form set out in Annex 4 (ICA

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Acknowledgment) of Schedule 28 (Governance Partnering and Service Agreement Management);

- (b) keep records of any such required undertakings;
- (c) supply to the Agency the records relating to those persons who have given such undertakings as the Agency may require; and
- (d) ensure that all those persons identified in Clause 47.8.1 (who have not signed a confidentiality undertaking) are made aware of and shall comply with the obligations set out in this Clause 47.

47.9 Nothing in this Service Agreement shall prevent the Agency from disclosing the Supplier Confidential Information:

47.9.1 to the National Identity Scheme Commissioner;

47.9.2 to any Crown Body and/or any other Contracting Authority provided that the Agency makes such disclosure on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body and/or any Contracting Authority. The Supplier agrees that all Crown Bodies and/or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies and/or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body and/or any Contracting Authority;

47.9.3 to the extent that any Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions (provided that the Agency will notify the Supplier of such disclosure to the extent it is permissible and reasonably practical for it to do so, and shall take into account any submissions the Supplier may make in relation to such disclosure);

47.9.4 to any professional adviser, insurance agent, insurance provider, consultant, supplier or other person engaged by any of the entities described in Clause 47.9.2 (including any benchmarking organisation) or any person conducting a Gateway Review in respect of this Service Agreement on the basis that such information is confidential and is not to be disclosed to a third party;

47.9.5 for the purpose of the exercise of the Audit Rights;

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- 47.9.6 for the purpose of the examination and certification of the accounts of any Customer;
 - 47.9.7 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which any Customer is making use of any Services provided under this Service Agreement;
 - 47.9.8 if the disclosure relates to the outcome of the procurement process for the Services or any other services supplied under the Framework Agreement as may be required to be published in the Supplement to the Official Journal of the European Union in accordance with EC directives or elsewhere in accordance with requirements of UK Government policy on the disclosure of information relating to government contracts;
 - 47.9.9 to any SSG Member where the Agency reasonably considers that disclosure is strictly necessary for the purpose of the performance of any service agreement entered into by that SSG Member under a framework agreement similar to the Framework Agreement to the extent that such disclosure is reasonably required in connection with such performance (except that the Agency may not under this Clause 47.9.9 disclose any Supplier Confidential Information which is information relating to the Supplier's or its Subcontractors' prices or costs) on the basis that such information is confidential and is not to be disclosed to a third party;
 - 47.9.10 to a proposed transferee, assignee or novatee of, or successor in title to a Customer on the basis that such information is confidential and is not to be disclosed to a third party; or
 - 47.9.11 to a Replacement Supplier or any third party whom any Customer is considering engaging as contemplated or permitted by this Service Agreement to the extent that such disclosure is strictly necessary in connection with such engagement (except that the Agency may not under this Clause 47.9.11 disclose any Supplier Confidential Information which is information relating to the Supplier's or its Subcontractors' prices or costs) on the basis that such information is confidential and is not to be disclosed to a third party.
- 47.10 The Agency shall ensure that any Crown Body, Contracting Authority, or other third party to whom the Supplier Confidential Information is disclosed pursuant to Clause 47.9 (excluding the NIS Commissioner) is made aware of the Agency's

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obligations of confidentiality under this Service Agreement.

47.11 Except as specified in Clause 47.12, upon the Agency's request, and in any event on termination of the whole or part of this Service Agreement or expiry of this Service Agreement the Supplier shall promptly return:

47.11.1 any Customer Confidential Information which it received while providing the Services;

47.11.2 all physical and written records containing the Customer Confidential Information related to the relevant Services; and

47.11.3 all documentation relating to any other Customer Confidential Information,

to the Agency or, if requested, destroy or delete the same in a manner specified by the Agency and promptly certify to the Agency that it has completed such destruction or deletion.

47.12 Clause 47.11 shall not apply to any copies of Customer Confidential Information:

47.12.1 necessary for the continued performance of Services under any surviving part of this Service Agreement; or

47.12.2 which the Supplier is required to keep by Law or this Service Agreement.

47.13 The obligations with respect to Confidential Information disclosed under this Service Agreement shall survive either expiry or termination of this Service Agreement and will continue for as long as the information remains confidential.

47.14 Each Party agrees that damages may not be an adequate remedy for any breach of this Clause 47 and that the other Parties shall be entitled to remedies of injunction, specific performance and any other appropriate equitable relief for any threatened or actual breach of this Clause 47.

47.15 The Agency and the Customers may use or copy any of the Supplier Confidential Information for the purposes anticipated under this Service Agreement but not otherwise, and the Agency shall procure that the Customers shall comply with this Clause 47.15.

47.16 The Agency shall, and shall procure that the Customers shall:

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- 47.16.1 implement security practices against any unauthorised copying, use, disclosure (whether that disclosure is oral, in writing or in any other form), access and damage or destruction of Supplier Confidential Information; and
- 47.16.2 ensure that the Supplier Confidential Information can be separately identified from the Agency's own information.

47.17 The Supplier shall (and shall procure that the Subcontractors shall):

- 47.17.1 ensure and agree that the Supplier Personnel are entitled to report any significant concerns they may have concerning the confidentiality or security of Customer Confidential Information, Customer Personal Data and/or Customer Data in accordance with Clause 47.17.2 and in the event that any of them do so report, their relevant employer takes no action to the detriment of such individuals in connection with such report or in any way discriminate against them for such report; and
- 47.17.2 advise each of the Supplier Personnel that the Agency requires that the Supplier and the Agency be notified by email or telephone of any significant confidentiality or security concerns such Supplier Personnel may have about Customer Confidential Information, Customer Personal Data and/or Customer Data.

48. Data Protection

48.1 With respect to the Customer Personal Data, the Agency appoints the Supplier as a Data Processor. The Supplier shall not assume any responsibility for determining the purposes for which and the manner in which the Customer Personal Data is Processed, but nevertheless shall comply at all times with the Data Protection Requirements.

48.2 The Supplier shall (and shall procure that the Subcontractors shall):

- 48.2.1 Process the Customer Personal Data only in accordance with instructions from the relevant Customer (which may be specific instructions or instructions of a general nature as set out in this Service Agreement or as otherwise Notified by the relevant Customer to the Supplier during the Term);
- 48.2.2 unless otherwise requested by the Agency, Process the Customer Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services;

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48.2.3 save to the extent that instructions issued under Clause 48.2.1 are inconsistent, implement appropriate technical and organisational measures (including those specified by the Data Protection Requirements) to protect the Customer Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. The Agency shall, at the request of the Supplier discuss with the Supplier the Supplier's assessment of what measures are needed from time to time and the following process may be followed at the Supplier's request to determine those measures:

- (a)** the Supplier shall, in accordance with Schedule 4 (Security and Information Assurance), develop a full Security Plan based on the draft Security Plan supplied with its Tender;
- (b)** the final Security Plan will be subject to the procedures set out in Schedule 4 (Security and Information Assurance); and
- (c)** amendments and revisions may be made to the Security Plan through the procedures described in Schedule 4 (Security and Information Assurance).

48.2.4 Subject to the Supplier's obligation to comply with the Data Protection Requirements as a processor, the Parties acknowledge the following principles will be relevant to the development and assurance of the Security Plan, but without prejudice to Clause 48.2.3 above:

- (a)** that the Agency is relying upon the Supplier's skill and knowledge in this regarding what is "appropriate"; and
- (b)** that the technical and organisational measures shall be appropriate in relation to the Customer Requirements and the Services and to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Customer Personal Data and having regard to the nature of the Customer Personal Data which is to be protected;
- (c)** that when implementing and updating technical and organisational measures, have regard to:
 - (i)** the sensitive nature of the personal data contained within the Customer Personal Data and the substantial harm which would

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result from unauthorised or unlawful processing or accidental loss or destruction of or damage to such personal data; and

- (ii) the state of technological development and the cost of implementing such measures;

48.2.5 ensure:

- (a) the reliability and integrity of any Supplier Personnel who have access to the Customer Personal Data;
- (b) that all Supplier Personnel involved in the Processing of the Customer Personal Data have undergone adequate training in the care, protection and handling of Personal Data; and
- (c) that all such Supplier Personnel perform their duties in accordance with this Service Agreement strictly in compliance with the Data Protection Requirements and with the provisions of Clause 50 by treating such Customer Personal Data as Customer Confidential Information;

48.2.6 neither disclose nor transfer the Customer Personal Data to any Subcontractors or Affiliates other than where strictly necessary for the provision of the Services and in such event the Supplier shall obtain the Prior Written Consent of the relevant Customer (save where such disclosure or transfer is specifically authorised under this Service Agreement);

48.2.7 reasonably promptly comply with the applicable Data Protection Requirements if it receives:

- (a) a request from a Data Subject concerning any information relating to himself (whether or not relating to Customer Personal Data);
- (b) a request from the relevant Customer or a Data Subject to rectify, block or erase any Customer Personal Data, to prevent the processing of Customer Personal Data in connection with direct marketing and/or to require an explanation of any decision made by automated means in respect of that person's Personal Data;
- (c) a complaint, communication or request relating to a Customer's obligations under the Data Protection Legislation (including requests from the Information Commissioner's Office); or

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- (d) a request for disclosure of Customer Personal Data where compliance with such request is required at Law;
- 48.2.8 provide the relevant Customer with full cooperation and assistance within the timescales reasonably required by that Customer in relation to any complaint, communication or request made, including by:

 - (a) complying fully with the applicable Data Protection Requirements;
 - (b) providing the relevant Customer with full details of the complaint, communication or request;
 - (c) providing the relevant Customer with any Customer Personal Data it holds in relation to a Data Subject (within the timescales required by that Customer); and
 - (d) (without prejudice to any obligation to comply with Law) providing the relevant Customer with any information reasonably requested by that Customer;
- 48.2.9 permit the relevant Customer or its Representative to inspect and audit the Supplier's data Processing activities (and/or those of its agents, Affiliates and Subcontractors) where this relates to this Service Agreement and comply with all reasonable requests or directions by that Customer to enable it to verify and/or procure that the Supplier or Subcontractor (as the case may be) is in full compliance with the Data Protection Requirements and its obligations under this Service Agreement;
- 48.2.10 provide a written description of the technical and organisational methods employed by the Supplier or Subcontractor (as the case may be) for Processing Customer Personal Data (within the timescales reasonably required by the relevant Customer);
- 48.2.11 not Process or permit the Processing of Customer Personal Data outside the United Kingdom other than with the Prior Written Consent of the Agency, and in such case in accordance with the Data Protection Requirements and this Clause 48;
- 48.2.12 where the Agency consents to a transfer of Customer Personal Data outside the United Kingdom:

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- (a) ensure that the Customer Personal Data continues to be Processed strictly in compliance with the Data Protection Requirements and this Clause 48; and
 - (b) promptly and fully inform the relevant Customer of any circumstances (including the existence of legislation) that may prevent the Supplier from fulfilling its obligations under this Clause 48;
- 48.2.13 not include Customer Personal Data in any product or service offered by the Supplier or Subcontractor (as the case may be) to third parties unless it is specifically required as part of the provision of the Services; and
- 48.2.14 not carry out any research, analysis or profiling activity which involves the use of any element of Customer Personal Data (including in aggregate form) or any information derived from any processing of such Customer Personal Data unless it is specifically required as part of the provision of the Services.
- 48.3 The Supplier shall use its reasonable endeavours to assist the Customers to comply with any obligations under the Data Protection Legislation and shall not perform its obligations under this Service Agreement in such a way as to cause any Customer to breach any of its applicable obligations under the Data Protection Legislation to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such applicable obligations.
- 48.4 The Supplier acknowledges that compliance with the provisions of this Clause 48 is of the utmost importance to the Customers.
- 48.5 Subject to the provisions of Clause 61.3, the Supplier shall be entitled to submit a Change Request under the Change Control Procedure if the Supplier is required to do any act or thing pursuant to this Clause 48 which is not already being done by the Supplier.
- 49. Freedom of Information**
- 49.1 The Supplier acknowledges that the Customers are subject to the FOIA and the EIRs and shall assist and cooperate with them to enable them to comply with the FOIA and the EIRs.
- 49.2 The Supplier shall (and shall procure that the Subcontractors shall):

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- 49.2.1 transfer to the relevant Customer all Requests for Information that it or they receive as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
- 49.2.2 provide the relevant Customer with a copy of all Information in its possession or power in the form that such Customer requires within five (5) Working Days (or such other period as the Agency may specify) on the Agency's request; and
- 49.2.3 provide all necessary assistance as reasonably requested by the relevant Customer to enable it to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the EIRs (as applicable).
- 49.3 The Supplier shall not respond directly to a Request for Information unless expressly authorised to do so by the relevant Customer.
- 49.4 The Supplier acknowledges that the Customers are entitled to disclose Information without consulting or obtaining consent from the Supplier, or having taken the Supplier's views into account, in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA. However, the Agency will notify the Supplier of a Request for Information to the extent it is permissible and reasonably practical for it to do so, and shall take into account any submissions the Supplier may make in relation to such Request for Information.
- 50. Customer Data**
- 50.1 The Supplier shall not (and shall procure that the Supplier Personnel shall not) delete or remove any proprietary notices or ERMI (if any) contained within or relating to the Customer Data.
- 50.2 The Supplier shall not (and shall procure that Supplier Personnel shall not) store, copy, disclose, or use the Customer Data except as strictly necessary for the performance by the Supplier of its obligations under this Service Agreement or as otherwise expressly authorised in writing by the relevant Customer.
- 50.3 If the Customer Data is held and/or processed by the Supplier, the Supplier shall supply that Customer Data to the relevant Customer as requested by that Customer in the format set out in Schedule 18 (Exit Management) or as the Agency may otherwise reasonably request in writing and the Customer shall bear the reasonable and properly evidenced costs of the Supplier in this regard.

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- 50.4 The Supplier shall perform secure back-ups of such elements of the Customer Data as referred to in the Business Continuity Requirements and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity Plan and Schedule 4 (Security and Information Assurance). The Supplier shall ensure that such back-ups are available to the relevant Customer and are delivered to that Customer in accordance with the Business Continuity Plan.
- 50.5 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with Schedule 4 (Security and Information Assurance).
- 50.6 If any Customer Data is corrupted, lost, destroyed or sufficiently degraded as a result of the Supplier's Default so as to be unusable:
- 50.6.1 the Supplier shall Notify the relevant Customer as soon as reasonably practicable after, and in any event within 24 hours of the time at which the Supplier becomes aware of the event that gives rise to the corruption, loss, destruction or degradation, and any failure to do so shall be a Material Default of this Agreement;
 - 50.6.2 the Supplier shall promptly restore (or procure the restoration of) the Customer Data to comply with the Customer Requirements using the back-up copy made in accordance with the Business Continuity Plan; and
 - 50.6.3 where the Supplier fails (or is unable) to restore the Customer Data from the back-up copy within such time frame as set out in the Business Continuity Plan the relevant Customer may itself restore (or procure restoration of) the Customer Data in any manner reasonably available to it (at the expense of the Supplier) and the Supplier shall provide to the relevant Customer such assistance as that Customer reasonably requires for that purpose.
- 50.7 If any Customer Data is corrupted, lost, destroyed or sufficiently degraded so as to be unusable for any reason other than a Supplier Default then the Supplier shall promptly at the Agency's request, and at the Agency's reasonable expense, either:
- 50.7.1 restore the Customer Data (as envisaged by Clause 50.6.2); or
 - 50.7.2 provide such assistance as the Agency shall reasonably require to assist the Agency, or other Customer (or any third party on the

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Agency's or other Customer's behalf) with the restoration of the Customer Data.

50.8 If at any time the Supplier suspects or has reason to believe that Customer Data has or may become corrupted, lost, destroyed or sufficiently degraded so as to be unusable for any reason, then the Supplier shall Notify the Agency and the relevant Customer as soon as possible and in any case within twenty four (24) hours and inform them of the remedial action the Supplier proposes to take.

50.9 The Supplier shall not (and shall procure that the Supplier Personnel shall not) without the Prior Written Consent of the Agency:

50.9.1 purport to sell, let, hire, assign rights in or otherwise dispose of Customer Data;

50.9.2 make any Customer Data available to any third party;

50.9.3 make any Customer Data available to Subcontractors unless it is necessary for the Subcontractors to perform their part of the supply of any Deliverables or provision of the Services; or

50.9.4 commercially exploit the Customer Data.

50.10 The Supplier shall not Process any Customer Data outside the United Kingdom other than with the Prior Written Consent of the Agency.

51. Official Secrets Acts

51.1 In addition to its obligations under Clause 61, the Supplier shall (and shall ensure that its Subcontractors shall) at all times comply with the Official Secrets Acts 1911 to 1989.

51.2 In particular, the Supplier shall take all necessary steps including the display of notices to ensure that all persons engaged on any work in connection with this Service Agreement have notice that these statutory provisions apply to them.

51.3 Where requested pursuant to Schedule 28 (Governance, Partnering and Service Agreement Management), or as otherwise requested by the Agency at any time, the Supplier shall, in respect of all Supplier Personnel procure the signature by some or all (as specified by the Agency) of such persons of a statement (in a form specified by the Agency) that they understand that the Official Secrets Acts 1911 to 1989 apply to them.

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respective timeframes set out in that Schedule and the Co-Operation Agreement.

10. Ethical Wall Arrangements

- 10.1 For the purposes of this Clause, the expression "**Related Procurement**" shall mean any circumstances where an Agency wishes to procure Services from an SSG Member (a "**New Service**") where the Supplier, its Affiliates or a proposed Subcontractor is either already providing or is due to provide a service to a Customer (a "**Legacy Service**") and that New Service shall either interface with or replace in whole or in part the Legacy Service.
- 10.2 If the Supplier or a proposed Subcontractor of the Supplier wishes to be considered as a supplier of a New Service to a Customer where it is already providing a Legacy Service to the same or another Customer, that Customer may require, as a pre-condition of involvement in the procurement of the New Service that the Supplier shall (and shall ensure that its Affiliates and Subcontractors shall) establish and maintain those "ethical wall" arrangements which are described in Annex 5 of Schedule 3 (Governance, Partnering and Framework Management) and approved by that Agency (such approval not to be unreasonably withheld or delayed) between the personnel who are involved in operational aspects of the Legacy Service and the personnel who are bidding for the New Service.

11. Confidentiality

- 11.1 The Parties agree that, with effect from the Framework Effective Date, the Non-Disclosure Agreement shall terminate upon the execution of this Framework Agreement and the provisions of this Clause 11 shall apply.
- 11.2 Except to the extent set out in this Clause 11 or where disclosure is expressly permitted elsewhere in this Framework Agreement, each Party shall (and in the case of the Supplier, the Supplier shall procure that the Subcontractors shall):
- 11.2.1 treat the other Parties' Confidential Information (and, in the case of the Supplier, the Customer 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);
- 11.2.2 not disclose the other Parties' Confidential Information (and, in the case of the Supplier, the Customer Confidential Information) to any other person without the owner's Prior Written Consent; and

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- 11.2.3 Notify the relevant Party immediately if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of such Party's Confidential Information (and, in the case of the Supplier, of the Customer Confidential Information).
- 11.3 Clause 11.2 shall not apply to the extent that:
- 11.3.1 disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIRs pursuant to Clause 13;
 - 11.3.2 the information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 11.3.3 the information was obtained from a third party without obligation of confidentiality;
 - 11.3.4 the information was already in the public domain at the time of disclosure otherwise than by a breach of this Framework Agreement;
or
 - 11.3.5 the information is developed independently without access to the relevant Confidential Information.
- 11.4 If the Agency, the Supplier or any Subcontractor (in this Clause 11.4, the "disclosing person") is required by Law to make a disclosure of Confidential Information, the disclosing person shall as soon as reasonably practicable:
- 11.4.1 Notify the other 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;
 - 11.4.2 supply to the other a legal opinion indicating that disclosure is necessary (which may include a note of advice from an in-house legal adviser of the disclosing person or advice from its solicitors);
 - 11.4.3 consult with the other as to the possible steps to avoid or limit disclosure and take those steps, provided that they do not result in significant adverse consequences for the Lead Agency or such Customers or the Supplier and its relevant Subcontractors;

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- 11.4.4 to the extent reasonably possible, seek confidentiality undertakings from the body which is to receive the Confidential Information; and
- 11.4.5 agree with the relevant Party in advance the particulars of the Confidential Information to be disclosed including, in the case of any stock exchange announcement, the relevant wording.

In this Clause 11.4, where a disclosing person is required to give Notice to or discharge any other obligation to the Agency, it shall also give Notice to and discharge such obligation in respect of any relevant Customer.

11.5 The Supplier shall (and shall procure that the Subcontractors shall):

- 11.5.1 implement security practices against any unauthorised copying, use, disclosure (whether that disclosure is oral, in writing or in any other form), access and damage or destruction of Customer Confidential Information including as Notified by the relevant Customer from time to time pursuant to the Framework Change Control Procedure;
- 11.5.2 ensure that all copies of Confidential Information which contain Protectively Marked Information shall be clearly marked in accordance with the security marking classification set out in Schedule 3 (Governance, Partnering and Framework Management) or as otherwise Notified by the relevant Customer from time to time pursuant to the Framework Change Control Procedure; and
- 11.5.3 ensure that the Customer Confidential Information can be separately identified from the Supplier's own information for the purposes of any Audit, and the Supplier's obligations to return and destroy such information on termination or expiry of this Framework Agreement in accordance with Clause 32.

11.6 Subject to Clauses 11.2.2, 11.3, 11.8 and 11.10 and the ethical wall requirements set out in Annex 5.2, Schedule 3 (Governance, Partnering and Service Agreement Management), the Supplier may disclose the Customer Confidential Information only to:

- 11.6.1 the Supplier Personnel who are either directly involved in a Mini-Competition or the provision of any of the Services and who need to know the information to enable performance of their obligations relating to that Mini-Competition or Service Agreement, and shall ensure that such Supplier Personnel are aware of and shall comply with these obligations as to confidentiality;

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- 11.6.2 the Supplier's professional advisers;
- 11.6.3 the Supplier's insurers or insurance agents to the extent necessary to enable the Supplier to meet its obligations to such insurers (upon first obtaining from such insurers a written undertaking of confidentiality in relation to the Customer Confidential Information in question, on the same terms as are contained in this Framework Agreement); and
- 11.6.4 any bank or financial institution from whom it is seeking or obtaining finance (upon first obtaining from such bank or institution a written undertaking of confidentiality in relation to the Customer Confidential Information in question, on terms no less onerous than those contained in this Framework Agreement).
- 11.7 The Supplier shall not (and shall procure that the Subcontractors shall not), use or copy any of the Customer Confidential Information other than for the purposes anticipated under this Framework Agreement.
- 11.8 Other than in relation to the Supplier Personnel who have signed a confidentiality undertaking as required under Clause 11.9, the Supplier shall give the relevant Customer prompt advance Notice of any disclosure of any of the Customer Confidential Information to the Supplier Personnel and shall give the relevant Customer reasonable opportunity to comment on the nature and extent of the disclosure and shall take account of any reasonable comment or request made by the relevant Customer.
- 11.9 If pursuant to Clause 11.8, the relevant Customer requests that members of the Supplier Personnel sign a confidentiality undertaking in the form set out in Annex 2 of Schedule 3 (Governance Partnering and Framework Management), the Supplier shall procure that such Supplier Personnel who shall be involved in the provision of any Services under a Service Agreement sign that confidentiality undertaking before starting any work in accordance with that Service Agreement. Where the Supplier Personnel in question are employees of the Supplier or of a Material Subcontractor then, if the Supplier can demonstrate that such employees are already subject to obligations of confidentiality no less onerous than those in the confidentiality undertaking, this shall constitute compliance with the Lead Agency's request.
- 11.10 Any disclosure made pursuant to Clause 11.8 shall require the Supplier to ensure that the relevant persons are made fully aware of the Supplier's obligations of confidentiality under this Framework Agreement and if required by the relevant Customer for such persons to sign a confidentiality acknowledgement in the form set out in Annex 2 of Schedule 3 (Governance

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Partnering and Framework Management).

11.11 The relevant Customer shall have the right to prohibit the disclosure of the Customer Confidential Information to any person and the Supplier shall not make any such disclosure to any such person so prohibited.

11.12 Without limiting Clauses 11.8, 11.10 or 11.11, the Supplier shall:

11.12.1 Notify the relevant Customer of all persons to whom Protectively Marked Information may be disclosed or who may (through the provision of the Services) become aware of Protectively Marked Information before those persons are permitted access to such Protectively Marked Information;

11.12.2 if required by the relevant Customer:

(a) arrange for those persons identified in Clause 11.12.1 to sign a confidentiality acknowledgement in the form set out in Annex 2 of Schedule 3 (Governance Partnering and Framework Management);

(b) keep records of any such required undertakings;

(c) supply to the relevant Customer the records relating to those persons who have given such acknowledgements as the relevant Customer may require; and

(d) ensure that all those persons identified in Clause 11.12.1 (who have not signed a confidentiality acknowledgement) are made aware of and shall comply with the obligations set out in this Clause 11.

11.13 Nothing in this Framework Agreement or any Service Agreement shall prevent any Customer from using the Supplier Confidential Information to the extent necessary for that Customer to benefit from the Services and the provisions of this Framework Agreement.

11.14 Nothing in this Framework Agreement or any Service Agreement shall prevent any Customer from disclosing the Supplier Confidential Information:

11.14.1 to the NIS Commissioner;

11.14.2 to the Information Commissioner;

11.14.3 to any Crown Body and/or any other Contracting Authority provided that the relevant Customer makes such disclosure on the basis that

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the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body and/or any Contracting Authority. The Supplier agrees that all Crown Bodies and/or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies and/or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body and/or any Contracting Authority;

- 11.14.4 to the extent that any Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions (provided that the Lead Agency will Notify the Supplier of such disclosure to the extent it is permissible and reasonably practical for it to do so and shall take into account any submissions the Supplier may make in relation to such disclosure);
- 11.14.5 to any professional adviser, insurance agent, insurance provider, consultant, Supplier or other person engaged by any of the entities described in Clause 11.14.3 (including any benchmarking organisation) or any person conducting a Gateway Review in respect of this Framework Agreement on the basis that such information is confidential and is not to be disclosed to a third party;
- 11.14.6 for the purpose of any Audit;
- 11.14.7 for the purpose of the examination and certification of the accounts of any Customer;
- 11.14.8 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which any Customer is making use of any Services provided under a Service Agreement;
- 11.14.9 if the disclosure relates to the outcome of the procurement process for the Services supplied under this Framework Agreement as may be required to be published in the Supplement to the Official Journal of the European Union in accordance with EC directives or elsewhere in accordance with requirements of UK Government policy on the disclosure of information relating to government contracts;

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- 11.14.10 to a proposed transferee, assignee or novatee of, or successor in title to any Customer on the basis that such information is confidential and is not to be disclosed to a third party; or
 - 11.14.11 to a Replacement Supplier or any third party whom any Customer is considering engaging as contemplated or permitted by this Framework Agreement to the extent that such disclosure is strictly necessary in connection with such engagement (except that the Lead Agency may not under this Clause 11.14.11 disclose any Supplier Confidential Information which is information relating to the Supplier's or its Subcontractors' prices or costs) on the basis that such information is confidential and is not to be disclosed to a third party.
- 11.15 The Lead Agency shall ensure that any Crown Body, Contracting Authority, or third party to whom the Supplier Confidential Information is disclosed pursuant to Clause 11.14 (excluding the NIS Commissioner) is made aware of their obligations of confidentiality under this Framework Agreement.
- 11.16 Except as specified in Clause 11.17, upon any Customer's request, and in any event on termination of the whole or part of this Framework Agreement or expiry of this Framework Agreement, the Supplier shall promptly return:
- 11.16.1 any Customer Confidential Information which it received in connection with this Framework Agreement;
 - 11.16.2 all physical and written records containing Customer Confidential Information; and
 - 11.16.3 all documentation relating to any other Customer Confidential Information,
- to either the relevant Customer or, if requested, destroy or delete the same in a manner specified by the relevant Customer and promptly certify to the relevant Customer that it has completed such destruction or deletion.
- 11.17 Clause 11.16 shall not apply to any copies of Confidential Information:
- 11.17.1 necessary for the continued performance of Services under any Service Agreement that survives the expiry or termination of this Framework Agreement; or
 - 11.17.2 which the Supplier is required to keep by Law or otherwise under this Framework Agreement or any Service Agreement.

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- 11.18 The obligations with respect to Confidential Information disclosed under this Framework Agreement shall survive either expiry or termination of this Framework Agreement and will continue for as long as the information remains confidential.
- 11.19 Each Party agrees that damages may not be an adequate remedy for any breach of this Clause 11 and that the other Parties (and, subject to Clauses 2.3 and 2.4, the Service Recipients) shall be entitled to remedies of injunction, specific performance and any other appropriate equitable relief for any threatened or actual breach of this Clause 11.
- 11.20 The Customers shall not use or copy any of the Supplier Confidential Information other than for the purposes anticipated under this Framework Agreement.
- 11.21 The Customers shall:
- 11.21.1 implement security practices against any unauthorised copying, use, disclosure (whether that disclosure is oral, in writing or in any other form), access and damage or destruction of Supplier Confidential Information;
 - 11.21.2 ensure that the Supplier Confidential Information can be separately identified from the Customer's own information.

12. Data Protection

- 12.1 With respect to the Customer Personal Data, the relevant Customer appoints the Supplier as a Data Processor. The Supplier shall not assume any responsibility for determining the purposes for which and the manner in which the Customer Personal Data is Processed, but nevertheless shall comply at all times with the Data Protection Requirements.
- 12.2 The Supplier shall (and shall procure that the Subcontractors shall):
- 12.2.1 process the Customer Personal Data only in accordance with instructions from the relevant Customer (which may be specific instructions or instructions of a general nature as set out in this Framework Agreement or as otherwise Notified by the relevant Customer to the Supplier during the Term);
 - 12.2.2 unless otherwise requested by the relevant Customer, Process the Customer Personal Data only to the extent, and in such manner, as is necessary for the performance of this Framework Agreement;

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- 12.2.3 except to the extent that instructions issued under Clause 12.2.1 are inconsistent, implement appropriate technical and organisational measures (including those specified by the Data Protection Requirements) to protect the Customer Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. The Lead Agency shall, at the request of the Supplier, discuss with the Supplier the Supplier's assessment of what measures are needed from time to time. Subject to the Supplier's obligation to comply with the Data Protection Requirements, the Supplier acknowledges:
- (a) that the relevant Customer is relying upon the Supplier's skill and knowledge in this regarding in assessing what is 'appropriate';
 - (b) that the technical and organisational measures are required to be appropriate to the obligations of the Supplier and the rights of the Agencies under this Framework Agreement and the Co-Operation Agreement and to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Customer Personal Data and having regard to the nature of the Customer Personal Data which is to be protected;
- 12.2.4 when implementing and updating technical and organisational measures, have regard to:
- (a) the sensitive nature of the personal data contained within the Customer Personal Data and the substantial harm which would result from unauthorised or unlawful processing or accidental loss or destruction of or damage to such personal data; and
 - (b) the state of technological development and the cost of implementing such measures;
- 12.2.5 ensure:
- (a) the reliability and integrity of any Supplier Personnel who have access to the Customer Personal Data;
 - (b) that all Supplier Personnel involved in the Processing of the Customer Personal Data have undergone adequate training in the care, protection and handling of Personal Data; and
 - (c) that all such Supplier Personnel perform their duties in accordance with this Framework Agreement strictly in compliance with the Data

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Protection Requirements and with the provisions of Clause 11 by treating such Customer Personal Data as Confidential Information;

- 12.2.6 neither disclose nor transfer the Customer Personal Data to any Subcontractors or Affiliates other than where strictly necessary for the performance of this Framework Agreement, the Co-Operation Agreement or the Supplier's participation in a Mini-Competition and in such event the Supplier shall obtain the Prior Written Consent of the relevant Customer (except where such disclosure or transfer is specifically authorised under this Framework Agreement);
- 12.2.7 comply reasonably promptly with the applicable Data Protection Requirements if it receives:
- (a) a request from a Data Subject concerning any information relating to himself (whether or not relating to Customer Personal Data);
 - (b) a request from the relevant Customer or a Data Subject to rectify, block or erase any Customer Personal Data, to prevent the processing of Customer Personal Data in connection with direct marketing and/or to require an explanation of any decision made by automated means in respect of that person's Personal Data; or
 - (c) a complaint, communication or request relating to a Customer's obligations under the Data Protection Legislation (including requests from the Information Commissioner's Office);
 - (d) a request for disclosure of Customer Personal Data where compliance with such request is required at Law;
- 12.2.8 provide the relevant Customer with full co-operation and assistance (within the timescales required by that Customer) in relation to any complaint, communication or request made, including by:
- (a) complying fully with the applicable Data Protection Requirements;
 - (b) providing the relevant Customer with full details of the complaint, communication or request;
 - (c) providing the relevant Customer with any Customer Personal Data it holds in relation to a Data Subject (within the timescales required by the relevant Customer); and

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- (d) (without prejudice to any obligation to comply with Law) providing the relevant Customer with any information reasonably requested by that Customer;
- 12.2.9 permit the relevant Customer Representative to inspect and audit the Supplier's Processing activities (and/or those of its agents, Affiliates and Subcontractors) where this relates to this Framework Agreement or the Co-Operation Agreement and comply with all reasonable requests or directions by such Customer to enable it to verify and/or procure that the Supplier or Subcontractor (as the case may be) is in full compliance with the Data Protection Requirements and their obligations under this Framework Agreement and the Co-Operation Agreement;
- 12.2.10 provide a written description of the technical and organisational methods employed by the Supplier or Subcontractor (as the case may be) for Processing Customer Personal Data (within the timescales reasonably required by the relevant Customer);
- 12.2.11 not Process or permit the Processing of Customer Personal Data outside the United Kingdom other than with the Prior Written Consent of the relevant Customer, and in such case in accordance with the Data Protection Requirements and this Clause 12;
- 12.2.12 where the relevant Customer grants its Prior Written Consent to a transfer of Customer Personal Data outside the United Kingdom:
 - (a) ensure that the Customer Personal Data continues to be Processed strictly in compliance with the Data Protection Requirements and this Clause 12; and
 - (b) promptly and fully inform the relevant Customer of any circumstances (including the existence of legislation) that may prevent the Supplier from fulfilling its obligations under this Clause 12;
- 12.2.13 not include Customer Personal Data in any product or service offered by the Supplier or Subcontractor (as the case may be) to third parties unless it is specifically required as part of the provision of the Services; and
- 12.2.14 not carry out any research, analysis or profiling activity which involves the use of any element of Customer Personal Data (including in aggregate form) or any information derived from any

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processing of such Customer Personal Data unless it is specifically required as part of the provision of the Services.

- 12.3 The Supplier shall use its reasonable endeavours to assist the relevant Customer to comply with any obligations under the Data Protection Legislation and shall not perform its obligations under this Framework Agreement in such a way as to cause the relevant Customer to breach any of its applicable obligations under the Data Protection Legislation to the extent the Supplier is aware or ought reasonably to have been aware of such obligations.
- 12.4 The Supplier acknowledges that compliance with the provisions of this Clause 12 is of the utmost importance to the Customers.
- 12.5 On receipt of a Notice from the Lead Agency requesting any act or thing to be done pursuant to this Clause 12 which is not already being done by the Supplier, the Supplier may submit a Change Request under the Framework Change Control Procedure.
- 13. Freedom of Information**
- 13.1 The Supplier acknowledges that the Customers are subject to the FOIA and the EIRs and shall assist and cooperate with them to enable them to comply with the FOIA and the EIRs.
- 13.2 The Supplier shall (and shall procure that the Subcontractors shall):
- 13.2.1 transfer to the relevant Customer all Requests for Information that it or they receive as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - 13.2.2 provide the relevant Customer with a copy of all Information in its or their possession or power in the form that the relevant Customer requires within five (5) Working Days (or such other period as the relevant Customer may specify) on the relevant Customer's request; and
 - 13.2.3 provide all necessary assistance as reasonably requested by the relevant Customer to enable the relevant Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the EIRs (as applicable).
- 13.3 The Supplier shall not respond directly to a Request for Information unless expressly authorised to do so by the relevant Customer.

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13.4 The Supplier acknowledges that the relevant Customer is entitled to disclose Information without consulting or obtaining consent from the Supplier, or having taken the Supplier's views into account, in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA. However, the Lead Agency will notify the Supplier of a Request for Information to the extent it is permissible and reasonably practical for it to do so, and shall take into account any submissions the Supplier may make in relation to such Request for Information.

14. Customer Data

14.1 The Supplier shall not (and shall procure that the Supplier Personnel shall not) delete or remove any proprietary notices or ERMI (if any) contained within or relating to the Customer Data.

14.2 The Supplier shall not (and shall procure that Supplier Personnel shall not) store, copy, disclose, or use the Customer Data except as strictly necessary for the performance by the Supplier of its obligations under this Framework Agreement or as otherwise expressly authorised in writing by the relevant Customer.

14.3 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Customer Data security requirements as Notified from time to time pursuant to the Framework Change Control Procedure.

14.4 The Supplier shall not (and shall procure that the Supplier Personnel shall not) without the Prior Written Consent of the relevant Customer:

14.4.1 purport to sell, let, hire, assign rights in or otherwise dispose of Customer Data;

14.4.2 make any Customer Data available to any third party;

14.4.3 make any Customer Data available to Subcontractors unless it is necessary for the Subcontractors to perform their part of the supply of any deliverables or provision of the Services under a Service Agreement; or

14.4.4 commercially exploit the Customer Data.

Note of meeting between David Moss and representatives from UKBA and IPS

23 February 2010

This document has been produced as an informal minute of the meeting between David Moss and the following list of attendees.

ATTENDEES

Alex Lahood	UK Borders Agency
Karen Kyle	UK Borders Agency
Mike Franklin	UK Borders Agency
Marek Rejman-Greene	Home Office Scientific Development Branch
Henry Bloomfield	Identity and Passport Service

Further to Lin Homer's letter of 3 February 2010, to discuss the points raised by David Moss in recent correspondence, relating to UKBA identity management systems.

- Introductions/ General Discussion based on David Moss's enquiry
- Interpol Lost and Stolen Database
- Schengen Information System
- Facial Recognition Technology
- Fingerprint Technology

	Discussion
1	<p>Alex Lahood opened the meeting by introducing the purpose and thanked David Moss for his recent correspondence. Alex Lahood set out the proposed scope and agenda for the meeting and mentioned the need to always consider biometric technologies as a component in a wider business context. The attendees then introduced themselves.</p> <p>David Moss gave a brief synopsis of his interests and reasons for showing an interest in the actions and events of UKBA ad IPS. As:</p> <ul style="list-style-type: none"> • Mobile phones and their use as an “identity voucher” (based on circa 80% national population owning one in 2003). • The Government stance on smart cards in 2003 and there being no mention of: <ul style="list-style-type: none"> ○ Security Validation ○ PKI • Biometrics – David has concerns about: <ul style="list-style-type: none"> ○ Accuracy levels ○ Usefulness to the business ○ Reliability • UKPS trial demonstrated disappointing facts about the enrolment and verification potential of biometrics. • Fascinated by biometrics but has had his belief in biometrics dampened by the lack of operational results being published. <ul style="list-style-type: none"> ○ Has lost faith in the NIST reports and is sceptical of their validity. This related to a report about US VISIT, which indicated that many more people were referred to secondary examination than predicted in testing. Karen Kyle pointed out that it would not be possible to say the extent to which this was because of biometric failure. ○ Concerned about the use of facial geometry and facial image recognition and the security if doing so. Has read but does not necessarily give validity to the FRVT 2006 results.
2	<p>Interpol: David Moss wrote a letter to the Telegraph regarding the use of Interpol and was pleased that the level of checks is now 70 million pa rather than the lower figure quoted in another document.</p>
3	<p>Schengen Information Systems – David Moss was not too concerned over the reasoning why we were not part of the SIS infrastructure and was happy to wait and see if the UK join the SIS at some future date.</p>

4

Face Recognition:

David Moss was concerned about the assertion by UKBA that the ACS gates were providing more security to border control. Based on his reading of trial results, he believes that we may be wasting our time and money:

Karen Kyle stated that it was not the intention that the gates alone would provide additional security, but that the integration of automated clearance into the wider border security system allowed eligible passengers to be processed securely and quickly, allowing officers to focus more of their time and expertise on other risk areas in the overall system

Karen Kyle then gave a brief description of how the automated gates are used at ports.

David Moss understood that the automated gates formed part of a larger system but was still concerned that the statistics that he has read show that the software and hardware are not able to perform well (although he noted that Smart Gate have not published their results).

Marek Rejman-Greene explained that we are under no illusion that the systems are 100% accurate but that there is adequate evidence/information about the level of performance to warrant embarking on a trial.

David Moss was still concerned that he would like more information to be made available from the trial and that he saw no reason why publishing these results would jeopardise security.

Alex Lahood confirmed that UKBA would not be publishing the results. For security reasons, any discussion of the acceptable operating parameters of the current or future gates would be available only on a Need To Know basis. If a FAR was published, people may see this as a challenge to try and break the system.

Marek Rejman-Greene suggested that by introducing these gates that it would also keep the UK in a lead position in respect of using biometrics at the border.

David Moss pointed out that there were other countries using biometrics far more extensively than the UK but accepted that the UK is doing a number of trials at the border specifically.

5

David Moss asked about the National Identity Register (NIR) and the National Identity Scheme and whether the NIR will mix UK, EEA, Visa and Non Visa Nationals together

Both Henry Bloomfield and Mike Franklin pointed out that there would be different registers for different identity "types," and that UK/EEA and non-EEA details would be kept separately and subject to different legal/policy regimes.

David Moss asked about IAFS and the use of different capture devices across the IAFS estate as well as the back end matching algorithm.

Mike Franklin pointed out that the capture devices may be from different suppliers across the architecture and also that there is only one supplier of the algorithm for IAFS.

6	<p>Fingerprint verification was discussed and David Moss pointed out that there was very poor data available on fingerprint verification and that some trials had issued results that showed poor performance, in terms of the levels of matching accuracy.</p> <p>Marek Rejman Greene and Mike Franklin stated that there were several trials for fingerprint verification and the results show that it is extremely accurate and reliable.</p>
Action 1	<p>Marek Rejman Greene to provide link for the fingerprint trial paper referred to at the meeting – see below.</p> <p>[http://fingerprint.nist.gov/PFT/index.html Section headed 'Results' has the original 2005 report, NISTIR 7249, together with update performance data from 11th December 2009 and listing of algorithm suppliers.]</p>
7	<p>David Moss asked more detailed questions about the UKPS trial and why IPS are not doing more large scale trials?</p> <p>Henry Bloomfield suggested that he may not be the best person from IPS to answer some of these points and that large scale trials can be very expensive and more relevant and cost-effective results may be obtained by conducting trials as part of a procurement allowing multiple vendors to be tested prior to purchasing the products.</p> <p>David Moss agreed that he can see that a large scale trial can be expensive but was still keen to see IPS do more and publish results to appease the public concerns.</p>
Action 2	<p>Marek Rejman Greene to send to David Moss the URL of the NIST conference in the US where some of the results of procurement testing will be presented.</p> <p>[Paper by Peter Waggett (IBM) <i>et al.</i>: <i>Performance prediction testing for very large scale fingerprint based national identity schemes</i> in International Biometric Performance Conference http://biometrics.nist.gov/ibpc2010/program.pdf.]</p>
8	<p>David Moss stated that he can understand the remit of the UKBA trials and that there is a clear focus for them to implement trials to automate and secure the border however he was not very clear as to the reasons for having an ID card and asked about what applications will be available with an ID card?</p> <p>Henry Bloomfield stated that the policy documents for ID cards clearly states their purpose and there are proposals for on-line use and ID services.</p>

<p>9</p>	<p>David Moss stated that there was a document in July 2002 which was a consultation document, referring to ID cards as "entitlement cards". It referred to potential problems that might be created using flat fingerprints, and that they could not be used as court evidence.</p> <p>It was pointed out that this is not the case and that fingerprints can be used in court as evidence.</p> <p>Mike Franklin also stated that although the flat fingerprint area is smaller than the rolled print, if the image is of good quality there is enough information from a flat print to perform a very accurate search and verification. David Moss offered to provide the reference for the document in question so that others could check what had been claimed.</p>
<p>10</p>	<p>Rounding up, David Moss was keen to request that government publish more information or at least give good valid reasons why the data cannot be provided.</p>
<p>11</p>	<p>Alex Lahood closed the meeting by thanking David Moss for his interest and that government is open to challenge, making the point that feedback, good bad or indifferent is welcome. He also thanked the other attendees and closed the meeting.</p>