

**2018**

**(1) HEALTH AND SOCIAL CARE  
INFORMATION CENTRE (NHS Digital)**

**and**

**(2) IBM UNITED KINGDOM LIMITED**

**AGREEMENT**

relating to

the provision of the NHS Digital Security  
Operations Centre

**HCON01333**

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**THIS AGREEMENT** is made on

2018

**BETWEEN:**

- (1) **HEALTH AND SOCIAL CARE INFORMATION CENTRE (NHS DIGITAL)** of 1 Trevelyan Square Boar Lane, Leeds West Yorkshire LS1 6AE ("**Authority**"); and
- (2) **IBM UNITED KINGDOM LIMITED** a company registered in England and Wales under company number 00741598 whose registered office is at P.O. Box 41, North Harbour, Portsmouth, Hants, PO6 3AU ("**Supplier**");

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

**INTRODUCTION:**

- A The Authority is a non-departmental public body created by statute, known as "NHS Digital".
- B On 15 November 2017 the Authority advertised in the Official Journal of the European Union (reference 2017/S 221-459432), inviting prospective suppliers to submit proposals for the provision of the NHS Digital Security Operations Centre.
- C The Supplier is a leading provider of technology and digital services and has experience in delivering Cyber Security solutions.
- D On the basis of the Supplier's response to the advertisement and a subsequent tender process, the Authority selected the Supplier as its preferred supplier.
- E Following negotiations, the Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

**IT IS AGREED, AS FOLLOWS:**

**SECTION A - PRELIMINARIES**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in schedule 1 (*Definitions*) or the relevant schedule in which that capitalised expression appears.
- 1.2 In this Agreement, unless the context otherwise requires:
  - 1.2.1 the singular includes the plural and vice versa;
  - 1.2.2 reference to a gender includes the other gender and the neuter;
  - 1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
  - 1.2.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;

- 1.2.5 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
- 1.2.6 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- 1.2.7 the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- 1.2.8 unless otherwise provided and save for references in annexes 1 to 3 of schedule 5 (*Software*) references to clauses and schedules are references to the clauses and schedules of this Agreement and references in any schedule to paragraphs, parts and annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the schedule or the part of the schedule in which the references appear; and
- 1.2.9 references to this Agreement are references to this Agreement as amended from time to time.
- 1.3 Where a standard, policy or document is referred to in this Agreement 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 update this Agreement with a reference to the replacement hyperlink.
- 1.4 If there is any conflict between the clauses and the schedules and/or any annexes to the schedules, the conflict shall be resolved in accordance with the following order of precedence:
  - 1.4.1 the clauses and schedule 1 (*Definitions*);
  - 1.4.2 schedules 2.1 (*Services Description*) and 2.2 (*Performance Levels*) and their annexes;
  - 1.4.3 any other schedules and their annexes (other than schedule 4.1 (*Supplier Solution*) and its annexes); and
  - 1.4.4 schedule 4.1 (*Supplier Solution*) and its annexes (if any).
- 1.5 The schedules and their annexes form part of this Agreement.

## **2. DUE DILIGENCE**

- 2.1 The Supplier acknowledges that, subject to the Allowable Assumptions:
  - 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 of its obligations under this Agreement;
  - 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;

2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Effective Date) of all relevant details relating to:

2.1.3.1 the Authority Requirements;

2.1.3.2 the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;

2.1.3.3 the operating processes and procedures and the working methods of the Authority;

2.1.3.4 the ownership, functionality, capacity, condition and suitability for use in the Services of the Authority Assets; and

2.1.3.5 the existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Agreement and/or which the Supplier will require the benefit of for the provision of the Services; and

2.1.4 it has advised the Authority in writing of:

2.1.4.1 each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;

2.1.4.2 the actions needed to remedy each such unsuitable aspect; and

2.1.4.3 a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,

and such actions, timetable and costs are fully reflected in this Agreement, including the Services Description and/or Authority Responsibilities as applicable.

2.2 The Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:

2.2.1 any unsuitable aspects of the Operating Environment;

2.2.2 any misinterpretation of the Authority Requirements; and/or

2.2.3 any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

### **3. WARRANTIES**

3.1 The Authority represents and warrants that:

3.1.1 it has full capacity and authority to enter into and to perform this Agreement;

- 3.1.2 this Agreement is executed by its duly authorised representative;
  - 3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and
  - 3.1.4 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).
- 3.2 The Supplier represents and warrants that:
- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
  - 3.2.2 it has full capacity and authority to enter into and to perform this Agreement;
  - 3.2.3 this Agreement is executed by its duly authorised representative;
  - 3.2.4 it has all necessary consents and regulatory approvals to enter into this Agreement;
  - 3.2.5 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 any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
  - 3.2.6 its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
  - 3.2.7 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
  - 3.2.8 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the PQQ and ITT (if applicable), its tender 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 Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Agreement;
  - 3.2.9 it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;

- 3.2.10 it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other 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 Agreement and/or the receipt of the Services by the Authority;
- 3.2.11 the Contract Inception Report is a true and accurate reflection of the Costs and Supplier Profit Margin forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Financial Model;
- 3.2.12 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 Agreement; and
- 3.2.13 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue.
- 3.3 The representations and warranties set out in clause 3.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Agreement) by reference to the facts then existing.
- 3.4 Each of the representations and warranties set out in clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.
- 3.5 If at any time a Party becomes aware that a representation or warranty given by it under clause 3.1 or 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.6 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.
- 3.7 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

## SECTION B - THE SERVICES

### 4. TERM

#### 4.1 This Agreement shall:

- 4.1.1 come into force on the Effective Date, save for clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 21 (*Confidentiality*), 22 (*Transparency and Freedom of Information*), 24 (*Publicity and Branding*), 25 (*Limitations on Liability*), 37 (*Waiver and Cumulative Remedies*), 38 (*Relationship of the Parties*), 40 (*Severance*), 42 (*Entire Agreement*), 43 (*Third Party Rights*),

44 (*Notices*), 45 (*Disputes*) and 46 (*Governing Law and Jurisdiction*), which shall be binding and enforceable as between the Parties from the date of signature; and

4.1.2 unless terminated at an earlier date by operation of Law or in accordance with clause 33 (*Termination Rights*), terminate:

4.1.2.1 at the end of the Initial Term; or

4.1.2.2 if the Authority elects to extend the Initial Term by giving the Supplier at least 30 calendar days' notice before the end of the Initial Term, at the end of the First Extension Period; or

4.1.2.3 if the Authority elects to extend the First Extension Period by giving the Supplier at least 30 calendar days' notice before the end of the First Extension Period, at the end of the Second Extension Period.

4.2 NOT USED

4.3 NOT USED

4.4 NOT USED

## 5. SERVICES

### Standard of Services

5.1 The Supplier shall provide

the relevant Operational Service in each case from (and including) the relevant Operational Service Commencement Date.

5.2 The Supplier shall ensure that the Services:

5.2.1 comply in all respects with the Services Description; and

5.2.2 are supplied in accordance with the Supplier Solution and the provisions of this Agreement.

5.3 The Supplier shall:

5.3.1 perform its obligations under this Agreement, including in relation to the supply of the Services and any Goods in accordance with:

5.3.1.1 all applicable Law;

5.3.1.2 Good Industry Practice;

5.3.1.3 the Standards;

5.3.1.4 the Baseline Security Requirements;

5.3.1.5 the Authority Cyber Security Policy;

5.3.1.6 the DSP Toolkit;

- 5.3.1.7 the Authority IT Strategy; and
  - 5.3.1.8 the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of clauses 5.3.1.1 to 5.3.1.7; and
  - 5.3.1.9 deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money.
- 5.4 In the event that the Supplier becomes aware of any inconsistency between the requirements of clauses 5.3.1.1 to 5.3.1.7, the Supplier shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

### **Supplier covenants**

- 5.5 The Supplier shall:
- 5.5.1 at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Agreement;
  - 5.5.2 save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to clause 13 (*Change*), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
  - 5.5.3 ensure that:
    - 5.5.3.1 it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other 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 Agreement and/or the receipt of the Services by the Authority;
    - 5.5.3.2 the release of any new Software or upgrade to any Software complies with the interface requirements in the Services Description and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of schedule 2.4 (*Security Management*)) shall notify the Authority three months before the release of any new Software or Upgrade;
    - 5.5.3.3 all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
    - 5.5.3.4 any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Authority Requirements; and

- 5.5.3.5 the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Authority) and will be Euro Compliant;
- 5.5.4 minimise any disruption to the Services, the IT Environment and/or the Authority's operations when carrying out its obligations under this Agreement;
- 5.5.5 ensure that any Documentation and training provided by the Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- 5.5.6 co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Supplier;
- 5.5.7 to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
- 5.5.8 unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in clause 5.5.7;
- 5.5.9 provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
- 5.5.10 gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;
- 5.5.11 notify the Authority in writing as soon as reasonably possible and in any event within one month of any change of Control taking place;
- 5.5.12 notify the Authority in writing within 10 Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
- 5.5.13 ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings 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 Supplier's obligations under this Agreement; and

- 5.5.14 manage closure or termination of Services and end of life of Goods to take account of the Authority's disposal requirements, including recycling and scope for re-use, and all applicable Standards.
- 5.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
- 5.6A Without prejudice to clause 8 (*Service Improvement*), the Supplier shall identify and report to the Programme Board annually in April each year confirming its compliance with clause 5.5 (a) to (n) inclusive, and notifying the Authority of:
- 5.6A.1 any component part of the Supplier System that is unsupported, End of Life, and/or no longer under standard support arrangements with the manufacturer;
- 5.6A.2 those areas of Software and databases, where the Supplier cannot source employees to provide services;
- 5.6A.3 those areas of networks, hardware and infrastructure, where the Supplier cannot source employees to provide services;
- 5.6A.4 configuration changes to the Supplier System;
- 5.6A.5 any other issues that in the opinion of the Supplier as expert, would be likely to frustrate or hinder the Supplier's capability to transition the data, applications, infrastructure and/or services, as at expiry or termination of the Agreement.
- 5.6B A suggested outline of the annual report is detailed at annex 2 to schedule 8.4 (*Records and Reports*).
- 5.7 Without prejudice to clauses 19.2 and 19.3 (*IPRs Indemnity*) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:
- 5.7.1 remedy any breach of its obligations in clauses 5.5.2 to 5.5.4 inclusive within three Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);
- 5.7.2 remedy any breach of its obligations in clause 5.5.1 and clauses 5.5.5 to 5.5.10 inclusive within 20 Working Days of becoming aware of the breach or being notified of the breach by the Authority; and
- 5.7.3 meet all the costs of, and incidental to, the performance of such remedial work,
- and any failure of the Supplier to comply with its obligations under clause 5.7.1 or clause 5.7.2 within the specified or agreed timeframe shall constitute a Notifiable Default.

### **Specially Written Software warranty**

- 5.8 Without prejudice to clauses 5.5 (*Supplier Covenants*) and 5.7 (*Services*) and any other rights and remedies of the Authority howsoever arising, the Supplier warrants to the Authority that all components of the Specially Written Software shall:
- 5.8.1 be free from material design and programming errors;
  - 5.8.2 perform in all material respects in accordance with the relevant specifications contained in the Supplier Solution and Documentation; and
  - 5.8.3 not infringe any Intellectual Property Rights.

### **Continuing obligation to provide the Services**

- 5.9 The Supplier shall continue to perform all of its obligations under this Agreement and shall not suspend the supply of the Services, notwithstanding:
- 5.9.1 any withholding of the Service Charges by the Authority pursuant to clause 7.2.3.2 (*Performance Failures*);
  - 5.9.2 the existence of an unresolved Dispute; and/or
  - 5.9.3 any failure by the Authority to pay any Charges,
- unless the Supplier is entitled to terminate this Agreement under clause 33.3.1 (*Termination by the Supplier*) for failure to pay undisputed Charges.

### **Optional Services**

- 5.10 NOT USED
- 5.11 NOT USED

### **Power of attorney**

- 5.12 By way of security for the performance of its obligations under clauses 5.5.7 and 5.5.8 (*Supplier Covenants*) the Supplier hereby irrevocably appoints the Authority as its agent and attorney to act with full power and authority in the Supplier's name and on its behalf to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such clauses and to delegate one or more of the powers conferred on it by this clause 5.12 (other than the power to delegate) to officer(s) appointed for that purpose by the Authority and may vary or revoke such delegation at any time.

### **Authority Responsibilities**

- 5.13 The Authority shall comply with its responsibilities set out in schedule 3 (*Authority Responsibilities*).

## 6. IMPLEMENTATION

### Implementation Plan and Delays

- 6.1 The Parties shall comply with the provisions of schedule 6.1 (*Implementation Plan*) in relation to the agreement and maintenance of the Detailed Implementation Plan.
- 6.2 The Supplier shall:
  - 6.2.1 comply with the Implementation Plan; and
  - 6.2.2 ensure that each Milestone is Achieved on or before its Milestone Date.
- 6.3 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay it shall:
  - 6.3.1 notify the Authority in accordance with clause 27.1 (*Rectification Plan Process*); and
  - 6.3.2 comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
  - 6.3.3 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

### 6.4 Testing and Achievement of Milestones

The Parties shall comply with the provisions of schedule 6.2 (*Testing Procedures*) in relation to the procedures to determine whether a Milestone or Test has been Achieved.

## 7. PERFORMANCE INDICATORS

- 7.1 The Supplier shall:
  - 7.1.1 provide the Operational Services in such a manner so as to meet or exceed the Target Performance Level for each Performance Indicator from the Milestone Date for each relevant CPP Milestone; and
  - 7.1.2 comply with the provisions of schedule 2.2 (*Performance Levels*) in relation to the monitoring and reporting on its performance against the Performance Indicators.

### Performance Failures

- 7.2 If in any Service Period:
  - 7.2.1 a Material KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process;
  - 7.2.2 a PI Failure occurs, the Supplier shall notify the Authority of the action (if any) it will take to rectify the PI Failure and/or to prevent the PI Failure from recurring; and/or
  - 7.2.3 a Material PI Failure occurs:

- 7.2.3.1 the Supplier shall comply with the Rectification Plan Process; and
- 7.2.3.2 the Authority may withhold a proportionate amount of the Service Charges in accordance with the process set out in clause 10.7 (*Set Off and Withholding*) until the relevant Material PI Failure is rectified to the reasonable satisfaction of the Authority, at which point the Authority shall pay the amount withheld.

### **Unacceptable KPI Failure**

- 7.3 If in any Service Period an Unacceptable KPI Failure occurs the Authority shall be entitled to withhold and retain as compensation for the Unacceptable KPI Failure a sum equal to any Service Charges which would otherwise have been due to the Supplier in respect of that Service Period such sum being ("**Compensation for Unacceptable KPI Failure**") provided that the operation of this clause 7.3 shall be without prejudice to any right which the Authority may have to terminate this Agreement and/or to claim damages from the Supplier as a result of such Unacceptable KPI Failure.
- 7.4 The Supplier:
  - 7.4.1 agrees that the application of clause 7.3 is commercially justifiable where an Unacceptable KPI Failure occurs; and
  - 7.4.2 acknowledges that it has taken legal advice on the application of clause 7.3 and has had the opportunity to price for that risk when calculating the Service Charges.

### **Changes to Performance Indicators**

- 7.5 Not more than once in each Contract Year the Authority may, on giving the Supplier at least three months' notice:
  - 7.5.1 change the weighting that applies in respect of one or more specific Key Performance Indicators; and/or
  - 7.5.2 convert one or more:
    - 7.5.2.1 Key Performance Indicators into a Subsidiary Performance Indicator; and/or
    - 7.5.2.2 Subsidiary Performance Indicators into a Key Performance Indicator (in which event the Authority shall also set out in the notice details of what will constitute a Minor KPI Failure, a Serious KPI Failure and a Severe KPI Failure for the new Key Performance Indicator).
- 7.6 The Supplier shall not be entitled to object to any changes made by the Authority under clause 7.5, or increase the Service Charges as a result of such changes provided that:
  - 7.6.1 the total number of Key Performance Indicators does not exceed 20; and
  - 7.6.2 the principal purpose of the change is to reflect changes in the Authority's business requirements and/or priorities or to reflect changing industry standards.

## 8. SERVICES IMPROVEMENT

- 8.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this clause 8. As part of this obligation the Supplier shall identify and report to the Innovation Board once every quarter on:
- 8.1.1 the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
  - 8.1.2 new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
  - 8.1.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk;
  - 8.1.4 changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Authority; and/or
  - 8.1.5 changes to the business processes and ways of working that would enable increased efficiencies in the delivery of Services.
- 8.2 The Supplier will present this information in the form of an Additional Services Work Package using the template at schedule 12 (*Additional Services Work Package*). The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any Additional Services should be implemented. The Supplier shall provide any further information that the Authority requests. If the Innovation Board provides comments on an Additional Services Work Package, the Supplier must take account of such comments and present a revised Additional Services Work Package to the Authority within 10 Working Days (unless otherwise agreed).
- 8.3 At any time, the Authority may require the Supplier to provide Additional Services in an expedited timescale. In these circumstances, the Authority will communicate its requirements for Additional Services to the Supplier and the Supplier will propose an Additional Services Work Package for those Additional Services within one Working Day (unless otherwise agreed). The Additional Services Work Package will be in the form of the template Additional Services Work Package at schedule 12 (*Additional Services Work Package*). If the Authority provides comments on an Additional Services Work Package, the Supplier must take account of such comments and present a revised Additional Services Work Package to the Authority within one Working Day (unless otherwise agreed);
- 8.4 The Authority may require the Supplier to provide any or all of the Additional Services set out in an Additional Services Work Package at any time by giving notice and returning a signed Additional Services Work Package to the Supplier. The Supplier acknowledges that the Authority is not obliged to take any Additional Services from the Supplier and that nothing shall prevent the Authority from receiving services that are the same as or similar to the Additional Services from any third party.
- 8.5 Following receipt of the Authority's notice pursuant to clause 8.4:

- 8.5.1 the Parties shall document the inclusion of the relevant Additional Services within the Services in accordance with the Change Control Procedure, modified to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Additional Services have already been agreed;
  - 8.5.2 the Supplier shall implement and Test the relevant Additional Services in accordance with the Testing procedure set out in the Additional Services Work Package;
  - 8.5.3 any additional charges for the Additional Services shall be incorporated in the Charges;
  - 8.5.4 the Supplier shall, from the date agreed in the Additional Services Work Package (or, if later, the date of Achievement of any Milestones associated with the commencement of the relevant Additional Services (if any)), provide the relevant Additional Services to meet or exceed the applicable Target Performance Level in respect of all Performance Indicators applicable to the Additional Services as set out in the Additional Services Work Package; and
  - 8.5.5 no amendment will be made to an Additional Services Work Package except in accordance with the Change Control Procedure.
- 8.6 Each Additional Services Work Package shall be part of this Agreement and shall not form a separate contract to it.

## 9. EQUIPMENT AND MAINTENANCE

### Supplier Equipment

- 9.1 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Authority Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this Agreement the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Authority Premises, including the cost of packing, carriage and making good the Sites and/or the Authority Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.
- 9.2 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Authority shall be liable for loss of or damage to any of the Supplier's property located on Authority Premises which is due to the negligent act or omission of the Authority.
- 9.3 Subject to any express provision of the BCDR Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Agreement, including the Target Performance Levels.

### Maintenance

- 9.4 The Supplier shall create and maintain a rolling schedule of planned maintenance to the IT Environment ("**Maintenance Schedule**") which shall be agreed with the Authority. Once the Maintenance Schedule has been agreed with the Authority Representative, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.

- 9.5 The Supplier shall give as much notice as is reasonably practicable to the Authority Representative prior to carrying out any Emergency Maintenance.
- 9.6 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the IT Environment or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the IT Environment and the Services.

### **Supply of Goods**

- 9.7 Where, as part of the Services, the Supplier is to sell goods or equipment ("**Goods**") to the Authority:
- 9.7.1 the relevant Goods and their prices shall be agreed in accordance with the Change Control Procedure;
- 9.7.2 the Supplier shall supply and, where relevant, install the Goods in accordance with the relevant specification;
- 9.7.3 the Supplier shall ensure that the Goods are free from material defects in design, materials and workmanship and remain so for 12 months after delivery;
- 9.7.4 if following inspection or testing the Authority considers that the Goods do not conform with the relevant specification, the Authority shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance; and
- 9.7.5 without prejudice to any other rights or remedies of the Authority:
- 9.7.5.1 risk in the Goods shall pass to the Authority at the time of delivery; and
- 9.7.5.2 ownership of the Goods shall pass to the Authority at the time of payment.

## **SECTION C - PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS**

### **10. FINANCIAL AND TAXATION MATTERS**

#### **Charges and Invoicing**

- 10.1 In consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in schedule 7.1 (*Charges and Invoicing*).
- 10.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under clauses 6.4 (*Testing and Achievement of Milestones*), 12 (*Records, Reports, Audits & Open Book Data*), 22 (*Transparency and Freedom of Information*), 23 (*Protection of Personal Data*) and, to the extent specified therein, clause 29 (*Remedial Adviser*) and clause 30 (*Step-In Rights*).

- 10.3 If the Authority fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount 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.

#### **VAT**

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

#### **Set-off and Withholding**

- 10.6 The Authority may set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Authority.
- 10.7 If the Authority wishes to:
- 10.7.1 set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier pursuant to clause 10.7; or
  - 10.7.2 exercise its right pursuant to clause 7.2.3.2 (*Performance Failures*) to withhold payment of a proportion of the Service Charges,

it shall give notice to the Supplier within 30 days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.

#### **Benchmarking**

- 10.8 The Parties shall comply with the provisions of schedule 7.3 (*Benchmarking*) in relation to the benchmarking of any or all of the Services.

#### **Financial Distress**

- 10.9 The Parties shall comply with the provisions of schedule 7.4 (*Financial Distress*) in relation to the assessment of the financial standing of the Supplier and the consequences of a change to that financial standing.

#### **Promoting Tax Compliance**

- 10.10 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 10.10.1 notify the Authority in writing of such fact within five Working Days of its occurrence; and

- 10.10.2 promptly provide to the Authority:
- 10.10.2.1 details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
  - 10.10.2.2 such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

## SECTION D - CONTRACT GOVERNANCE

### 11. GOVERNANCE

- 11.1 The Parties shall comply with the provisions of schedule 8.1 (*Governance*) in relation to the management and governance of this Agreement.

#### Representatives

- 11.2 Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.
- 11.3 The initial Supplier Representative shall be the person named as such in schedule 9.2 (*Key Personnel*). Any change to the Supplier Representative shall be agreed in accordance with clause 14 (*Supplier Personnel*).
- 11.4 The Authority shall notify the Supplier of the identity of the initial Authority Representative within five Working Days of the Effective Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

### 12. RECORDS, REPORTS, AUDITS & OPEN BOOK DATA

- 12.1 The Supplier shall comply with the provisions of:
- 12.1.1 schedule 8.4 (*Reports and Records Provisions*) in relation to the maintenance and retention of Records; and
  - 12.1.2 part A of schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the maintenance of Open Book Data.
- 12.2 The Parties shall comply with the provisions of:
- 12.2.1 part B of schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the provision of the Financial Reports; and
  - 12.2.2 part C of schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

## 13. CHANGE

### Change Control Procedure

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

### Change in Law

13.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Charges as the result of:

13.2.1 a General Change in Law; or

13.2.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.

13.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in clause 13.2.2), the Supplier shall:

13.3.1 notify the Authority as soon as reasonably practicable of the likely effects of that change, including:

13.3.1.1 whether any Change is required to the Services, the Charges or this Agreement; and

13.3.1.2 whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Target Performance Levels; and

13.3.2 provide the Authority with evidence:

13.3.2.1 that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;

13.3.2.2 as to how the Specific Change in Law has affected the cost of providing the Services; and

13.3.2.3 demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of clause 8 (*Services Improvement*), has been taken into account in amending the Charges.

13.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in clause 13.2.2) shall be implemented in accordance with the Change Control Procedure.

**SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN**

**14. SUPPLIER PERSONNEL**

14.1 The Supplier shall:

14.1.1 provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;

14.1.2 ensure that all Supplier Personnel:

14.1.2.1 are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;

14.1.2.2 are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in schedule 2.1 (*Services Description*) and schedule 2.4 (*Security Management*); and

14.1.2.3 comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements as set out in schedule 2.4 (*Security Management*);

(a) subject to schedule 9.1 (*Staff Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;

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

(c) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;

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

(e) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and

(f) procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Agreement.

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

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

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

### **Key Personnel**

- 14.3 The Supplier shall ensure that Key Personnel fulfil the Key Roles at all times during the Term. Schedule 9.2 (*Key Personnel*) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.
- 14.4 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 14.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- 14.5.1 requested to do so by the Authority;
  - 14.5.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
  - 14.5.3 the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
  - 14.5.4 the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 14.6 The Supplier shall:
- 14.6.1 notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
  - 14.6.2 ensure that any Key Role is not vacant for any longer than 10 Working Days;
  - 14.6.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least 20 Working Days' notice;
  - 14.6.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
  - 14.6.5 ensure that any replacement for a Key Role:
    - 14.6.5.1 has a level of qualifications and experience appropriate to the relevant Key Role; and
    - 14.6.5.2 is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced; and

- 14.6.6 in respect of arrangements for planned changes of those Key Personnel fulfilling the Key Role of 'Security Analyst':
- 14.6.6.1 allow a period of not less than 30 days during which incoming and outgoing personnel work together to transfer responsibilities;
  - 14.6.6.2 provide the Authority with such information as it reasonably requests; and
  - 14.6.6.3 permit the Authority to meet and approve, such approval not to be unreasonably withheld or delayed, such a replacement prior to appointment.
- 14.7 For the avoidance of doubt and subject always to the Supplier's compliance with Clause 14.6 the Supplier shall be permitted to replace Key Personnel fulfilling the Key Role of 'Security Analyst' in furtherance of its legitimate business interests and/or the career progression of any person fulfilling the Key Role of 'Security Analyst'.

### **Employment Indemnity**

- 14.8 The Parties agree that:
- 14.8.1 the Supplier shall both during and after the Term indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel; and
  - 14.8.2 the Authority shall both during and after the Term indemnify the Supplier against all Employee Liabilities that may arise as a result of any claims brought against the Supplier by any person where such claim arises from any act or omission of the Authority or any of the Authority's employees, agents, consultants and contractors.

### **Income Tax and National Insurance Contributions**

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

## **Staff Transfer**

14.10 The Parties agree that:

14.10.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, schedule 9.1 (*Staff Transfer*) shall apply as follows:

14.10.1.1 where the Relevant Transfer involves the transfer of Transferring Authority Employees, part A of schedule 9.1 (*Staff Transfer*) shall apply;

14.10.1.2 where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, part B of schedule 9.1 (*Staff Transfer*) shall apply;

14.10.1.3 where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, parts A and B of schedule 9.1 (*Staff Transfer*) shall apply; and

14.10.1.4 part C of schedule 9.1 (*Staff Transfer*) shall not apply;

14.10.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, part C of schedule 9.1 (*Staff Transfer*) shall apply and parts A and B of schedule 9.1 (*Staff Transfer*) shall not apply; and

14.10.3 part D of schedule 9.1 (*Staff Transfer*) shall apply on the expiry or termination of the Services or any part of the Services.

## **15. SUPPLY CHAIN RIGHTS AND PROTECTIONS**

### **Appointment of Sub-contractors**

15.1 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:

15.1.1 manage any Sub-contractors in accordance with Good Industry Practice including adherence to Standards relevant to the Services which are the subject of the Sub-contract;

15.1.2 comply with its obligations under this Agreement in the delivery of the Services; and

15.1.3 assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Agreement.

15.2 Prior to sub-contracting any of its obligations under this Agreement, the Supplier shall notify the Authority in writing of:

15.2.1 the proposed Sub-contractor's name, registered office and company registration number;

15.2.2 the scope of any Services to be provided by the proposed Sub-contractor; and

- 15.2.3 where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.
- 15.3 If requested by the Authority within 10 Working Days of receipt of the Supplier's notice issued pursuant to clause 15.2, the Supplier shall also provide:
- 15.3.1 a copy of the proposed Sub-contract; and
- 15.3.2 any further information reasonably requested by the Authority.
- 15.4 The Authority may, within 10 Working Days of receipt of the Supplier's notice issued pursuant to clause 15.2 (or, if later, receipt of any further information requested pursuant to clause 15.3), object to the appointment of the relevant Sub-contractor if it considers that:
- 15.4.1 the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
- 15.4.2 the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
- 15.4.3 the proposed Sub-contractor employs unfit persons; and/or
- 15.4.4 the proposed Sub-contractor should be excluded in accordance with clause 15.18;
- in which case, the Supplier shall not proceed with the proposed appointment.
- 15.5 If:
- 15.5.1 the Authority has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of 10 Working Days of receipt of:
- 15.5.1.1 the Supplier's notice issued pursuant to clause 15.1; and
- 15.5.1.2 any further information requested by the Authority pursuant to clause 15.3; and
- 15.5.2 the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with clause 15.6 (*Appointment of Key Sub-contractors*)),

the Supplier may proceed with the proposed appointment and, where the Sub-contract is entered into exclusively for the purpose of delivery of the Services, may notify the Authority that the relevant Sub-contract shall constitute a Third Party Contract for the purposes of schedule 4.4 (*Third Party Contracts*).

### Appointment of Key Sub-contractors

- 15.6 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:
- 15.6.1 the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;
  - 15.6.2 the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
  - 15.6.3 the proposed Key Sub-contractor employs unfit persons; and/or
  - 15.6.4 the proposed Key Sub-contractor should be excluded in accordance with clause 15.18.
- 15.7 The Authority consents to the appointment of the Key Sub-contractors listed in schedule 4.3 (*Notified Key Sub-contractors*).
- 15.8 Except where the Authority has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:
- 15.8.1 provisions which will enable the Supplier to discharge its obligations under this Agreement;
  - 15.8.2 a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;
  - 15.8.3 a provision enabling the Authority to enforce the Key Sub-contract as if it were the Supplier;
  - 15.8.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
  - 15.8.5 obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
    - 15.8.5.1 data protection requirements set out in clauses 20 (*Authority Data and Security Requirements*) and 23 (*Protection of Personal Data*);
    - 15.8.5.2 FOIA requirements set out in clause 22 (*Transparency and Freedom of Information*);
    - 15.8.5.3 the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in clause 5.5.13 (*Services*);
    - 15.8.5.4 the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and

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- 15.8.5.5 the conduct of Audits set out in part C of schedule 7.5 (*Financial Reports and Audit Rights*);
- 15.8.6 provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under clauses 33.1.1 (*Termination by the Authority*) and 34.4 (*Payments by the Authority*) and schedule 7.2 (*Payments on Termination*) of this Agreement;
- 15.8.7 a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;
- 15.8.8 a provision enabling the Supplier or the Authority to appoint a Remedial Adviser on substantially the same terms as are set out in clause 29 (*Remedial Adviser*);
- 15.8.9 a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in clause 30 (*Step-In Rights*);
- 15.8.10 a provision requiring the Key Sub-contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and
- 15.8.11 a provision requiring the Key Sub-contractor to:
- 15.8.11.1 promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:
- (a) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
- (b) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,
- and in any event, provide such notification within 10 Working Days of the date on which the Key Sub-contractor first becomes aware of such); and
- 15.8.11.2 co-operate with the Supplier and the Authority in order to give full effect to the provisions of schedule 7.4 (*Financial Distress*), including meeting with the Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Service Continuity Plan.
- 15.9 The Supplier shall not terminate or materially amend the terms of any Key Sub-contract without the Authority's prior written consent, which shall not be unreasonably withheld or delayed.

### Supply chain protection

- 15.10 The Supplier shall ensure that all Sub-contracts (which in this sub-clause includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain provisions:
- 15.10.1 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;
  - 15.10.2 requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
  - 15.10.3 that if the Supplier or other party fails to consider and verify an invoice in accordance with clause 15.10.2, the invoice shall be regarded as valid and undisputed for the purpose of clause 15.10.4 after a reasonable time has passed;
  - 15.10.4 requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding 30 days of verifying that the invoice is valid and undisputed; and
  - 15.10.5 giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
  - 15.10.6 requiring the Sub-contractor to include a clause to the same effect as this clause 15.10 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.
- 15.11 The Supplier shall:
- 15.11.1 pay any undisputed sums which are due from it to a Sub-contractor within 30 days of verifying that the invoice is valid and undisputed;
  - 15.11.2 include within the Balanced Scorecard Report produced by it pursuant to schedule 2.2 (*Performance Levels*) a summary of its compliance with clause 15.11.1, such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.
- 15.12 Notwithstanding any provision of clauses 21 (*Confidentiality*) and 24 (*Publicity and Branding*), if the Supplier notifies the Authority (whether in a Balanced Scorecard Report or otherwise) that the Supplier has failed to pay a Sub-contractor's undisputed invoice within 30 days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

### **Termination of Sub-contracts**

15.13 The Authority may require the Supplier to terminate:

15.13.1 a Sub-contract where:

15.13.1.1 the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to clause 33.1.2 (*Termination by the Authority*);

15.13.1.2 the relevant Sub-contractor or any of its Affiliates have 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 Services or otherwise;

15.13.1.3 the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or

15.13.1.4 the Authority has found grounds for exclusion of the Sub-contractor in accordance with clause 15.18; and

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

15.13.2.1 the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or

15.13.2.2 the Authority has not served its notice of objection within six 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.

### **Competitive Terms**

15.14 If the Authority is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may:

15.14.1 require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or

15.14.2 subject to clause 15.13, enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.

15.15 If the Authority exercises either of its options pursuant to clause 15.14, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.

- 15.16 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
- 15.16.1 the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
  - 15.16.2 any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

#### **Retention of Legal Obligations**

- 15.17 Notwithstanding the Supplier's right to sub-contract pursuant to this clause 15, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own.

#### **Exclusion of Sub-contractors**

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

### **SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY**

#### **16. INTELLECTUAL PROPERTY RIGHTS**

- 16.1 Except as expressly set out in this Agreement:
- 16.1.1 the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
    - 16.1.1.1 the Supplier Software;
    - 16.1.1.2 the Third Party Software;
    - 16.1.1.3 the Third Party IPRs; and
    - 16.1.1.4 the Supplier Background IPRs;
  - 16.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:
    - 16.1.2.1 the Authority Software;
    - 16.1.2.2 the Authority Data; and
    - 16.1.2.3 the Authority Background IPRs;

- 16.1.3 Specially Written Software and Project Specific IPRs (except for any Know-How, trade secrets or Confidential Information contained therein) shall be the property of the Authority.
- 16.2 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 16.1, 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).
- 16.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.
- 16.4 Unless the Authority otherwise agrees in advance in writing:
- 16.4.1 all Specially Written Software and any software element of Project Specific IPRs shall be created in a format, or able to be converted into a format, which is suitable for publication by the Authority as open source software; and
- 16.4.2 where the Specially Written Software and any software element of Project Specific IPRs are written in a format that requires conversion before publication as open source software, the Supplier shall also provide the converted format to the Authority.
- 16.5 Where the Authority agrees that any Specially Written Software and/or any software element of Project Specific IPRs should be excluded from Open Source publication, the Supplier shall as soon as reasonably practicable provide written details of the impact that such exclusion will have on the Authority's ability to publish other Open Source software under clause 19A (*Open Source Publication*).

## 17. TRANSFER AND LICENCES GRANTED BY THE SUPPLIER

### Specially Written Software and Project Specific IPRs

- 17.1 Subject to clause 17.16 (*Patents*) the Supplier hereby transfers to the Authority by way of a current assignment of future rights, or shall procure the transfer to the Authority of, by way of a current assignment of future rights, all rights (subject to clause 16.1.1) in the Specially Written Software and the Project Specific IPRs including (without limitation):
- 17.1.1 the Documentation, Source Code and the Object Code of the Specially Written Software;
- 17.1.2 all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the "**Software Supporting Materials**");
- but not including any Know-How, trade secrets or Confidential Information.
- 17.2 The Supplier:
- 17.2.1 shall:
- 17.2.1.1 inform the Authority of all Specially Written Software and any element of project specific IPRs that constitutes a modification or enhancement to Supplier Software or Third Party Software; and

- 17.2.1.2 deliver to the Authority the Specially Written Software and the software element of Project Specific IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Authority; and
- 17.2.1.3 without prejudice to clause 17.10 (*Third Party Software and Third Party IPRs*), provide full details to the Authority of any Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any element of Project Specific IPRs;
- 17.2.2 acknowledges and agrees that the ownership of the media referred to in clause 17.2.1.2 shall vest in the Authority upon their receipt by the Authority; and
- 17.2.3 shall execute all such documentation as is required to ensure that any rights in the Specially Written Software and Project Specific IPRs are properly transferred to the Authority.

### **Supplier Software and Supplier Background IPRs**

17.3 The Supplier hereby grants to the Authority:

- 17.3.1 subject to the provisions of clause 34.11.2 (*Consequences of expiry or termination*), perpetual, royalty-free, worldwide and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):
  - 17.3.1.1 the Supplier Non COTS Software for which the Supplier delivers a copy to the Authority for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function; and
  - 17.3.1.2 the Supplier Non COTS Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function;

and, in the case of Supplier Non COTS Software licenced on a named user basis, to transfer the Supplier Non COTS Software from one user to another free of charge provided that the Supplier is notified of the same; and

17.3.2 REDACTED

17.3.3 a perpetual royalty-free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained within the Specially Written Software or the Project Specific IPRs.

- 17.4 At any time during the Term or following termination or expiry of this Agreement, the Supplier may terminate the licence granted in respect of the Supplier Non COTS Software under clause 17.3.1.1 or in respect of the Supplier Non COTS Background IPRs under clause 17.3.1.2 by giving 30 days' notice in writing (or such other period as agreed by the Parties) if the Authority or any person to whom the Authority grants a sub-licence pursuant to clause 17.6 (*Authority's Right to Sub-Licence*) commits any material breach of the terms of clause 17.3.1.1 or 17.3.1.2 or 17.6.1.2 (as the case may be) which, if the breach is capable of remedy, is not remedied within 20 Working Days after the Supplier gives the Authority written notice specifying the breach and requiring its remedy.
- 17.5 In the event the licence of the Supplier Non COTS Software or the Supplier Non COTS Background IPRs is terminated pursuant to clause 17.4, the Authority shall:
- 17.5.1 immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);
- 17.5.2 at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non COTS Software and/or the Supplier Non COTS Background IPRs, provided that if the Supplier has not made an election within six months of the termination of the licence, the Authority may destroy the documents and other tangible materials that contain any of the Supplier Non-COTS Software and/or the Supplier Non COTS Background IPRs (as the case may be); and
- 17.5.3 ensure, so far as reasonably practicable, that any Supplier Non COTS Software and/or Supplier Non COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such Supplier Non COTS Software and/or Supplier Non COTS Background IPRs.

**Authority's right to sub-licence**

- 17.6 Without prejudice to clause 17.3.2, the Authority may sub-licence:
- 17.6.1 the rights granted under clause 17.3.1 (*Supplier Software and Supplier Background IPRs*) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
- 17.6.1.1 the sub-licence is on terms no broader than those granted to the Authority (but may include equivalent rights to sub-licence, assign or novate as set out in clauses 17.6 and 17.7);
- 17.6.1.2 the sub-licence authorises the third party to use the rights licensed in clause 17.3.1 (*Supplier Software and Supplier Background IPRs*) only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function; and
- 17.6.1.3 any sub- licensee that is not a Central Government Body shall be subject to confidentiality undertakings equivalent to those set out in this Agreement; and

- 17.6.2 the rights granted under clause 17.3.1 (*Supplier Software and Supplier Background IPRs*) to any Approved Sub Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software and/or the Project Specific IPRs provided that:
- 17.6.2.1 the sub-licence is on terms no broader than those granted to the Authority (but may include equivalent rights to sub-licence, assign or novate as set out in clauses 17.6 and 17.7); and
  - 17.6.2.2 any Approved Sub Licensee that is not a Central Government Body shall be subject to confidentiality undertakings equivalent to those set out in this Agreement.

#### **Authority's right to assign/novate licences**

- 17.7 Without prejudice to clause 17.3.2, the Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to clause 17.3.1 (*Supplier Software and Supplier Background IPRs*) to:
- 17.7.1 a Central Government Body; or
  - 17.7.2 to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.
- 17.8 Without prejudice to clause 17.3.2, any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in clause 17.3 (*Supplier Software and Supplier Background IPRs*). If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licence granted in clause 17.3 (*Supplier Software and Supplier Background IPRs*).
- 17.9 Without prejudice to clause 17.3.2, if a licence granted in clause 17.3 (*Supplier Software and Supplier Background IPRs*) is novated under clause 17.7 (*Authority's right to assign/novate licences*) or there is a change of the Authority's status pursuant to clause 17.8, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.

#### **Third Party Software and Third Party IPRs**

- 17.10 The Supplier shall not use in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party Non COTS Software or Third Party Non COTS IPRs unless in each case it has:
- 17.10.1 first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Authority on a royalty-free basis to the Authority and on terms no less favourable to the Authority than those set out in clauses 17.3.1 and 17.4 (*Supplier Software and Supplier Background IPRs*) and clauses 17.6 (*Authority's Right to Sub-Licence*) and 17.7 (*Authority's Right to Assign/Novate Licences*); or
  - 17.10.2 complied with the provisions of clause 17.11.

- 17.11 If the Supplier cannot obtain for the Authority a licence in respect of any Third Party Non COTS Software and/or Third Party Non COTS IPRs in accordance with the licence terms set out in clause 17.10.1, the Supplier shall:
- 17.11.1 notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
  - 17.11.2 use the relevant Third Party Non COTS Software and/or Third Party Non COTS IPRs only if the Authority has first approved in writing the terms of the licence from the relevant third party.
- 17.12 The Supplier shall:
- 17.12.1 notify the Authority and where relevant Pilot Organisations in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and
  - 17.12.2 unless instructed otherwise in writing by the Authority in any case within 20 Working Days of notification pursuant to clause 17.12.1, use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Authority and where relevant Pilot Organisations on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.
- 17.13 Should the Supplier become aware at any time, including after termination, that the Specially Written Software and/or the Project Specific IPRs contain any Intellectual Property Rights for which the Authority does not have a suitable licence, then the Supplier must notify the Authority within 10 days of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in.

### **Termination and Replacement Suppliers**

- 17.14 For the avoidance of doubt, the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this clause 17.
- 17.15 The Supplier shall, if requested by the Authority in accordance with schedule 8.5 (*Exit Management*) and at the Supplier's cost:
- 17.15.1 grant (or procure the grant) to any Replacement Supplier of:
    - 17.15.1.1 a licence to use any Supplier Non COTS Software, Supplier Non COTS Background IPRs, Third Party Non COTS IPRs and/or Third Party Non COTS Software on a royalty-free basis to the Replacement Supplier and on terms no less favourable than those granted to the Authority in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this clause 17 subject to receipt by the Supplier of a confidentiality undertaking in its favour in or substantially in the form set out in annex 2 to schedule 5 (*Software*) duly executed by the Replacement Supplier;

- 17.15.1.2 a licence to use any Supplier COTS Software and/or Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Supplier; and/or
- 17.15.2 use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

## **Patents**

- 17.16 Where a patent owned by the Supplier is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs by the Authority (or any third party to which the Authority has sub-licensed, assigned or novated the Specially Written Software or Project Specific IPRs (including for the avoidance of doubt, any Replacement Supplier or Approved Sub Licensee)), the Supplier hereby grants to the Authority and such third parties a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Agreement.

## **Named User Software**

- 17.17 Where the Supplier is responsible for the calculation of the appropriate number of users for any Supplier Software or Third Party Software licensed to the Authority on a named user basis, and it is later shown there is a shortfall of licences, the Supplier shall be responsible for all additional costs incurred by the Authority to secure the required number of licences.

## **18. LICENCES GRANTED BY THE AUTHORITY**

- 18.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Software, the Authority Background IPRs, the Specially Written Software, the Project Specific IPRs and the Authority Data solely to the extent necessary for performing the Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:
  - 18.1.1 any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in clause 21 (*Confidentiality*); and
  - 18.1.2 the Supplier shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.
- 18.2 In the event of the termination or expiry of this Agreement, the licence granted pursuant to clause 18.1 and any sub-licence granted by the Supplier in accordance with clause 18.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:
  - 18.2.1 immediately cease all use of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be);
  - 18.2.2 at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, the Authority Background

IPRs and the Authority Data, provided that if the Authority has not made an election within six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be); and

18.2.3 ensure, so far as reasonably practicable, that any Authority Software, Authority Background IPRs and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Authority Software, Authority Background IPRs and/or Authority Data.

## **19. IPRS INDEMNITY**

19.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.

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

19.2.1 procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or

19.2.2 replace or modify the relevant item with non-infringing substitutes provided that:

19.2.2.1 the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

19.2.2.2 the replaced or modified item does not have an adverse effect on any other services or the IT Environment;

19.2.2.3 there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and

19.2.2.4 the terms and conditions of this Agreement shall apply to the replaced or modified Services.

19.3 If the Supplier elects to procure a licence in accordance with clause 19.2.1 or to modify or replace an item pursuant to clause 19.2.2, but this has not avoided or resolved the IPRs Claim, then:

19.3.1 the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and

19.3.2 without prejudice to the indemnity set out in clause 19.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

## **19A OPEN SOURCE PUBLICATION**

- 19A.1 The Supplier agrees that the Authority may at its sole discretion publish as Open Source Software all or part of the Specially Written Software and any software element of the Project Specific IPRs after the relevant Operational Service Commencement Date.
- 19A.2 The Supplier hereby warrants that the Specially Written Software and any software element of the Project Specific IPRs:
- 19A.2.1 are suitable for release as Open Source and that any release will not allow a third party to use the Open Source software to in any way compromise the operation, running or security of the Specially Written Software, the Project Specific IPRs or the Authority System;
  - 19A.2.2 not cause any harm or damage to any party using anything published as Open Source and that the Specially Written Software and the Project Specific IPRs do not contain any Malicious Software;
  - 19A.2.3 do not contain any material which would bring the Authority into disrepute upon publication as Open Source;
  - 19A.2.4 do not contain any IPR owned or claimed to be owned by any third party which is found, or alleged to be found, in the Specially Written Software and the Project Specific IPRs ("**Non-Party IPRs**"); and
  - 19A.2.5 will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**") no later than the relevant Operational Service Commencement Date.
- 19A.3 The Supplier shall ensure that the Open Source Publication Material provided to the Authority does not include any Supplier Software or Supplier Background IPRs save that any Supplier Background IPRs that the Supplier is willing to allow to be included in any Open Source publication can remain in the Open Source Publication Material supplied to the Authority. In such a case, the Supplier hereby acknowledges that any such Supplier Background IPRs will become Open Source and will be licensed and treated as such following publication by the Authority and any third party that uses the Open Source Publication Materials on the terms of the Open Source licence used by the Authority when publishing as Open Source.
- 19A.4 The Supplier hereby indemnifies the Authority against all claims in which the Authority is, or is threatened to be, a party for any alleged infringement of any Non-Party IPRs arising from publication of the Specially Written Software and any software element of the Project Specific IPRs as Open Source under sub-clause 19A.1.

## **20. AUTHORITY DATA AND SECURITY REQUIREMENTS**

- 20.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 20.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.

- 20.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in schedule 2.1 (*Services Description*).
- 20.4 The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.
- 20.5 The Supplier shall perform secure back-ups of all Authority Data under its control or the control of any Sub-Contractor and shall ensure that up-to-date back-ups are stored off-site in accordance with the BCDR Plan. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than six monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 20.6 The Supplier shall notify the Authority in advance if any provision of the Services or performance of this Agreement permits the Supplier or any third party remote access to any Authority Assets, Authority Software or the Authority's System. The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Requirements.
- 20.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:
- 20.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in schedule 8.6 (*Business Continuity and Disaster Recovery*) and the Supplier shall do so as soon as practicable but not later than five Working Days from the date of receipt of the Authority's notice; and/or
- 20.7.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in schedule 8.6 (*Business Continuity and Disaster Recovery*).
- 20.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.
- 20.9 The Supplier shall comply with the requirements of schedule 2.4 (*Security Management*) and the Authority Cyber Security Policy.
- 20.10 The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements and Authority Cyber Security Policy.
- 20.11 If the Supplier believes that a change or proposed change to the Baseline Security Requirements and Authority Cyber Security Policy will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.

- 20.12 Until and/or unless a change to the Charges is agreed by the Authority pursuant to clause 20.11 the Supplier shall continue to perform the Services in accordance with its existing obligations.

### **Malicious Software**

- 20.13 The Supplier shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software in the IT Environment (or as otherwise agreed by the Parties).
- 20.14 Notwithstanding clause 20.13, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.
- 20.15 Any cost arising out of the actions of the Parties taken in compliance with the provisions of clause 20.14 shall be borne by the Parties as follows:
- 20.15.1 by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier (except where the Authority has waived the obligation set out in clause 20.13) or the Authority Data (whilst the Authority Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the Supplier; and
- 20.15.2 otherwise by the Authority.

## **21. CONFIDENTIALITY**

- 21.1 For the purposes of this clause 21, 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.
- 21.2 Except to the extent set out in this clause 21 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
- 21.2.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
- 21.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
- 21.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and

- 21.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 21.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- 21.3.1 the Recipient is required to disclose the Confidential Information by Law, provided that clause 22 (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;
- 21.3.2 the need for such disclosure arises out of or in connection with:
- 21.3.2.1 any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;
- 21.3.2.2 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 any Services provided under this Agreement; or
- 21.3.2.3 the conduct of a Central Government Body review in respect of this Agreement; or
- 21.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 21.4 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.
- 21.5 The Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:
- 21.5.1 Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;
- 21.5.2 its auditors; and
- 21.5.3 its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where the Supplier discloses Confidential Information of the Authority pursuant to this clause 21.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

- 21.6 The Authority may disclose the Confidential Information of the Supplier:
- 21.6.1 on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
  - 21.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - 21.6.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - 21.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in clause 21.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
  - 21.6.5 on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its step-in rights pursuant to clause 30 (*Step-In Rights*), its rights to appoint a Remedial Adviser pursuant to clause 29 (*Remedial Adviser*) and Exit Management rights; or
  - 21.6.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

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 21.

- 21.7 Nothing in this clause 21 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this 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.

## **22. TRANSPARENCY AND FREEDOM OF INFORMATION**

- 22.1 The Parties acknowledge that
- 22.1.1 the Transparency Reports; and
  - 22.1.2 the content of this Agreement, including any changes to this Agreement agreed from time to time, except for:
    - 22.1.2.1 any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and
    - 22.1.2.2 Commercially Sensitive Information,
- (together the "**Transparency Information**") are not Confidential Information.
- 22.2 Notwithstanding any other provision of this 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.
- 22.3 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 paragraph 1 of schedule 8.4 (*Reports and Records Provisions*).
- 22.4 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.
- 22.5 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 Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 22.6 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 (except for Commercially Sensitive Information, Confidential Information (subject to clause 21.6.3) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within five working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
- 22.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- 22.7.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
- 22.7.2 transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two Working Days of receipt;
- 22.7.3 provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within five Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- 22.7.4 not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.
- 22.8 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive 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 Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

**23. PROTECTION OF PERSONAL DATA**

23.1 The table below sets out the details of Processing, Personal Data and Data Subjects. In completing this table, the Authority may take account of the view of the Supplier, however the final decision as to the content of this table shall be with the Authority at its absolute discretion. The Supplier shall comply with any further written instructions with respect to Processing by the Authority and any such further instructions shall be incorporated into this table:

<b>Description</b>	<b>Details</b>
Subject matter of the Processing	The Authority, as Data Controller, is required to process Personal Data in order to deliver its statutory services. The Supplier will have access to this Personal Data in the course of providing the Services.
Duration of the Processing	As set out in paragraph 1.1 of Data Processing Addendum Exhibit of annex 2 ( <i>Initial Security Management Plan</i> ) to schedule 2.4 ( <i>Security Management</i> ).
Nature and purposes of Processing	Collection, transformation, storage, correlation and analysis of event data from systems, services and individual devices for the purpose of detection, prevention, incident handling and mitigation of cyber security threats, risks and attacks across the monitored estate, which event data, whilst not intended, may contain Personal Data.  Business contact information for example role/name, business telephone, address, email and user IDs for the performance of the Services.
Type of Personal Data	As set out in paragraph 2.2 of Data Processing Addendum Exhibit of annex 2 ( <i>Initial Security Management Plan</i> ) to schedule 2.4 ( <i>Security Management</i> ).
Categories of Data Subjects	As set out in paragraph 2.1 of Data Processing Addendum Exhibit of annex 2 ( <i>Initial Security Management Plan</i> ) to schedule 2.4 ( <i>Security Management</i> ).
Plan for return of the data once the Processing is complete unless requirement under union or member state law to preserve that type of data	As set out in paragraph 4 of appendix 1 Data Processing Addendum Exhibit of annex 2 ( <i>Initial Security Management Plan</i> ) to schedule 2.4 ( <i>Security Management</i> ).
Jurisdictions of Processing	United Kingdom, Republic of Ireland, Sweden and United States of America.
Contact details of the	As set out in paragraph 6 of Data Processing Addendum Exhibit

Authority's Data Protection Officer	of annex 2 ( <i>Initial Security Management Plan</i> ) to schedule 2.4 ( <i>Security Management</i> ).
Contact details of the Supplier's Data Protection Officer	As set out in paragraph 7 of Data Processing Addendum Exhibit of annex 2 ( <i>Initial Security Management Plan</i> ) to schedule 2.4 ( <i>Security Management</i> ).

- 23.2 The Controller could be the Authority and/or other parties and therefore all references to the Authority in this clause 23 (*Protection of Personal Data*) shall be interpreted to extend to any other Controller as if they were a party to this Agreement.
- 23.3 Where any Personal Data are Processed in connection with the exercise of the Parties' rights and obligations under this Agreement, the Parties acknowledge that the Supplier shall be acting as a Processor on behalf of the Authority as the Controller. The only Processing that the Supplier is authorised to do is listed in clause 23.1 and may not be determined by the Supplier.
- 23.4 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:
- 23.4.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;
  - 23.4.2 an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
  - 23.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 23.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 23.5 The Supplier shall, and shall procure that its agents, Sub-Processors and employees shall:
- 23.5.1 Process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Agreement, or as otherwise notified by the Authority to the Supplier in writing from time to time) and clause 23.1, 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;
  - 23.5.2 notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Laws;
  - 23.5.3 ensure that at all times it has in place appropriate technical and organisational measures (which are consistent with Article 32 of the GDPR) to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data, such measures to ensure a level of security commensurate with the risks associated with the Processing, and including the measures set out in schedule 11 (*Cyber Security*), having taken account of the:
    - 23.5.3.1 nature of the data to be protected;

- 23.5.3.2 harm that might result from a Data Loss Event;
- 23.5.3.3 state of technological development; and
- 23.5.3.4 cost of implementing any measures;
- 23.5.4 notify the Authority immediately upon becoming aware of a Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the Authority with sufficient information to meet any obligations to report a Personal Data Breach under the Data Protection Laws. Such notification shall as a minimum:
  - 23.5.4.1 describe the nature of the Personal Data Breach, the categories and numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned;
  - 23.5.4.2 communicate the name and contact details of the data protection officer or other relevant contact from whom more information may be obtained;
  - 23.5.4.3 describe the likely consequences of the Personal Data Breach; and
  - 23.5.4.4 describe the measures taken or proposed to be taken to address the Personal Data Breach;
- 23.5.5 co-operate with the Authority and take such reasonable steps as are directed by the Authority to assist in the investigation, mitigation and remediation of a Personal Data Breach;
- 23.5.6 not disclose the Personal Data to any Supplier Personnel unless necessary for the provision of the Services;
- 23.5.7 other than where specifically authorised under this Agreement, not appoint any third party sub-contractor to Process the Personal Data ("**Sub-Processor**") without the prior written consent of the Authority. In all cases where a Sub-Processor is appointed:
  - 23.5.7.1 notify the Authority in writing of the intended Sub-Processor and Processing;
  - 23.5.7.2 the contract between the Supplier and the Sub-Processor shall include terms which give effect to the terms set out in this clause 23 such that they apply to the Sub-Processor;
  - 23.5.7.3 the Supplier shall provide the Authority with such information regarding the Sub-Processor as the Authority may reasonably require;
  - 23.5.7.4 the Supplier shall remain fully liable to the Authority for any failure by a Sub-Processor to fulfil its obligations in relation to the Processing of any Personal Data; and
  - 23.5.7.5 the use of the Sub-Processor shall be otherwise in accordance with clause 23.6;

- 23.5.8 take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data, ensuring in each case that access is strictly limited to those individuals who need to access the relevant Personal Data, as strictly necessary to perform the Services in the context of that individual's duties to the Supplier, and ensure that the Supplier Personnel:
- 23.5.8.1 are aware of and comply with the Supplier's obligations under this clause 23 together with any obligations pertaining to confidentiality or data protection which are set out in this Agreement;
  - 23.5.8.2 are subject to confidentiality undertakings or other contractual or professional or statutory obligations of confidentiality;
  - 23.5.8.3 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 Agreement; and
  - 23.5.8.4 have undergone adequate training in the use, care, protection and handling of Personal Data;
- 23.5.9 notify the Authority immediately if:
- 23.5.9.1 it receives from a Data Subject (or third party on their behalf):
    - (a) a Data Subject Request (or purported Data Subject Request);
    - (b) a request to rectify any inaccurate Personal Data;
    - (c) a request to have any Personal Data erased or blocked;
    - (d) a request to restrict the Processing of any Personal Data;
    - (e) a request to obtain a portable copy of Personal Data, or to transfer such a copy to any Third Party;
    - (f) an objection to any Processing of Personal Data;
    - (g) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data under this Agreement;
    - (h) 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
    - (i) any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws; or
  - 23.5.9.2 it becomes aware of a Data Loss Event,
- (each a "**Relevant Communication**").

- 23.5.10 the Supplier's obligation to notify under clause 23.5.9 shall include the provision of further information to the Authority in phases, as details become available.
  - 23.5.11 taking into account the nature of the processing, provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority, and in any case within sufficient time for the Authority to comply with any relevant timescales prescribed by the Data Protection Laws) in relation to any Relevant Communications (whether received by the Supplier or by the Authority directly) including by implementing such technical and organisational measures as may be reasonably required by the Authority and by promptly providing:
    - 23.5.11.1 the Authority with full details and copies of the Relevant Communication (where received by the Supplier);
    - 23.5.11.2 the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject;
    - 23.5.11.3 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office; and
    - 23.5.11.4 assistance as requested by the Authority following any Data Loss Event;
  - 23.5.12 allow for audits (including inspections) of its data Processing activity by the Authority or the Authority's mandated Auditor, and if requested by the Authority, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this clause 23 and provide to the Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.
  - 23.5.13 cease Processing the Personal Data immediately upon the earlier of the (i) termination or expiry of this Agreement, or (ii) the cessation of the Services, and as soon as reasonably practicable thereafter, at the Authority's option, either return, or securely and irrevocably delete from its systems (so that such Personal Data cannot be recovered or reconstructed), the Personal Data and any copies of it or of the information it contains; and
  - 23.5.14 designate a data protection officer if required by the Data Protection Laws.
- 23.6 The Supplier shall not Process or otherwise transfer, or permit the transfer, of any (i) Patient Identifiable Data outside England and Wales without obtaining the prior written consent of the Authority; or (ii) Personal Data in or to any Restricted Country without obtaining the prior written consent of the Authority (unless the transfer is required by EU or member state law to which the Supplier is subject, and if this is the case then the Supplier shall inform the Authority of that requirement before Processing the Personal Data, unless a Law prohibits such information being provided on important grounds of public interest) and the following conditions are fulfilled:
- 23.6.1 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;

- 23.6.2 the Data Subject has enforceable rights and effective legal remedies;
  - 23.6.3 the Supplier complies with its obligations under the Data Protection Laws 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
  - 23.6.4 the Supplier complies with any reasonable instructions notified to it in advance by the Authority with respect to the Processing of the Personal Data.
- 23.7 In respect of any Processing in, or transfer of Personal Data to, any Restricted Country permitted in accordance with clause 23.6, the Supplier shall, when requested by the Authority, promptly enter into an agreement with the Authority or any Authority Service Recipient including or on such provisions as the Standard Contractual Clauses and/or such variation as a regulator or the Authority might require which terms shall, in the event of any conflict, take precedence over those in this clause 23, and the Supplier shall comply with any reasonable instructions notified to it in advance by the Authority with respect to the transfer of the Personal Data.
- 23.8 Subject to the Authority providing the Supplier with all information reasonably required by the Supplier to comply with this clause 23.8, create and maintain a register setting out:
- 23.8.1 the types of Personal Data and categories of Data Subject whose Personal Data are Processed during the provision of the Services; and
  - 23.8.2 a general description of the technical and organisational security measures adopted by the Supplier to protect the Personal Data in accordance with clause 23.5.3.
- 23.9 The Supplier shall use its reasonable endeavours to assist the Authority to comply with any obligations under the Data Protection Laws and shall not perform its obligations under this Agreement in such a way as to cause the Authority to breach any of the Authority's obligations under the Data Protection Laws to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.
- 23.10 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause.
- 23.11 Both the Authority and the Supplier shall comply with their respective obligations under the GDPR in relation to this Agreement, including by adhering to any relevant codes of conduct published pursuant to Article 40 of the GDPR.
- 23.12 Both the Authority and the Supplier shall comply with their respective obligations under any relevant law implementing or otherwise giving effect to the Network & Information Systems Regulations 2018 ("**NIS Regulations**"). In response to the obligations created by any law implementing or otherwise giving effect to the NIS Regulations, the Authority may elect to produce a report setting out the steps to be reasonably followed by both parties in relation to their compliance with the NIS Regulations in the context of the Services, and the Supplier shall comply with the terms of any such report.
- 23.13 Notwithstanding clause 13 (*Change*), the Authority may, at any time on not less than 30 Working Days' notice, revise this clause 23 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 Agreement).

- 23.14 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 Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 23.15 If following the date of this Agreement:
- 23.15.1 any codes of practice, codes of conduct, regulatory guidance, standard clauses and any other related laws arising from the GDPR or from the NIS Regulations are published; or
  - 23.15.2 the UK ceases to be a Member State of the European Union,
- then the Authority may require the Supplier to take such further reasonable actions, or enter into such further contractual terms, in each case as necessary to take account of these developments.
- 23.16 The Supplier shall from the Effective Date, and throughout the Term, remain registered with the DSP Toolkit system (or any replacement to such system).
- 23.17 The Supplier shall abide by the terms and guidance as detailed in and provided by the DSP Toolkit system. The Supplier shall maintain good information governance standards and practices that meet or exceed the DSP Toolkit standards required of its organisation type.
- 23.18 Any Supplier Personnel that do or are required to have access to any Patient Identifiable Data must be Security Cleared.

## **24. PUBLICITY AND BRANDING**

- 24.1 The Supplier shall not:
- 24.1.1 make any press announcements or publicise this Agreement or its contents in any way; or
  - 24.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders,
- without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.
- 24.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Supplier System and the Authority System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

## SECTION G - LIABILITY, INDEMNITIES AND INSURANCE

### 25. LIMITATIONS ON LIABILITY

#### Unlimited liability

- 25.1 Neither Party limits its liability for:
- 25.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);
  - 25.1.2 fraud or fraudulent misrepresentation by it or its employees;
  - 25.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - 25.1.4 any liability to the extent it cannot be limited or excluded by Law.
- 25.2 The Supplier's liability in respect of the indemnities in clause 10.5 (*VAT*), clause 14.8 (*Employment Indemnity*), clause 14.9 (*Income Tax and National Insurance Contributions*), clause 19 (*IPRs Indemnity*), schedule 9.1 (*Staff Transfer*) and the annexes to schedule 9.1 (*Staff Transfer*) shall be unlimited.
- 25.3 The Authority's liability in respect of the indemnities in clause 14.8 (*Employment Indemnity*), schedule 9.1 (*Staff Transfer*) and the annexes to schedule 9.1 (*Staff Transfer*) shall be unlimited.

#### Financial and other limits

- 25.4 Subject to clauses 25.1 and 25.2 (*Unlimited Liability*) and clauses 25.7 and 25.8 (*Consequential losses*):
- 25.4.1 REDACTED
  - 25.4.2 the Supplier's aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed:
    - 25.4.2.1 REDACTED
    - 25.4.2.2 REDACTED
    - 25.4.2.3 REDACTED
- REDACTED
- 25.5 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under clause 25.4.2.

25.6 Subject to clauses 25.1 and 25.3 (*Unlimited Liability*) and clause 25.7 (*Consequential Losses*) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:

25.6.1 REDACTED

25.6.2 the Authority's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of Defaults of the Authority shall in no event exceed:

25.6.2.1 REDACTED

25.6.2.2 REDACTED

25.6.2.3 REDACTED

### **Consequential Losses**

25.7 Subject to clauses 25.1, 25.2 and 25.3 (*Unlimited Liability*) and clause 25.8, neither Party shall be liable to the other Party for:

25.7.1 any indirect, special or consequential Loss; or

25.7.2 any loss of profits, anticipated savings, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).

25.8 Notwithstanding clause 25.7 but subject to clause 25.4, 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:

25.8.1 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;

25.8.2 any wasted expenditure or charges;

25.8.3 the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Agreement;

25.8.4 any compensation or interest paid to a third party by the Authority; and

25.8.5 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

### **Conduct of indemnity claims**

25.9 Where under this Agreement one Party indemnifies the other Party, the Parties shall comply with the provisions of schedule 8.7 (*Conduct of Claims*) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

## Mitigation

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

## 26. INSURANCE

The Supplier shall comply with the provisions of schedule 2.5 (*Insurance Requirements*) in relation to obtaining and maintaining insurance.

## SECTION H – REMEDIES AND RELIEF

### 27. RECTIFICATION PLAN PROCESS

27.1 In the event that:

27.1.1 there is, or is reasonably likely to be, a Delay;

27.1.2 in any Service Period there has been:

27.1.2.1 a Material KPI Failure; and/or

27.1.2.2 a Material PI Failure; and/or

27.1.3 the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

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

## Notification

27.2 If:

27.2.1 the Supplier notifies the Authority pursuant to clause 27.1 that a Notifiable Default has occurred; or

27.2.2 the Authority notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

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

- 27.3 The "**Rectification Plan Process**" shall be as set out in clauses 27.4 (*Submission of the draft Rectification Plan*) to 27.9 (*Agreement of the Rectification Plan*).

#### **Submission of the draft Rectification Plan**

- 27.4 The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to clause 27.2 (*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

- 27.5 The draft Rectification Plan shall set out:

- 27.5.1 full details of the Notifiable Default that has occurred, including a root cause analysis;
- 27.5.2 the actual or anticipated effect of the Notifiable Default; and
- 27.5.3 the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).

- 27.6 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with paragraph 6 of schedule 8.3 (*Dispute Resolution Procedure*).

#### **Agreement of the Rectification Plan**

- 27.7 The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:

- 27.7.1 is insufficiently detailed to be capable of proper evaluation;
- 27.7.2 will take too long to complete;
- 27.7.3 will not prevent reoccurrence of the Notifiable Default; and/or
- 27.7.4 will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.

- 27.8 The Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within five Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.

- 27.9 If the Authority consents to the Rectification Plan:
- 27.9.1 the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
  - 27.9.2 the Authority may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Event.

## 28. DELAY PAYMENTS

NOT USED

## 29. REMEDIAL ADVISER

- 29.1 If:
- 29.1.1 any of the Intervention Trigger Events occur; or
  - 29.1.2 the Authority reasonably believes that any of the Intervention Trigger Events are likely to occur,
- (each an "**Intervention Cause**"), the Authority may give notice to the Supplier (an "**Intervention Notice**") giving reasonable details of the Intervention Cause and requiring:
- 29.1.2.1 a meeting between the Authority Representative and the Supplier Representative to discuss the Intervention Cause; and/or
  - 29.1.2.2 the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this clause 29.

For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, the Authority has no obligation to exercise its rights under this clause 29.1 prior to or instead of exercising its right to terminate this Agreement.

- 29.2 If the Authority gives notice that it requires the appointment of a Remedial Adviser:
- 29.2.1 the Remedial Adviser shall be:
    - 29.2.1.1 a person selected by the Supplier and approved by the Authority; or
    - 29.2.1.2 if none of the persons selected by the Supplier have been approved by the Authority (or no person has been selected by the Supplier) within 10 Working Days following the date on which the Intervention Notice is given, a person identified by the Authority;
  - 29.2.2 the terms of engagement and start date agreed with the Remedial Adviser must be approved by the Authority; and
  - 29.2.3 any right of the Authority to terminate this Agreement pursuant to clause 33.1.2 (*Termination by the Authority*) for the occurrence of that Intervention Cause shall be suspended for 60 Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties) (the "**Intervention Period**").

- 29.3 The Remedial Adviser's overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing the Supplier's responsibilities under this Agreement), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:
- 29.3.1 observe the conduct of and work alongside the Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
  - 29.3.2 gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
  - 29.3.3 write reports and provide information to the Authority in connection with the steps being taken by the Supplier to remedy the Intervention Cause;
  - 29.3.4 make recommendations to the Authority and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or
  - 29.3.5 take any other steps that the Authority and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.
- 29.4 The Supplier shall:
- 29.4.1 work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
  - 29.4.2 ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;
  - 29.4.3 submit to such monitoring as the Authority and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
  - 29.4.4 implement any reasonable recommendations made by the Remedial Adviser that have been approved by the Authority within the timescales given by the Remedial Adviser; and
  - 29.4.5 not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Authority (such consent not to be unreasonably withheld).
- 29.5 The Supplier shall be responsible for:
- 29.5.1 the costs of appointing, and the fees charged by, the Remedial Adviser; and
  - 29.5.2 its own costs in connection with any action required by the Authority and/or the Remedial Adviser pursuant to this clause 29.

- 29.6 If:
- 29.6.1 the Supplier:
    - 29.6.1.1 fails to perform any of the steps required by the Authority in an Intervention Notice; and/or
    - 29.6.1.2 is in Default of any of its obligations under clause 29.4; and/or
  - 29.6.2 the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,  
  
(each a "**Remedial Adviser Failure**"), the Authority shall be entitled to terminate this Agreement pursuant to clause 33.1.2 (*Termination by the Authority*).

### 30. STEP-IN RIGHTS

- 30.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a "**Step-In Notice**") that it will be taking action under this clause 30, either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to clause 21 (*Confidentiality*)). The Step-In Notice shall set out the following:
- 30.1.1 the action the Authority wishes to take and in particular the Services that it wishes to control (the "**Required Action**");
  - 30.1.2 the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier's Default;
  - 30.1.3 the date on which it wishes to commence the Required Action;
  - 30.1.4 the time period which it believes will be necessary for the Required Action;
  - 30.1.5 whether the Authority will require access to the Supplier's premises and/or the Sites; and
  - 30.1.6 to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.
- 30.2 Following service of a Step-In Notice, the Authority shall:
- 30.2.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
  - 30.2.2 keep records of the Required Action taken and provide information about the Required Action to the Supplier;
  - 30.2.3 co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Authority is not assuming control; and

- 30.2.4 act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this clause 30.
- 30.3 For so long as and to the extent that the Required Action is continuing, then:
- 30.3.1 the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
- 30.3.2 no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of clause 30.4 shall apply to Deductions from Charges in respect of other Services; and
- 30.3.3 the Authority shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Authority's costs of taking the Required Action.
- 30.4 If the Supplier demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:
- 30.4.1 the degradation of any Services not subject to the Required Action; or
- 30.4.2 the non-Achievement of a Milestone,
- beyond that which would have been the case had the Authority not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.
- 30.5 Before ceasing to exercise its step in rights under this clause 30 the Authority shall deliver a written notice to the Supplier (a "**Step-Out Notice**"), specifying:
- 30.5.1 the Required Action it has actually taken; and
- 30.5.2 the date on which the Authority plans to end the Required Action (the "**Step-Out Date**") subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with clause 30.6.
- 30.6 The Supplier shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a "**Step-Out Plan**") relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.
- 30.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
- 30.8 The Supplier shall bear its own costs in connection with any step-in by the Authority under this clause 30, provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:
- 30.8.1 limbs (c) or (d) of the definition of a Step-In Trigger Event; or

30.8.2 limbs (e) and (f) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Supplier's Default).

### 31. AUTHORITY CAUSE

31.1 Notwithstanding any other provision of this Agreement, if the Supplier has failed to:

31.1.1 Achieve a Milestone by its Milestone Date;

31.1.2 provide the Operational Services in accordance with the Target Performance Levels; and/or

31.1.3 comply with its obligations under this Agreement,

(each a "**Supplier Non-Performance**"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this clause 31):

31.1.3.1 the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;

31.1.3.2 the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:

(a) to terminate this Agreement pursuant to clause 33.1.2 (*Termination by the Authority*); or

(b) to take action pursuant clauses 29 (*Remedial Adviser*) or 30 (*Step-In Rights*);

31.1.3.3 where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:

(a) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause; and

(b) if the Authority, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause; and/or

(c) the Supplier shall only be entitled to claim compensation across one or more Milestones forming part of the Affected Services, subject to and in accordance with the principles set out below and subject always to clause 25 (*Limitations on Liability*):

(i) in respect of recovering the additional costs relating to Supplier Personnel, compensation shall not be

payable in respect of the first 20 cumulative days of delay (which may or may not be consecutive);

(ii) subject to paragraph (i) above, the compensation shall reimburse the Supplier for additional Costs incurred by the Supplier that the Supplier:

(1) can demonstrate it has incurred solely and directly as a result of the Authority Cause; and

(2) is, has been, or will be unable to mitigate, having complied with its obligations under clause 31.1 (*Authority Cause*),

together with an amount as is appropriate to maintain the Anticipated Contract Life Profit Margin in respect of the relevant Affected Service;

(iii) the compensation shall not operate so as to put the Supplier in a better position than it would have been in but for the occurrence of the Authority Cause;

(d) the Supplier shall provide the Authority with any information the Authority may require in order to assess the validity of the Supplier's claim to compensation, and/or

31.1.3.4 where the Supplier Non-Performance constitutes a Performance Failure:

(a) the Authority shall not be entitled to withhold any of the Service Charges pursuant to clause 7.2.3.2 (*Performance Failures*);

(b) the Authority shall not be entitled to withhold and retain any Compensation for Unacceptable KPI Failure pursuant to clause 7.3 (*Unacceptable KPI Failure*); and

(c) the Supplier shall be entitled to invoice for the Service Charges for the relevant Operational Services affected by the Authority Cause,

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

31.2 In order to claim any of the rights and/or relief referred to in clause 31.1, the Supplier shall as soon as reasonably practicable (and in any event within 10 Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Authority notice (a "**Relief Notice**") setting out details of:

31.2.1 the Supplier Non-Performance;

31.2.2 the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Agreement;

- 31.2.3 any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
- 31.2.4 the relief and/or compensation claimed by the Supplier.
- 31.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief and/or compensation, consulting with the Supplier where necessary.
- 31.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.
- 31.5 Without prejudice to clause 5.9 (*Continuing Obligation to Provide the Services*), if a Dispute arises as to:
  - 31.5.1 whether a Supplier Non-Performance would not have occurred but for an Authority Cause; and/or
  - 31.5.2 the nature and/or extent of the relief and/or compensation claimed by the Supplier,

either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

- 31.6 Any Change that is required to the Implementation Plan or to the Charges pursuant to this clause 31 shall be implemented in accordance with the Change Control Procedure.

## **32. FORCE MAJEURE**

- 32.1 Subject to the remaining provisions of this clause 32 (and, in relation to the Supplier, subject to its compliance with its obligations in schedule 8.6 (*Business Continuity and Disaster Recovery*)), a Party may claim relief under this clause 32 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 32.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 32.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this clause 32 to the extent that consequences of the relevant Force Majeure Event:
  - 32.3.1 are capable of being mitigated by any of the Services including the BCDR Services, but the Supplier has failed to do so; and/or

- 32.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement.
- 32.4 Subject to clause 32.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 32.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 32.6 Where, as a result of a Force Majeure Event:
- 32.6.1 an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
- 32.6.1.1 the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to clause 33.1.3 (*Termination by the Authority*) or clause 33.3.2 (*Termination by the Supplier*); and
- 32.6.1.2 neither Party shall be liable for any Default arising as a result of such failure;
- 32.6.2 the Supplier fails to perform its obligations in accordance with this Agreement:
- 32.6.2.1 the Authority shall not be entitled:
- (a) during the continuance of the Force Majeure Event to exercise its rights under clause 29 (*Remedial Adviser*) and/or clause 30 (*Step-In Rights*) as a result of such failure; and
- (b) to withhold any of the Service Charges pursuant to clause 7.2.3.2 (*Performance Failures*) or withhold and retain any of the Service Charges as compensation pursuant to clause 7.3 (*Unacceptable KPI Failure*) to the extent that a Performance Failure has been caused by the Force Majeure Event; and
- 32.6.2.2 the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.
- 32.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.

- 32.8 Relief from liability for the Affected Party under this clause 32 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under clause 32.7.

## SECTION I – TERMINATION AND EXIT MANAGEMENT

### 33. TERMINATION RIGHTS

#### Termination by the Authority

- 33.1 The Authority may terminate this Agreement by issuing a Termination Notice to the Supplier:

- 33.1.1 for convenience at any time, including where the Agreement should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under article 258 of the Treaty on the Functioning of the EU;
- 33.1.2 if a Supplier Termination Event occurs;
- 33.1.3 if a Force Majeure Event endures for a continuous period of more than 90 days;  
or
- 33.1.4 if the Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,

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

- 33.2 Where the Authority:

- 33.2.1 is terminating this Agreement under clause 33.1.2 due to the occurrence of either limb (a) and/or (f) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
- 33.2.2 has the right to terminate this Agreement under clause 33.1.1, clause 33.1.2 or clause 33.1.3, it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement.

#### Termination by the Supplier

- 33.3 The Supplier may, by issuing a Termination Notice to the Authority, terminate:

- 33.3.1 this Agreement if the Authority fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds £200,000 and such amount remains outstanding 40 Working Days after the receipt by the Authority of a notice of non-payment from the Supplier; or
- 33.3.2 any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than 90 days,

and this Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than 20 Working Days from

the date of the issue of the Termination Notice). If the operation of clause 33.3.2 would result in a Partial Termination, the provisions of clause 33.4 (*Partial Termination*) shall apply.

### **Partial Termination**

- 33.4 If the Supplier notifies the Authority pursuant to clause 33.3.2 (*Termination by the Supplier*) that it intends to terminate this Agreement in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Agreement by serving a Termination Notice to the Supplier within one month of receiving the Supplier's Termination Notice. For the purpose of this clause 33.4, in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.
- 33.5 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:
- 33.5.1 the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated; and
- 33.5.2 the Supplier shall not be entitled to reject the Change.

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

### **General Provisions on Expiry or Termination**

- 34.1 The provisions of clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 5.8 (*Specially Written Software warranty*), 10.4 and 10.5 (*VAT*), 10.6 and 10.7 (*Set-off and Withholding*), 12 (*Records, Reports, Audits & Open Book Data*), 14.8 (*Employment Indemnity*), 14.9 (*Income Tax and National Insurance Contributions*), 16 (*Intellectual Property Rights*), 17 (*Transfer and Licences Granted by the Supplier*), 19 (*IPRs Indemnity*), 19A (*Open Source Publications*), 20 (*Authority Data and Security Requirements*), 21 (*Confidentiality*), 22 (*Transparency and Freedom of Information*), 23 (*Protection of Personal Data*), 24 (*Publicity and Branding*), 25 (*Limitations on Liability*), 34 (*Consequences of Expiry or Termination*), 37 (*Waiver and Cumulative Remedies*), 40 (*Severance*), 42 (*Entire Agreement*), 43 (*Third Party Rights*), 44 (*Notices*), 45 (*Disputes*) and 46 (*Governing Law and Jurisdiction*), and the provisions of schedules 1 (*Definitions*), 7.1 (*Charges and Invoicing*), 7.2 (*Payments on Termination*), 7.5 (*Financial Reports and Audit Rights*), 8.3 (*Dispute Resolution Procedure*), 8.4 (*Reports and Records Provisions*), 8.5 (*Exit Management*), 8.7 (*Conducts of Claims*) and 9.1 (*Staff Transfer*), shall survive the termination or expiry of this Agreement.

### **Exit Management**

- 34.2 The Parties shall comply with the provisions of schedule 8.5 (*Exit Management*) and any current Exit Plan in relation to orderly transition of the Services to the Authority or a Replacement Supplier.

### **Payments by the Authority**

- 34.3 If this Agreement is terminated in part by the Authority pursuant to clause 33.1.1 (*Termination by the Authority*) or by the Supplier pursuant to clause 33.3.1 (*Termination by the Supplier*), the Authority shall only pay the Supplier the Termination Payment (which shall

be the Supplier's sole remedy for the termination of this Agreement). If this Agreement is terminated in whole by the Authority pursuant to clause 33.1.1 (*Termination by the Authority*), the Authority shall pay the Supplier the following payments (which shall be the Supplier's sole remedy for the termination of this Agreement):

- 34.3.1 the Termination Payment; and
  - 34.3.2 the Compensation Payment, if the period from (but excluding) the date that the Termination Notice is given (or, where paragraph 2.1(d) of part D of schedule 7.1 (*Charges and Invoicing*) applies, deemed given) by the Authority pursuant to clause 33.1.1 (*Termination by the Authority*) to (and including) the Termination Date is less than 365 days.
- 34.4 If this Agreement is terminated (in part or in whole) by the Authority pursuant to clauses 33.1.2, 33.1.3 and/or 33.2 (*Termination by the Authority*), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:
- 34.4.1 payments in respect of any Assets or apportionments in accordance with schedule 8.5 (*Exit Management*); and
  - 34.4.2 payments in respect of unpaid Charges for Services received up until the Termination Date.
- 34.5 The costs of termination incurred by the Parties shall lie where they fall if:
- 34.5.1 either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to clauses 33.1.3 or 33.2.2 (*Termination by the Authority*) or 33.3.2 (*Termination by the Supplier*); or
  - 34.5.2 the Authority terminates this Agreement under clause 33.1.4.

#### **Payments by the Supplier**

- 34.6 In the event of termination or expiry of this Agreement, the Supplier shall repay to the Authority all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.
- 34.7 If this Agreement is terminated (in whole or in part) by the Authority pursuant to clause 33.1.2 (*Termination by the Authority*) prior to Achievement of one or more CPP Milestones, the Authority may at any time on or within 12 months of the issue of the relevant Termination Notice by issue to the Supplier of written notice (a "**Milestone Adjustment Payment Notice**") require the Supplier to repay to the Authority an amount equal to the aggregate Milestone Adjustment Payment Amounts in respect of each CPP Milestone to which the Milestone Adjustment Payment Notice relates.
- 34.8 A Milestone Adjustment Payment Notice shall specify:
- 34.8.1 each CPP Milestone to which it relates;

- 34.8.2 in relation to each such CPP Milestone, each Deliverable relating to that CPP Milestone that the Authority wishes to retain, if any (each such Deliverable being a "**Retained Deliverable**"); and
- 34.8.3 those Retained Deliverables, if any, the Allowable Price for which the Authority considers should be subject to deduction of an adjusting payment on the grounds that they do not or will not perform in all material respects in accordance with their specification (such adjusting payment being an "**Allowable Price Adjustment**"),
- and may form part of a Termination Notice.
- 34.9 The Supplier shall within 10 Working Days of receipt of a Milestone Adjustment Payment Notice, in each case as applicable:
- 34.9.1 notify the Authority whether it agrees that the Retained Deliverables which the Authority considers should be subject to an Allowable Price Adjustment as specified in the relevant Milestone Adjustment Payment Notice should be so subject; and
- 34.9.2 in relation to each such Retained Deliverable that the Supplier agrees should be subject to an Allowable Price Adjustment, notify the Authority of the Supplier's proposed amount of the Allowable Price Adjustment and the basis for its approval;
- 34.9.3 provide the Authority with its calculation of the Milestone Adjustment Payment Amount in respect of each CPP Milestone the subject of the relevant Milestone Adjustment Payment Notice using its proposed Allowable Price Adjustment, including details of:
- 34.9.3.1 all relevant Milestone Payments; and
- 34.9.3.2 the Allowable Price of each Retained Deliverable; and
- 34.9.4 provide the Authority with such supporting information as the Authority may require.
- 34.10 If the Parties do not agree the calculation of a Milestone Adjustment Payment Amount within 20 Working Days of the Supplier's receipt of the relevant Milestone Adjustment Payment Notice, either Party may refer the Dispute to the Dispute Resolution Procedure.
- 34.11 If the Authority issues a Milestone Adjustment Payment Notice pursuant to clause 34.7:
- 34.11.1 the Authority shall:
- 34.11.1.1 securely destroy or return to the Supplier all Non-retained Deliverables that are in tangible form; and
- 34.11.1.2 ensure that all Non-retained Deliverables that are held in electronic, digital or other machine-readable form cease to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such all Non-retained Deliverables,

in each case as soon as reasonably practicable after repayment of the aggregate Milestone Adjustment Payment Amounts repayable pursuant to that Milestone Adjustment Payment Notice; and

- 34.11.2 all licences granted pursuant to clause 17 (*Transfer and Licences Granted by the Supplier*) in respect of Specially Written Software and Project Specific IPRs and any Supplier Non-COTS Software and/or Supplier Background IPRs shall terminate upon such repayment to the extent that they relate to the Non-retained Deliverables.

## SECTION J - MISCELLANEOUS AND GOVERNING LAW

### 35. COMPLIANCE

#### Health and Safety

- 35.1 The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

35.1.1 all applicable Law regarding health and safety; and

35.1.2 the Health and Safety Policy whilst at the Authority Premises.

- 35.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

#### Equality and Diversity

- 35.3 The Supplier shall:

35.3.1 perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

35.3.1.1 all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

35.3.1.2 the Authority's equality and diversity policy as provided to the Supplier from time to time; and

35.3.1.3 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; and

35.3.2 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).

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

- 35.4 The Supplier shall comply with the provisions of:
- 35.4.1 the Official Secrets Acts 1911 to 1989; and
  - 35.4.2 section 182 of the Finance Act 1989.

### **Corporate Social Responsibility**

- 35.5 The Authority applies corporate and social responsibility values to its business operations and activities which are consistent with the Government's corporate social responsibility policies, including, without limitation, those policies relating to anti-bribery and corruption, health and safety, the environment and sustainable development, equality and diversity.
- 35.6 The Supplier represents and warrants that it:
- 35.6.1 complies with all CSR Laws;
  - 35.6.2 requires its Sub-contractors and any person under its control, to comply with all CSR Laws; and
  - 35.6.3 has adopted a written corporate and social responsibility policy that sets out its values for relevant activity and behaviour (including, without limitation, addressing the impact on employees, clients, stakeholders, communities and the environment by the Supplier's business activities).
- 35.7 The Supplier shall notify the Authority in the event that its corporate and social responsibility policy is in conflict with any CSR Policies notified to the Supplier or which it should reasonably be aware of.

### **Modern Slavery**

- 35.8 The Supplier represents and warrants that at the Effective Date neither the Supplier, nor any of its officers, employees:
- 35.8.1 has been convicted of any offence involving slavery and human trafficking; and
  - 35.8.2 having made reasonable enquiries, so far as it is aware, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 35.9 The Supplier shall implement due diligence procedures for its Sub-contractors and other participants in its supply chains to ensure that there is no slavery or human trafficking in its supply chains.
- 35.10 The Supplier shall prepare and deliver to the Authority each year, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.
- 35.11 The Supplier warrants and represents that it has complied with and throughout this Agreement will continue to comply with the CSR Policies.

### **36. ASSIGNMENT AND NOVATION**

36.1 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 Agreement without the prior written consent of the Authority.

36.2 The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:

36.2.1 any Central Government Body;

36.2.2 to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by 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 36.2.

36.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to clause 36.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

36.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body a "**Successor Body**"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority under limb (h) of the definition of Supplier Termination Event (as if references in that limb (h) to the Supplier and references to a Party in the definition of Insolvency Event were references to the Successor Body).

### **37. WAIVER AND CUMULATIVE REMEDIES**

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

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

### **38. RELATIONSHIP OF THE PARTIES**

Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this 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.

**39. PREVENTION OF FRAUD AND BRIBERY**

- 39.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:
- 39.1.1 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
  - 39.1.2 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.
- 39.2 The Supplier shall not during the term of this Agreement:
- 39.2.1 commit a Prohibited Act; and/or
  - 39.2.2 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.
- 39.3 The Supplier shall during the term of this Agreement:
- 39.3.1 establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
  - 39.3.2 keep appropriate records of its compliance with its obligations under clause 39.3.1 and make such records available to the Authority on request.
- 39.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of clause 39.1 and/or 39.2, or has reason to believe that it has or any of the Supplier Personnel have:
- 39.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 39.4.2 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
  - 39.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 39.5 If the Supplier makes a notification to the Authority pursuant to clause 39.4, 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 12 (*Records, Reports, Audits & Open Book Data*).

- 39.6 If the Supplier is in Default under clauses 39.1 and/or 39.2, the Authority may by notice:
- 39.6.1 require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
  - 39.6.2 immediately terminate this Agreement.
- 39.7 Any notice served by the Authority under clause 39.6 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 Agreement shall terminate).

#### **40. SEVERANCE**

- 40.1 If any provision of this 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 Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
- 40.2 In the event that any deemed deletion under clause 40.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 40.3 If the Parties are unable to agree on the revisions to this Agreement within five Working Days of the date of the notice given pursuant to clause 40.2, the matter shall be dealt with in accordance with paragraph 4 (*Commercial Negotiation*) of schedule 8.3 (*Dispute Resolution Procedure*) except that if the representatives are unable to resolve the dispute within 30 Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this clause 40.3.

#### **41. FURTHER ASSURANCES**

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

#### **42. ENTIRE AGREEMENT**

- 42.1 This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 42.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
- 42.3 Nothing in this clause 42 shall exclude any liability in respect of misrepresentations made fraudulently.

**43. THIRD PARTY RIGHTS**

- 43.1 The provisions of clause 19.1 (*IPRs Indemnity*), paragraphs 2.1 and 2.6 of part A, paragraphs 2.1, 2.6, 3.1 and 3.3 of part B, paragraphs 2.1 and 2.3 of part C and paragraphs 1.4, 2.3 and 2.8 of part D of schedule 9.1 (*Staff Transfer*) and the provisions of paragraph 6.9 of schedule 8.5 (*Exit Management*) (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.
- 43.2 Subject to clause 43.1, a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 43.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.
- 43.4 Any amendments or modifications to this Agreement may be made, and any rights created under clause 43.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

**44. NOTICES**

- 44.1 Any notices sent under this Agreement must be in writing.
- 44.2 Subject to clause 44.4, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

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

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

	<b>Supplier</b>	<b>Authority</b>
<b>Contact:</b>	REDACTED	NHS Digital Commercial
<b>Address:</b>	REDACTED	NHS Digital, 1 Trevelyan Square, 1st Floor, Boar Lane, Leeds, LS1 6AE
<b>Email:</b>	REDACTED	REDACTED

44.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in clause 44.2:

44.4.1 Step-In Notices;

44.4.2 Force Majeure Notices;

44.4.3 notices issued by the Supplier pursuant to clause 33.3 (*Termination by the Supplier*);

44.4.4 Termination Notices; and

44.4.5 Dispute Notices.

44.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with clause 44.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in clause 44.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

44.6 This clause 44 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under schedule 8.3 (*Dispute Resolution Procedure*)).

## **45. DISPUTES**

45.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.

45.2 The Supplier shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.

**46. GOVERNING LAW AND JURISDICTION**

- 46.1 This 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.
- 46.2 Subject to clause 45 (*Disputes*) and schedule 8.3 (*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 Agreement or its subject matter or formation.

**47. COUNTERPARTS**

- 47.1 This Agreement may be executed in any number of counterparts but will not be effective until each Party has executed at least one counterpart. Each counterpart when executed will be an original, but all counterparts together will constitute one document.

**48. ISSUED PROPERTY**

- 48.1 All Issued Property shall remain the property of the Authority. It shall be used in the execution of this Agreement, and for no other purpose, without the prior approval in writing of the Authority.
- 48.2 Neither the Supplier, nor any Supplier Personnel or Sub-contractor, nor any other person, shall have a lien on Issued Property, for any sum due to the Supplier, Sub-contractor, or other person, and the Supplier shall take all such steps as may be necessary to ensure that the title of the Authority, and the exclusion of any such lien, are brought to the notice of all Sub-contractors and other persons dealing with any Issued Property.
- 48.3 Within 14 days of receipt of Issued Property, the Supplier Personnel in possession of the Issued Property shall:
- 48.3.1 conduct a reasonable visual inspection;
  - 48.3.2 conduct any additional inspection and testing as may be necessary and practicable to ensure the Issued Property is not defective or deficient for the purpose for which it has been provided; and
  - 48.3.3 if any defects or deficiencies are identified, notify the Authority within five Working Days.
- 48.4 If the Authority receives a notification under clause 48.3.3, and agrees with the assessment, it shall re-issue or repair the related Issued Property within five Working Days. If appropriate, the Authority shall also provide written instructions for the return or disposal of the defective Issued Property.
- 48.5 In the event that the Authority fails to provide a replacement for, or repair, the defective Issued Property in line with clause 48.4, where this causes a Supplier delay, fair and reasonable revisions of the Implementation Plan shall be made as may be appropriate, provided that the Supplier has taken all reasonable measures to mitigate the consequences of any such delay.

- 48.6 Subject to clause 48.8 below, and any limitation or exclusion of liability as may be specified in the Agreement, the Supplier shall be responsible for the safe custody and due return of any Issued Property and shall be responsible for all loss or damage thereto resulting from an act, omission or negligence of the Supplier, until re-delivered in accordance with the Authority's instructions.
- 48.7 If requested, the Authority, within a reasonable time, and where practicable before delivery of the Issued Property, shall notify the Supplier of the value of the Issued Property.
- 48.8 The Supplier shall not be liable in respect of:
- 48.8.1 defects or deficiencies notified to the Authority in accordance with clause 48.3 and agreed in accordance with clause 48.4 of this Agreement, or latent defects which the Supplier can show could not reasonably have been discovered by means of the activities described at clause 48.3 of this Agreement;
  - 48.8.2 fair wear and tear in Issued Property resulting from its normal and proper use in the execution of the Agreement (except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance by the Agreement); and
  - 48.8.3 Issued Property rendered unserviceable as a direct result of ordinary performance of the Agreement.
- 48.9 The Supplier shall:
- 48.9.1 open and maintain an Issued Property Register;
  - 48.9.2 ensure that all Issued Property of the Authority recorded in the Issued Property Register is available for inspection by the Authority at any reasonable time; and
  - 48.9.3 on being given two months' notice, co-operate with the Authority to conduct audits of the Issued Property recorded in the Issued Property Register in a manner to be determined by the Authority. Where the Authority has reasonable grounds to believe that the Issued Property of the Authority has not been used in accordance with the terms of issue then these audits may be conducted on two Working Days' notice. Any individual carrying out an audit at the Supplier's premises will be Security Cleared and comply with the Supplier's policies relating to working onsite.
- 48.10 At the end of the Term the Supplier shall forward its most recent Issued Property Register to the Authority and the Authority shall instruct the Supplier regarding the return or disposal of such Issued Property.

**IN WITNESS** of which this Agreement has been duly executed by the Parties on the date which appears at the head of its page 1.

**SIGNED** for and on behalf of **IBM UNITED** )  
**KINGDOM LIMITED** by: )  
)  
)

Signature .....

Name (block capitals) .....

**Director/authorised  
signatory**

**SIGNED** for and on behalf of **HEALTH AND** )  
**SOCIAL CARE INFORMATION** )  
**CENTRE (NHS DIGITAL)** by:

Signature .....

Name (block capitals) .....

**Director/authorised  
signatory**

## SCHEDULE 1: DEFINITIONS

Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below.

<b>"Achieve"</b>	means:  (a) in respect of a Test, to successfully pass a Test without any Test Issues; and  (b) in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of schedule 6.2 ( <i>Testing Procedures</i> ),  and <b>"Achieved"</b> and <b>"Achievement"</b> shall be construed accordingly;
<b>"Acquired Rights Directive"</b>	means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
<b>"Additional Services"</b>	new services which are added to the Services during the Term in accordance with clause 8 ( <i>Services Improvement</i> );
<b>"Additional Services Work Package"</b>	the detailed plan, agreed in accordance with clause 8 ( <i>Services Improvement</i> ), describing the Additional Services to be provided by the Supplier, the timetable for their performance and the related matters listed in the template work package set out in schedule 12 ( <i>Additional Services Work Package</i> );
<b>"Affected Party"</b>	means the Party seeking to claim relief in respect of a Force Majeure Event;
<b>"Affected Service(s)"</b>	has the meaning given in paragraph 1.1 of part B ( <i>Charging Mechanisms</i> ) to schedule 7.1 ( <i>Charges and Invoicing</i> );
<b>"Affiliate"</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 with, that body corporate from time to time;
<b>"Allowable Assumptions"</b>	means the assumptions set out in annex 5 of schedule 7.1 ( <i>Charges and Invoicing</i> );

<b>"Allowable Price"</b>	<p>means in relation to the Retained Deliverables relating to a CPP Milestone, if any, an amount determined in accordance with the formula:</p> <p><math>A - B</math></p> <p>where:</p> <p>(a) A is an amount equal to the Costs incurred by the Supplier in providing or developing the relevant Retained Deliverables as reflected in the Financial Model together with an amount equal to the Anticipated Contract Life Profit Margin thereon; and</p> <p>(b) B is an amount equal to the Allowable Price Adjustment relating to the relevant Retained Deliverables, if any, or if there is no such Allowable Price Adjustment, zero,</p> <p>provided that the Allowable Price for any Retained Deliverables shall in no circumstances exceed the aggregate amount of the Milestone Payments paid to the Supplier in respect of the Milestones (or in the case of Partial Termination, the Milestones for the parts of the Services terminated) relating to that CPP Milestone;</p>
<b>"Allowable Price Adjustment"</b>	has the meaning given in clause 34.8.3 ( <i>Payments by the Supplier</i> );
<b>"Annual Contract Report"</b>	has the meaning given in schedule 7.5 ( <i>Financial Reports and Audit Rights</i> );
<b>"Anticipated Contract Life Profit Margin"</b>	has the meaning given in schedule 7.1 ( <i>Charges and Invoicing</i> );
<b>"Approved Sub Licensee"</b>	<p>means any of the following:</p> <p>(a) a Central Government Body;</p> <p>(b) any third party providing services to a Central Government Body; and/or</p> <p>(c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority;</p>
<b>"Assets"</b>	means all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding the Authority Assets;
<b>"Audit"</b>	means any exercise by the Authority of its Audit Rights pursuant to clause 12 ( <i>Records, Reports, Audits &amp; Open Book Data</i> ) and schedule 7.5 ( <i>Financial Reports and Audit Rights</i> );

**"Audit Agents"**

means:

- (a) the Authority's internal and external auditors;
- (b) the Authority's statutory or regulatory auditors;
- (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (d) HM Treasury or the Cabinet Office;
- (e) any party formally appointed by the Authority to carry out audit or similar review functions; and
- (f) successors or assigns of any of the above;

**"Audit Rights"**

means the audit and access rights referred to in schedule 7.5 (*Financial Reports and Audit Rights*);

**"Authority Assets"**

means the Authority Materials, the Authority infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision or receipt of the Services;

**"Authority Background IPRs"**

means:

- (a) IPRs owned by the Authority before the Effective Date, including IPRs contained in any of the Authority's Know-How, documentation, processes and procedures;
- (b) IPRs created by the Authority independently of this Agreement; and/or
- (c) Crown Copyright which is not available to the Supplier otherwise than under this Agreement,

but excluding IPRs owned by the Authority subsisting in the Authority Software;

- "Authority Cause"** means any breach by the Authority of any of the Authority Responsibilities where such a breach causes a specific and actual impact on the Supplier's performance of the Services, except to the extent that such breach is:
- (a) the result of any act or omission by the Authority to which the Supplier has given its prior consent; or
  - (b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;
- "Authority Cyber Security Policy"** means the Authority's cyber security policy the current copy of which is schedule 11 (*Cyber Security*), as updated from time to time by the Authority and notified to the Supplier;
- "Authority Data"** means:
- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
    - (i) supplied to the Supplier by or on behalf of the Authority; and/or
    - (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or
  - (b) any Personal Data for which the Authority is the Data Controller;
- "Authority Information"** shall mean all Authority Data, Confidential Information, Intellectual Property Rights and other data or information, however it is conveyed or received, that (without prejudice to the foregoing) belongs to, is licensed to and/or relates to the customers, business affairs, development, trade secrets, business plans, know-how, personnel or suppliers of the Authority together with any information derived from any of the above;
- "Authority IT Strategy"** means the Authority's IT policy in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Change Control Procedure;

<b>"Authority Materials"</b>	<p>means the Authority Data together with any materials, documentation, information, programs and codes supplied by the Authority to the Supplier, the IPRs in which:</p> <ul style="list-style-type: none"><li>(a) are owned or used by or on behalf of the Authority; and</li><li>(b) are or may be used in connection with the provision or receipt of the Services,</li></ul> <p>but excluding any Project Specific IPRs, Specially Written Software, Supplier Software, Third Party Software and Documentation relating to Supplier Software or Third Party Software;</p>
<b>"Authority Premises"</b>	<p>means premises owned, controlled or occupied by the Authority and/or any Central Government Body which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them);</p>
<b>"Authority Representative"</b>	<p>means the representative appointed by the Authority pursuant to clause 11.4 (<i>Representatives</i>);</p>
<b>"Authority Requirements"</b>	<p>means the requirements of the Authority set out in schedules 2.1 (<i>Services Description</i>), 2.2 (<i>Performance Indicators</i>), 2.3 (<i>Standards</i>), 2.4 (<i>Security Management</i>), 2.5 (<i>Insurance Requirements</i>), 6.1 (<i>Implementation Plan</i>), 8.4 (<i>Reports and Records Provisions</i>), 8.5 (<i>Exit Management</i>), 8.6 (<i>Business Continuity and Disaster Recovery</i>) and 11 (<i>Cyber Security</i>);</p>
<b>"Authority Responsibilities"</b>	<p>means the responsibilities of the Authority specified in schedule 3 (<i>Authority Responsibilities</i>);</p>
<b>"Authority Software"</b>	<p>means software which is owned by or licensed to the Authority (other than under or pursuant to this Agreement) and which is or will be used by the Supplier for the purposes of providing the Services;</p>
<b>"Authority System"</b>	<p>means the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with this Agreement which is owned by the Authority or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Services;</p>
<b>"Balanced Scorecard Report"</b>	<p>has the meaning given in paragraph 1.1(b) of part B of schedule 2.2 (<i>Performance Levels</i>);</p>
<b>"Baseline Security Requirements"</b>	<p>means the Authority's baseline security requirements, the current copy of which is contained in annex 1 of schedule 2.4 (<i>Security Management</i>), as updated from time to time by the Authority and notified to the Supplier;</p>
<b>"BCDR Plan"</b>	<p>means any plan prepared pursuant to paragraph 2 of schedule 8.6 (<i>Business Continuity and Disaster Recovery</i>), as may be amended</p>

from time to time;

- "BCDR Services"** means the business continuity and disaster recovery services set out in schedule 8.6 (*Business Continuity and Disaster Recovery*);
- "Central Government Body"** 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:
- (a) Government Department;
  - (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
  - (c) Non-Ministerial Department; or
  - (d) Executive Agency; and
- to the extent not included within the above, Department of Health and NHS England;
- "Certificate of Costs"** has the meaning given in schedule 7.1 (*Charges and Invoicing*);
- "Change"** means any change to this Agreement;
- "Change Authorisation Note"** means a form setting out an agreed Contract Change which shall be substantially in the form of annex 2 of schedule 8.2 (*Change Control Procedure*);
- "Change Control Procedure"** means the procedure for changing this Agreement set out in schedule 8.2 (*Change Control Procedure*);
- "Change in Law"** means any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;
- "Change Request"** a written request for a Contract Change substantially in the form of annex 1 of schedule 8.2 (*Change Control Procedure*);
- "Charges"** means the charges for the provision of the Services set out in or otherwise calculated in accordance with schedule 7.1 (*Charges and Invoicing*), including any Milestone Payment or Service Charge;

- "Commercially Sensitive Information"** means the information listed in schedule 4.2 (*Commercially Sensitive Information*) comprising the information of a commercially sensitive nature relating to:
- (a) the pricing of the Services;
  - (b) details of the Supplier's IPRs; and
  - (c) the Supplier's business and investment plans;
- which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
- "Comparable Supply"** means the supply of services to another customer of the Supplier that are the same or similar to any of the Services;
- "Compensation for Unacceptable KPI Failure"** has the meaning given in clause 7.3 (*Unacceptable KPI Failure*);
- "Compensation Payment"** has the meaning given in schedule 7.2 (*Payments on Termination*);
- "Confidential Information"** means:
- (a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:
    - (i) the Disclosing Party Group; or
    - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group;
  - (b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Agreement;
  - (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and
  - (d) Information derived from any of the above,
- but not including any Information which:
- (i) was in the possession of the Recipient without obligation of

confidentiality prior to its disclosure by the Disclosing Party;

(ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;

(iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;

(iv) was independently developed without access to the Confidential Information; or

(v) relates to the Supplier's:

(A) performance under this Agreement; or

(B) failure to pay any Sub-contractor as required pursuant to clause 15.11.1 (*Supply Chain Protection*);

**"Contract Change"** means any change to this Agreement other than an Operational Change;

**"Contract Inception Report"** means the initial financial model in a form agreed by the Supplier and the Authority as part of Milestone ID: M01 as specified in annex 1 (*Outline Implementation Plan*) to schedule 6.1 (*Implementation Plan*);

**"Contract Year"** means:

(a) a period of 12 months commencing on the Effective Date; or

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

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

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

**"Costs"** has the meaning given in schedule 7.1 (*Charges and Invoicing*);

**"CPP Milestone"** means a contract performance point as set out in the Implementation Plan, being the Milestone at which the Supplier has demonstrated that the Supplier Solution or relevant Service is working satisfactorily in its operating environment in accordance with schedule 6.2 (*Testing Procedures*);

<b>"CRTPA"</b>	means the Contracts (Rights of Third Parties) Act 1999;
<b>"CSR Laws"</b>	means Laws relating to corporate social responsibility issues (e.g. anti-bribery and corruption, health and safety, the environmental and sustainable development, equality and diversity), including but not limited to the Modern Slavery Act 2015, the Public Services (Social Value) Act 2012, the Public Contracts Regulations 2015 and Article 6 of the Energy Efficiency Directive 2012/27/EU, from time to time in force;
<b>"CSR Policies"</b>	means the Authority's policies, including, without limitation, anti-bribery and corruption, health and safety, the environmental and sustainable development, equality and diversity, and any similar policy notified to the Supplier by the Authority from time to time, and "CSR Policy" shall mean any one of them;
<b>"Data Controller" or "Controller"</b>	has the meaning given in the Data Protection Laws;
<b>"Data Loss Event"</b>	means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
<b>"Data Processor" or "Processor"</b>	has the meaning given in the Data Protection Laws;
<b>"Data Protection Impact Assessment"</b>	an assessment by the Authority of the Impact of the envisaged processing on the protection of Personal Data;
<b>"Data Protection Laws"</b>	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 subject to Royal Assent to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
<b>"DPA 2018"</b>	Data Protection Act 2018;
<b>"Data Subject"</b>	has the meaning given in the Data Protection Laws;
<b>"Data Subject Request"</b>	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to access his or her Personal Data;
<b>"Deductions"</b>	means all Compensation for Unacceptable KPI Failure or any other deduction which is paid or payable to the Authority under this Agreement;
<b>"Default"</b>	means any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act,

omission, negligence or statement:

(a) in the case of the Authority, of its employees, servants, agents;  
or

(b) in the case of the Supplier, of its Sub-contractors or any  
Supplier Personnel,

in connection with or in relation to the subject-matter of this  
Agreement and in respect of which such Party is liable to the other;

**"Defect"**

means:

(a) any error, damage or defect in the manufacturing of a  
Deliverable; or

(b) any error or failure of code within the Software which causes a  
Deliverable to malfunction or to produce unintelligible or incorrect  
results; or

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

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

**"Delay"**

means:

(a) a delay in the Achievement of a Milestone by its Milestone  
Date; or

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

**"Delay Deduction Period"**

means the period of 100 days commencing on the relevant  
Milestone Date;

**"Deliverable"**

means an item or feature delivered or to be delivered by the  
Supplier at or before a Milestone Date or at any other stage during  
the performance of this Agreement;

**"Detailed Implementation  
Plan"**

means the plan developed and revised from time to time in  
accordance with paragraphs 3 and 4 of schedule 6.1  
(*Implementation Plan*);

<b>"Disclosing Party"</b>	has the meaning given in clause 21.1 ( <i>Confidentiality</i> );
<b>"Disclosing Party Group"</b>	means: <ul style="list-style-type: none"><li>(a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and</li><li>(b) where the Disclosing Party is the Authority, the Authority and any Central Government Body with which the Authority or the Supplier interacts in connection with this Agreement;</li></ul>
<b>"Dispute"</b>	means any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the Parties to 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 schedule 8.3 ( <i>Dispute Resolution Procedure</i> );
<b>"Documentation"</b>	means descriptions of the Services and Performance Indicators, details of the Supplier System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as: <ul style="list-style-type: none"><li>(a) is required to be supplied by the Supplier to the Authority under this Agreement;</li><li>(b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services;</li><li>(c) is required by the Supplier in order to provide the Services; and/or</li><li>(d) has been or shall be generated for the purpose of providing the Services;</li></ul>
<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;

**"DSC"**

means Data Security Centre;

**"DSP Toolkit"**

means the Authority's data security and prevention toolkit, which includes the policies and standards required by the Authority, and which can be accessed from <https://www.dsptoolkit.nhs.uk/> as may be amended or replaced by the Authority or the Department of Health from time to time;

**"Due Diligence Information"**

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

**"Effective Date"**

means the date on which this Agreement is signed by both Parties;

**"EIRs"**

means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;

**"Emergency Maintenance"** means ad hoc and unplanned maintenance provided by the Supplier where:

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

(b) the Supplier reasonably suspects that the IT Environment or the Services, or any part the IT Environment or the Services, has or may have developed a fault;

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

(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;

(b) unfair, wrongful or constructive dismissal compensation;

(c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;

(d) compensation for less favourable treatment of part-time workers or fixed term employees;

(e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;

(f) employment claims whether in tort, contract or statute or otherwise;

(g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

**"Employment Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations implementing the Acquired Rights Directive;

- “End of Life”** means:
- that the manufacturer of the product has indicated that the product is in the end of its useful life; or
- that the manufacturer of the product has stopped maintaining it; or
- in the case of Software, that updates or upgrades are no longer available;
- "Estimated Year 1 Charges"** means the estimated Charges payable by the Authority during the first Contract Year, as set out in the Financial Model;
- "Estimated Initial Service Charges"** means the estimated Service Charges payable by the Authority during the period of 12 months from the first Operational Service Commencement Date, as set out in the Financial Model;
- "Euro Compliant"** means that (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Authority's business; (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):
- (a) be able to perform all such functions in any number of currencies and/or in euros;
  - (b) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations;
  - (c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;
  - (d) incorporate protocols for dealing with rounding and currency conversion;
  - (e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and
  - (f) permit the input of data in euro and display an outcome in euro where such data, supporting the Authority's normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK;

<b>"Exit Management"</b>	means services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier, as set out or referred to in schedule 8.5 ( <i>Exit Management</i> );
<b>"Exit Plan"</b>	means the plan produced and updated by the Supplier during the Term in accordance with paragraph 4 of schedule 8.5 ( <i>Exit Management</i> );
<b>"Expedited Dispute Timetable"</b>	means the reduced timetable for the resolution of Disputes set out in paragraph 3 of schedule 8.3 ( <i>Dispute Resolution Procedure</i> );
<b>"Expert"</b>	has the meaning given in schedule 8.3 ( <i>Dispute Resolution Procedure</i> );
<b>"Expert Determination"</b>	means the process described in paragraph 6 of schedule 8.3 ( <i>Dispute Resolution Procedure</i> );
<b>"Financial Distress Event"</b>	means the occurrence of one or more of the events listed in paragraph 3.1 of schedule 7.4 ( <i>Financial Distress</i> );
<b>"Financial Distress Service Continuity Plan"</b>	means a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that a Financial Distress Event occurs;
<b>"Financial Model"</b>	has the meaning given in schedule 7.5 ( <i>Financial Reports and Audit Rights</i> );
<b>"Financial Reports"</b>	has the meaning given in schedule 7.5 ( <i>Financial Reports and Audit Rights</i> );
<b>"Financial Transparency Objectives"</b>	has the meaning given in schedule 7.5 ( <i>Financial Reports and Audit Rights</i> );
<b>"First Extension Period"</b>	means a period of one year from the end of the Initial Term;
<b>"FOIA"</b>	means the Freedom of Information Act 2000 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 any relevant Central Government Body in relation to such Act;
<b>"Force Majeure Event"</b>	means any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier's or a Sub-contractor's supply chain;

<b>"Force Majeure Notice"</b>	means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
<b>"Former Supplier"</b>	has the meaning given in schedule 9.1 ( <i>Staff Transfer</i> );
<b>"GDPR"</b>	the General Data Protection Regulation (Regulation (EU) 2016/679)
<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>"Good Industry Practice"</b>	means at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Authority, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;
<b>"Goods"</b>	has the meaning given in clause 9.7 ( <i>Supply of Goods</i> );
<b>"Halifax Abuse Principle"</b>	means the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>"Health and Safety Policy"</b>	means the health and safety policy of the Authority and/or other relevant Central Government Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;
<b>"HMRC"</b>	means HM Revenue & Customs;
<b>"Impact Assessment"</b>	has the meaning given in schedule 8.2 ( <i>Change Control Procedure</i> );
<b>"Implementation Plan"</b>	means the Outline Implementation Plan or (if and when approved by the Authority pursuant to paragraph 3 of schedule 6.1 ( <i>Implementation Plan</i> )) the Detailed Implementation Plan as updated in accordance with paragraph 4 of schedule 6.1 ( <i>Implementation Plan</i> ) from time to time;

- "Indemnified Person"** means the Authority and each and every person to whom the Authority (or any direct or indirect sub licensee of the Authority) sub licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Agreement;
- "Information"** means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);
- "Initial Term"** means the period of 3 years from and including the Effective Date;
- "Insolvency Event"** means:
- (a) the other Party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:
    - (i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or
    - (ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;
  - (b) the other Party commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to section 1A and schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
  - (c) a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;
  - (d) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within 14 days;
  - (e) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
  - (f) where the other Party is a company, a LLP or a partnership:
    - (i) a petition is presented (which is not dismissed within 14 days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party other than for the sole purpose of a scheme for a solvent

amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;

(ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over the other Party;

(iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver; or

(iv) (being a partnership) the holder of an agricultural floating charge over the assets of that other Party has become entitled to appoint or has appointed an agricultural receiver; or

(g) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;

**"Intellectual Property Rights" or "IPRs"**

means:

(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;

(b) applications for registration, and the right to apply for registration, for any of the rights listed at limb (a) that are capable of being registered in any country or jurisdiction; and

(c) all other rights having equivalent or similar effect in any country or jurisdiction;

**"Intervention Cause"**

has the meaning given in clause 29.1 (*Remedial Adviser*);

**"Intervention Notice"**

has the meaning given in clause 29.1 (*Remedial Adviser*);

**"Intervention Period"**

has the meaning given in clause 29.2.3 (*Remedial Adviser*);

<b>"Intervention Trigger Event"</b>	means  (a) any event falling within limb (a), (b), (d), (e) or (f) of the definition of a Supplier Termination Event;  (b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;  (c) the Supplier not Achieving a Key Milestone within 75 days of its relevant Milestone Date;
<b>"IPRs Claim"</b>	means any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Authority Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Agreement or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Agreement;
<b>"Issued Property"</b>	means any piece of equipment provided to the Supplier by the Authority to support in the delivery of Services under this Agreement;
<b>"Issued Property Register"</b>	means a live, and detailed list of all Issued Property in possession of the Supplier, including item type, model number, Supplier Personnel or Sub-contractor responsible for the Issued Property and the date of receipt;
<b>"IT"</b>	means information and communications technology;
<b>"IT Environment"</b>	means the Authority System and the Supplier System;
<b>"Key Milestone"</b>	means the Milestones identified in the Implementation Plan as key milestones;
<b>"Key Performance Indicator"</b>	means the key performance indicators set out in table 1 of part 1 of annex 1 of schedule 2.2 ( <i>Performance Levels</i> );
<b>"Key Personnel"</b>	means those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in schedule 9.2 ( <i>Key Personnel</i> ) against each Key Role as at the Effective Date or as amended from time to time in accordance with clauses 14.5 and 14.6( <i>Key Personnel</i> );
<b>"Key Roles"</b>	means a role described as a Key Role in schedule 9.2 ( <i>Key Personnel</i> ) and any additional roles added from time to time in accordance with clause 14.4 ( <i>Key Personnel</i> );
<b>"Key Sub-contract"</b>	means each Sub-contract with a Key Sub-contractor;

<b>"Key Sub-contractor"</b>	means any Sub-contractor:  (a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or  (b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10 per cent of the aggregate Charges forecast to be payable under this Agreement (as set out in the Financial Model);
<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 Services but excluding know how already in the other Party's possession before this Agreement;
<b>"KPI Failure"</b>	means a failure to meet the Target Performance Level in respect of a Key Performance Indicator;
<b>"KPI Service Threshold"</b>	shall be as set out against the relevant Key Performance Indicator in table 1 of part 1 of annex 1 of schedule 2.2 ( <i>Performance Levels</i> );
<b>"Law(s)"</b>	means any law, statute, 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, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
<b>"LED"</b>	Law Enforcement Directive (Directive (EU) 2016/680);
<b>"Licensed Software"</b>	means all and any Software licensed by or through the Supplier, its Sub-contractors or any third party to the Authority for the purposes of or pursuant to this Agreement, including any Supplier Software, Third Party Software and/or any Specially Written Software;
<b>"Local Monitoring Pilot"</b>	means the pilot referred to in requirement 3.4, as set out in schedule 4.1 ( <i>Supplier Solution</i> );
<b>"Losses"</b>	means losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
<b>"Maintenance Schedule"</b>	shall have the meaning set out in clause 9.4 ( <i>Maintenance</i> );
<b>"Malicious Software"</b>	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without

knowledge of its existence;

**"Management Information"** means the management information specified in schedule 2.2 (*Performance Levels*), schedule 7.1 (*Charges and Invoicing*) and schedule 8.1 (*Governance*) to be provided by the Supplier to the Authority;

**"Material KPI Failure"** means:

- (a) a Serious KPI Failure;
- (b) a Severe KPI Failure; or
- (c) a failure by the Supplier to meet a KPI Service Threshold;

**"Material PI Failure"** means:

- (a) a failure by the Supplier to meet the PI Service Threshold in respect of 25 per cent or more of the Subsidiary Performance Indicators that are measured in that Service Period; and/or
- (b) a failure by the Supplier to meet the Target Performance Level in respect of 50 per cent or more of the Subsidiary Performance Indicators that are measured in that Service Period;

**"Measurement Period"** means in relation to a Key Performance Indicator or Subsidiary Performance Indicator, the period over which the Supplier's performance is measured (for example, a Service Period if measured monthly or a 12 month period if measured annually);

**"Milestone"** means an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date;

**"Milestone Achievement Certificate"** means the certificate to be granted by the Authority when the Supplier has Achieved a Milestone, which shall be in substantially the same form as that set out in annex 3 of schedule 6.2 (*Testing Procedures*);

<b>"Milestone Adjustment Payment Amount"</b>	means in respect of each CPP Milestone the subject of a Milestone Adjustment Payment Notice, an amount determined in accordance with the formula:  A – B  where:  (a) A is an amount equal to the aggregate sum of all Milestone Payments paid to the Supplier in respect of the Milestones (or in the case of Partial Termination, the Milestones for the parts of the Services terminated) relating to that CPP Milestone; and  (b) B is an amount equal to the aggregate Allowable Price for the Retained Deliverables relating to that CPP Milestone or, if there are no such Retained Deliverables, zero;
<b>"Milestone Adjustment Payment Notice"</b>	has the meaning given in clause 34.7 ( <i>Payments by the Supplier</i> );
<b>"Milestone Date"</b>	means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
<b>"Milestone Payment"</b>	means a payment identified in schedule 7.1 ( <i>Charges and Invoicing</i> ) to be made following the issue of a Milestone Achievement Certificate;
<b>"Milestone Retention"</b>	has the meaning given in schedule 7.1 ( <i>Charges and Invoicing</i> );
<b>"Minor KPI Failure"</b>	shall be as set out against the relevant Key Performance Indicator in table 1 of part 1 of annex 1 of schedule 2.2 ( <i>Performance Levels</i> );
<b>"month"</b>	means a calendar month and <b>"monthly"</b> shall be interpreted accordingly;
<b>"Multi-Party Dispute Resolution Procedure"</b>	has the meaning given in paragraph 9.1 of schedule 8.3 ( <i>Dispute Resolution Procedure</i> );
<b>"Multi-Party Procedure Initiation Notice"</b>	has the meaning given in paragraph 9.2 of schedule 8.3 ( <i>Dispute Resolution Procedure</i> );
<b>"New Capabilities"</b>	means the capabilities referred to in section 3, as set out in schedule 4.1 ( <i>Supplier Solution</i> );
<b>"New Releases"</b>	means an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
<b>"Non-retained Deliverables"</b>	in relation to a CPP Milestone Payment Notice and each CPP Milestone the subject of that CPP Milestone Payment Notice, Deliverables provided to the Authority which relate to the relevant

	CPP Milestone(s) and which are not Retained Deliverables;
<b>"Notifiable Default"</b>	shall have the meaning given in clause 27.1( <i>Rectification Plan Process</i> );
<b>"Object Code"</b>	means software and/or data in machine-readable, compiled object code form;
<b>"Occasion of Tax Non-Compliance"</b>	means:  (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:  (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;  (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or  (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;
<b>"Open Book Data"</b>	has the meaning given in schedule 7.5 ( <i>Financial Reports and Audit Rights</i> );
<b>"Open Source"</b>	means computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;
<b>"Operating Environment"</b>	means the Authority System and the Sites;

<b>"Operational Change"</b>	<p>means any change in the Supplier's operational procedures which in all respects, when implemented:</p> <ul style="list-style-type: none"><li>(a) will not affect the Charges and will not result in any other costs to the Authority;</li><li>(b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services;</li><li>(c) will not adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure; and</li><li>(d) will not require a change to this Agreement;</li></ul>
<b>"Operational Service Commencement Date"</b>	<p>in relation to an Operational Service, the later of:</p> <ul style="list-style-type: none"><li>(a) the date(s) identified in the Implementation Plan upon which the Operational Service is to commence; and</li><li>(b) where the Implementation Plan states that the Supplier must have Achieved the relevant Milestone before it can commence the provision of that Operational Service, the date upon which the Supplier Achieves the relevant Milestone;</li></ul>
<b>"Operational Services"</b>	<p>means the services described in the Services Description;</p>
<b>"Other Supplier"</b>	<p>means any supplier to the Authority (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;</p>
<b>"Outline Implementation Plan"</b>	<p>means the outline plan set out at annex 1 of schedule 6.1 (<i>Implementation Plan</i>);</p>
<b>"Partial Termination"</b>	<p>means the partial termination of this Agreement to the extent that it relates to the provision of any part of the Services as further provided for in clause 33.2.2 (<i>Termination by the Authority</i>) or 33.3.2 (<i>Termination by the Supplier</i>);</p>
<b>"Parties" and "Party"</b>	<p>have the meanings respectively given on page 1 of this Agreement;</p>
<b>"Patient Identifiable Data"</b>	<p>means the Personal Data in respect of a patient (for example: name, address, post code, date of birth, NHS number, local patient identifiable code) in the context and capacity of that patient receiving NHS treatment;</p>
<b>"Performance Failure"</b>	<p>means a KPI Failure or a PI Failure;</p>
<b>"Performance Indicators"</b>	<p>means the Key Performance Indicators and the Subsidiary Performance Indicators;</p>
<b>"Permitted Maintenance"</b>	<p>has the meaning given in clause 9.4 (<i>Maintenance</i>);</p>

<b>"Performance Monitoring Report"</b>	has the meaning given in schedule 2.2 ( <i>Performance Levels</i> );
<b>"Personal Data"</b>	means personal data (as defined in the Data Protection Laws) which is Processed by the Supplier or any Sub-contractor on behalf of the Authority or a Central Government Body pursuant to or in connection with this Agreement;
<b>"Personal Data Breach"</b>	has the meaning given in the GDPR;
<b>"Pilot Organisation"</b>	means any public sector health or social care organisation specified by the Authority as one of the 15 pilot sites;
<b>"Process"</b>	has the meaning given to it in the Data Protection Laws and <b>"Processed"</b> and <b>"Processing"</b> shall be construed accordingly;
<b>"Programme Board"</b>	means the body described in paragraph 5 of schedule 8.1 ( <i>Governance</i> );
<b>"Prohibited Act"</b>	means: <ul style="list-style-type: none"><li>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:<ul style="list-style-type: none"><li>(i) induce that person to perform improperly a relevant function or activity; or</li><li>(ii) reward that person for improper performance of a relevant function or activity;</li></ul></li><li>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;</li><li>(c) an offence:<ul style="list-style-type: none"><li>(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);</li><li>(ii) under legislation or common law concerning fraudulent acts; or</li><li>(iii) defrauding, attempting to defraud or conspiring to defraud the Authority; or</li></ul></li><li>(d) any activity, practice or conduct which would constitute one of the offences listed under limb (c) above if such activity, practice or conduct had been carried out in the UK;</li></ul>
<b>"Project Specific IPRs"</b>	(a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement and updates and amendments of these

items including (but not limited to) database schema; and/or

(b) Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Agreement;

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

**"Quarter"**

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

**"Recipient"**

has the meaning given in clause 21.1 (*Confidentiality*);

**"Records"**

has the meaning given in schedule 8.4 (*Records Provisions*);

**"Rectification Plan"**

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

**"Rectification Plan Failure"**

means:

(a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in clauses 27.4 (*Submission of the draft Rectification Plan*) or 27.8 (*Agreement of the Rectification Plan*);

(b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to clause 27.7 (*Agreement of the Rectification Plan*);

(c) the Supplier failing to rectify a material Default within the later of:

(i) 30 Working Days of a notification made pursuant to clause 27.2 (*Notification*); and

(ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default;

(d) a Material KPI Failure re-occurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in any of the three Measurement Periods subsequent to the Measurement Period in which the initial Material KPI Failure occurred;

(e) the Supplier not Achieving a Key Milestone by the expiry of the Delay Deduction Period; and/or

(f) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of six months for the same (or substantially the same) root cause as that of

the original Notifiable Default;

- "Rectification Plan Process"** means the process set out in clauses 27.4 (*Submission of the Rectification Plan*) to 27.9 (*Agreement of the Rectification Plan*);
- "Registers"** has the meaning given in schedule 8.5 (*Exit Management*);
- "Reimbursable Expenses"** has the meaning given in schedule 7.1 (*Charges and Invoicing*);
- "Relevant IPRs"** means IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority or a third party in the fulfilment of the Supplier's obligations under this Agreement including IPRs in the Specially Written Software, the Supplier Non COTS Software, the Supplier Non COTS Background IPRs, the Third Party Non COTS Software and the Third Party Non COTS IPRs but excluding any IPRs in the Authority Software, the Authority Background IPRs, the Supplier COTS Software, the Supplier COTS Background IPRs, the Third Party COTS Software and/or the Third Party COTS IPRs;
- "Relevant Requirements"** 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;
- "Relevant Tax Authority"** means HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
- "Relevant Transfer"** means a transfer of employment to which the Employment Regulations applies;
- "Relief Notice"** has the meaning given in clause 31.2 (*Authority Cause*);
- "Remedial Adviser"** means the person appointed pursuant to clause 29.2 (*Remedial Adviser*);
- "Remedial Adviser Failure"** has the meaning given in clause 29.6 (*Remedial Adviser*);
- "Replacement Services"** means any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Agreement, whether those services are provided by the Authority internally and/or by any third party;
- "Replacement Supplier"** means any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);
- "Request For Information"** means a Request for Information under the FOIA or the EIRs;
- "Required Action"** has the meaning given in clause 30.1.1 (*Step-In Rights*);

<b>"Restricted Country"</b>	means any county which is not (i) a member of the European Economic Area; (ii) the United Kingdom; (iii) any country not deemed adequate by the European Commission pursuant to article 25(6) of Directive 95/46/EC or article 45(3) of the General Data Protection Regulation;
<b>"Retained Deliverables"</b>	has the meaning given in clause 34.8.2 ( <i>Payments by the Supplier</i> );
<b>"Security Cleared"</b>	means having passed the security check which determines that a person's character and personal circumstances are such that they can be trusted to work in a position which involves long-term, frequent and uncontrolled access to SECRET assets in accordance with <a href="https://www.gov.uk/guidance/security-vetting-and-clearance">https://www.gov.uk/guidance/security-vetting-and-clearance</a> ;
<b>"Security Management Plan"</b>	means the Supplier's security plan as attached as annex 2 of schedule 2.4 ( <i>Security Management</i> ) and as subsequently developed and revised pursuant to paragraphs 3 and 4 of schedule 2.4 ( <i>Security Management</i> );
<b>"Second Extension Period"</b>	means a period of one year from the end of the Initial Term;
<b>"Serious KPI Failure"</b>	shall be as set out against the relevant Key Performance Indicator in table 1 of part 1 of annex 1 of (schedule 2.2 ( <i>Performance Levels</i> );
<b>"Service Charges"</b>	means the periodic payments made in accordance with schedule 7.1 ( <i>Charges and Invoicing</i> ) in respect of the supply of the Operational Services;
<b>"Service Period"</b>	means a calendar month, save that:  (a) the first service period shall begin on the first Operational Service Commencement Date and shall expire at the end of the calendar month in which the first Operational Service Commencement Date falls; and  (b) the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term;
<b>"Service Points"</b>	in relation to a KPI Failure, the points that are set out against the relevant Key Performance Indicator in the fifth of the table in annex 1 of schedule 2.2 ( <i>Performance Levels</i> );
<b>"Services"</b>	means any and all of the services to be provided by the Supplier under this Agreement, including those set out in schedule 2.1 ( <i>Services Description</i> );
<b>"Service Transfer Date"</b>	has the meaning given in schedule 9.1 ( <i>Staff Transfer</i> );
<b>"Services Description"</b>	means the services description set out in schedule 2.1 ( <i>Services Description</i> );
<b>"Severe KPI Failure"</b>	shall be as set out against the relevant Key Performance Indicator in

	table 1 of part I of annex 1 of schedule 2.2 ( <i>Performance Levels</i> );
<b>"SIEM"</b>	means the Security Information Events Management;
<b>"Sites"</b>	means any premises (including the Authority Premises, the Supplier's premises or third party premises):  (a) from, to or at which:  (i) the Services are (or are to be) provided; or  (ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or  (b) where:  (i) any part of the Supplier System is situated; or  (ii) any physical interface with the Authority System takes place;
<b>"Software"</b>	means Specially Written Software, Supplier Software and Third Party Software;
<b>"Software Supporting Materials"</b>	has the meaning given in clause 17.1.2 ( <i>Specially Written Software and Project Specific IPRs</i> );
<b>"Source Code"</b>	means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
<b>"Specially Written Software"</b>	means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-contractor or other third party on behalf of the Supplier) specifically for the purposes of this Agreement, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Agreement.
<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>"SPI Failure"</b>	means a failure to meet the Target Performance Level in respect of a Subsidiary Performance Indicator;
<b>"SPI Service Threshold"</b>	shall be as set out against the relevant Subsidiary Performance Indicator in table 2 in part 1 of annex 1 of schedule 2.2 ( <i>Performance Levels</i> );
<b>"Staffing Information"</b>	has the meaning given in schedule 9.1 ( <i>Staff Transfer</i> );
<b>"Standard Contractual"</b>	means the standard contractual clauses for the transfer of personal

<b>"Clauses"</b>	data to processors established in third countries which do not ensure an adequate level of protection as set out in Commission Decision C (2010) 593 and reference to the standard contractual clauses shall be to the clauses as updated, amended, replaced or superseded from time to time by the European Commission;
<b>"Standards"</b>	means the standards, policies and/or procedures identified in schedule 2.3 ( <i>Standards</i> );
<b>"Step-In Notice"</b>	has the meaning given in clause 30.1 ( <i>Step-In Rights</i> );
<b>"Step-In Trigger Event"</b>	means: <ul style="list-style-type: none"><li>(a) any event falling within the definition of a Supplier Termination Event;</li><li>(b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;</li><li>(c) the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Agreement;</li><li>(d) the Authority being advised by a regulatory body that the exercise by the Authority of its rights under clause 30 (<i>Step-In Rights</i>) is necessary;</li><li>(e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or</li><li>(f) a need by the Authority to take action to discharge a statutory duty;</li></ul>
<b>"Step-Out Date"</b>	has the meaning given in clause 30.5.2 ( <i>Step-In Rights</i> );
<b>"Step-Out Notice"</b>	has the meaning given in clause 30.5 ( <i>Step-In Rights</i> );
<b>"Step-Out Plan"</b>	has the meaning given in clause 30.6 ( <i>Step-In Rights</i> );
<b>"Sub-contract"</b>	means any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;

<b>"Sub-contractor"</b>	means any third party with whom:  (a) the Supplier enters into a Sub-contract; or  (b) a third party under limb (a) above enters into a Sub-contract, or the servants or agents of that third party;
<b>"Sub-Processor"</b>	has the meaning given to it in Clause 23.5.7;
<b>"Subsidiary Performance Indicator"</b>	means the Performance Indicators set out in table 2 of part I of annex 1 of schedule 2.2 ( <i>Performance Levels</i> );
<b>"Successor Body"</b>	has the meaning given in clause 36.4 ( <i>Assignment and Novation</i> );
<b>"Supplier Background IPRs"</b>	means:  (a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or  (b) Intellectual Property Rights created by the Supplier independently of this Agreement,  which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;
<b>"Supplier COTS Background IPRs"</b>	means any embodiments of Supplier Background IPRs that the Supplier makes generally available commercially prior to the date of this Agreement or during the Term (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price;
<b>"Supplier COTS Software"</b>	means Supplier Software (including open source software) that the Supplier makes generally available commercially prior to the date of this Agreement or during the Term (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price;
<b>"Supplier Equipment"</b>	means the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from the Authority) for the provision of the Services;
<b>"Supplier Non COTS Background IPRs"</b>	means any embodiments of Supplier Background IPRs that have been delivered by the Supplier to the Authority and that are not Supplier COTS Background IPRs;
<b>"Supplier Non COTS"</b>	means Supplier Software that is not Supplier COTS Software;

**Software"**

- "Supplier Non-Performance"** has the meaning given in clause 31.1 (*Authority Cause*);
- "Supplier Personnel"** means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier's obligations under this Agreement;
- "Supplier Profit"** has the meaning given in schedule 7.1 (*Charges and Invoicing*);
- "Supplier Profit Margin"** has the meaning given in schedule 7.1 (*Charges and Invoicing*);
- "Supplier Representative"** means the representative appointed by the Supplier pursuant to clause 11.3 (*Representatives*);
- "Supplier Software"** means software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in schedule 5 (*Software*);
- "Supplier Solution"** means the Supplier's solution for the Services set out in schedule 4.1 (*Supplier Solution*) including any annexes of that schedule;
- "Supplier System"** means the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);
- "Supplier Termination Event"** means:
- (a) the Supplier committing a material Default which is irremediable;
  - (b) as a result of the Supplier's Default, the Authority incurring Losses in any Contract Year which exceed 80 per cent of the value of the aggregate annual liability cap for that Contract Year as set out in clause 25.6.1 (*Financial Limits*);
  - (c) a Remedial Adviser Failure;
  - (d) a Rectification Plan Failure;
  - (e) where a right of termination is expressly reserved in this Agreement, including pursuant to:
    - (i) clause 19 (*IPRs Indemnity*);
    - (ii) clause 39.6.2 (*Prevention of Fraud and Bribery*); and/or
    - (iii) paragraph 4 of schedule 7.4 (*Financial Distress*);
  - (f) the representation and warranty given by the Supplier pursuant

to clause 3.2.1 (*Warranties*) being materially untrue or misleading;

(g) the Supplier committing a material Default under clause 10.10 (*Promoting Tax Compliance*) or failing to provide details of steps being taken and mitigating factors pursuant to clause 10.10 (*Promoting Tax Compliance*) which in the reasonable opinion of the Authority are acceptable;

(h) the Supplier committing a material Default under any of the following clauses:

- (i) clause 5.5.10 (*Services*);
- (ii) clause 23 (*Protection of Personal Data*);
- (iii) clause 22 (*Transparency and Freedom of Information*);
- (iv) clause 21 (*Confidentiality*); and
- (v) clause 35 (*Compliance*); and/or

in respect of any security requirements set out in schedule 2.1 (*Services Description*), schedule 2.4 (*Security Management*), the Baseline Security Requirements or the Authority Cyber Security Policy; and/or

in respect of any requirements set out in schedule 9.1 (*Staff Transfer*);

(i) any failure by the Supplier to implement the changes set out in a Benchmark Report as referred to in paragraph 5.9 of schedule 7.3 (*Benchmarking*);

(j) an Insolvency Event occurring in respect of the Supplier

(k) NOT USED

(l) change of Control of the Supplier 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 months of the later of the date on which the change of Control took place or the date on which the Authority was given notice of the change of Control;

(m) a change of Control of a Key Sub-contractor unless, within six months of being notified by the Authority that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Authority pursuant to clause 15.6

*(Appointment of Key Sub-contractors);*

(n) any failure by the Supplier to enter into or to comply with an Admission Agreement under the annex to either part A or part B of schedule 9.1 (*Staff Transfer*);

(o) the Authority has become aware that the Supplier should have been excluded under regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Agreement; or

(p) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law.

**"Target Performance Level"** means the minimum level of performance for a Performance Indicator which is required by the Authority, as set out against the relevant Performance Indicator in the tables in annex 1 of schedule 2.2 (*Performance Levels*);

**"Term"** means the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Agreement;

**"Termination Assistance Notice"** has the meaning given in paragraph 5.1 of schedule 8.5 (*Exit Management*);

**"Termination Assistance Period"** in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to paragraph 5.2 of schedule 8.5 (*Exit Management*);

**"Termination Date"** means the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate;

**"Termination Notice"** 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;

**"Termination Payment"** means the payment determined in accordance with schedule 7.2 (*Payments on Termination*);

**"Termination Services"** means the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in annex 1 of schedule 8.5 (*Exit Management*), and any other services required pursuant to the Termination Assistance Notice;

**"Test Issues"** has the meaning given in schedule 6.2 (*Testing Procedures*);

**"Tests" and "Testing"** means any tests required to be carried out under this Agreement, as further described in schedule 6.2 (*Testing Procedure*) and **"Tested"**

	shall be construed accordingly;
<b>"Test Success Criteria"</b>	has the meaning given in schedule 6.2 ( <i>Testing Procedures</i> );
<b>"Third Party Beneficiary"</b>	has the meaning given in clause 43.1 ( <i>Third Party Rights</i> );
<b>"Third Party COTS IPRs"</b>	means Third Party IPRs that the supplier makes generally available commercially prior to the date of this Agreement or during the Term (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price;
<b>"Third Party COTS Software"</b>	means Third Party Software (including open source software) that the supplier makes generally available commercially prior to the date of this Agreement or during the Term (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price;
<b>"Third Party IPRs"</b>	means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;
<b>"Third Party Non COTS IPRs"</b>	means Third Party IPRs that are not Third Party COTS IPRs;
<b>"Third Party Non COTS Software"</b>	means Third Party Software that is not Third Party COTS Software;
<b>"Third Party Provisions"</b>	has the meaning given in clause 43.1 ( <i>Third Party Rights</i> );
<b>"Third Party Software"</b>	means software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in schedule 5 ( <i>Software</i> );
<b>"Threat Intelligence"</b>	means evidence-based knowledge, including context, mechanisms, indicators, implications and actionable advice, about an existing or emerging menace or hazard to assets that can be used to inform decisions regarding the subject's response to that menace or hazard;
<b>"Transferring Assets"</b>	has the meaning given in paragraph 6.2(a) of schedule 8.5 ( <i>Exit Management</i> );
<b>"Transferring Authority Employees"</b>	has the meaning given in schedule 9.1 ( <i>Staff Transfer</i> );
<b>"Transferring Former Supplier Employees"</b>	has the meaning given in schedule 9.1 ( <i>Staff Transfer</i> );
<b>"Transferring Supplier Employees"</b>	has the meaning given in schedule 9.1 ( <i>Staff Transfer</i> );
<b>"Transparency Information"</b>	has the meaning given in clause 22.1.2;

<b>"Transparency Reports"</b>	has the meaning given in schedule 8.4 ( <i>Reports and Records Provisions</i> );
<b>"UK"</b>	means the United Kingdom;
<b>"Unacceptable KPI Failure"</b>	means the Supplier failing to achieve the KPI Service Threshold in respect of more than 50 per cent of the Key Performance Indicators that are measured in that Service Period;
<b>"Updates"</b>	in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
<b>"Upgrades"</b>	means any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term;
<b>"VAT"</b>	means value added tax as provided for in the Value Added Tax Act 1994; and
<b>"Working Day"</b>	means any day other than a Saturday, Sunday or public holiday in England and Wales.

**SCHEDULE 2.1: SERVICES DESCRIPTION**

The following Services Description sets out the Services to be provided by the Supplier at a high level. For further detail please see Schedule 4.1 Supplier Solution.

ID	Category	Requirement	Sub Requirements
1	Business As Usual	The Supplier shall work alongside the Authority to ensure continuity for existing DSC services.	
1.1	Business As Usual	The Supplier shall assume responsibility for delivery of the BAU services described below at 1.2-1.7 within 30 days of contract signature.  BAU services are described below at 1.2-1.7 inclusive. This shall be considered reaching Initial Operating Capability (" <b>IOC</b> ").	
1.2	Business As Usual	The Supplier shall provide Threat Intelligence to the Authority on a regular basis.	
1.2.1	Business As Usual		The Supplier must deliver Threat Intelligence on new threats or vulnerabilities as soon as they are discovered.
1.2.2	Business As Usual		The Supplier shall provide a weekly summary of Threat Intelligence to the DSC.
1.2.3	Business As Usual		The Supplier shall provide each Threat Intelligence report in a human readable format.
1.2.4	Business As Usual		The Supplier shall ensure that the Threat Intelligence it provides is specific and relevant to the health and care sector.

ID	Category	Requirement	Sub Requirements
1.2.5	Business As Usual		The Supplier shall proactively monitor and evaluate evolving threats.
1.2.6	Business As Usual		The Supplier must supply Threat Intelligence which is concise yet robust, accurate, relevant and reliable.
1.2.7	Business As Usual		The Supplier must compile information from multiple sources to ensure that it provides a holistic view of the emerging threats that apply to health and care.
1.2.8	Business As Usual		The Supplier shall continually improve the Threat Intelligence provided.
1.2.9	Business As Usual		The Supplier shall align the Threat Intelligence provided with the output of broadcasts to health and care customers in order to reduce processing time and drive efficiencies.
1.2.10	Business As Usual		The Supplier shall regularly review their intelligence sources for relevance.
1.2.11	Business As Usual		REDACTED
1.2.12	Business As Usual		REDACTED
1.2.13	Business As Usual		The Supplier must detail mitigations and resolutions for identified threats and vulnerabilities in their Threat Intelligence whenever possible.

ID	Category	Requirement	Sub Requirements
1.2.14	Business As Usual		REDACTED
1.2.15	Business As Usual		REDACTED
1.2.16	Business As Usual		The Supplier must provide the Threat Intelligence to the DSC via agreed and appropriately secure and reliable mechanisms.
1.2.17	Business As Usual		The Supplier must notify DSC whenever it identifies or detects compromised confidential health and care information.
1.2.18	Business As Usual		The Supplier shall provide each Threat Intelligence report in an editable format.
1.2.19	Business As Usual		The Supplier shall provide additional clarification on Threat Intelligence supplied to the DSC as required.
1.2.20	Business As Usual		REDACTED

ID	Category	Requirement	Sub Requirements
1.3	Business As Usual	The Supplier must provide immediate notification of new threats categorised as critical or high severity via agreed channels of communication and must confirm DSC receipt by phone.	
1.4	Business As Usual	The Supplier shall work to develop the DSC SIEM in conjunction with the Authority, and following any recommendations arising from development of the SOM.	
1.4.1	Business As Usual		The Supplier shall work with the DSC to identify any inputs that can further enhance the DSC SIEM.
1.4.2	Business As Usual		The Supplier shall work with the DSC to integrate any identified intelligence feeds into the DSC SIEM.
1.4.3	Business As Usual		REDACTED
1.4.4	Business As Usual		The Supplier shall work with the Authority to identify opportunities for enhancing BAU services using the current SIEM solution.

ID	Category	Requirement	Sub Requirements
1.5	Business As Usual	The Supplier shall provide co-located skilled personnel to supplement the Authority capability.	
1.5.1	Business As Usual		<p>The Supplier shall initially provide 2 Full Time Equivalents ("FTE") to work supporting the security cell operations (threat intel, incident response, guidance, protective monitoring).</p> <p>At least 1 FTE must be proficient in the use of the REDACTED at a user level to support the protective monitoring service</p>
1.5.2	Business As Usual		<p>The Supplier shall provide personnel who are suitably qualified and experienced.</p>
1.5.3	Business As Usual		<p>The Supplier shall ensure that personnel must have good written and verbal communication skills for support of:</p> <ul style="list-style-type: none"> <li>· inbound/outbound call handling;</li> <li>· Inbound/outbound email handling;</li> <li>· threat article creation; and</li> <li>· creation of guidance documentation.</li> </ul>

ID	Category	Requirement	Sub Requirements
1.5.4	Business As Usual		The Supplier Personnel must analyse each piece of Threat Intelligence received (from all sources) to assess and understand the potential impacts on confidentiality, integrity and availability of data/systems and applicability to health and care.
1.5.5	Business As Usual		<p>The Supplier Personnel shall create a threat article for each piece of Threat Intelligence for distribution to service users.</p> <p>If appropriate, the analyst must create a more detailed threat article for publication online. Each article must have a unique threat reference number.</p>
1.5.6	Business As Usual		The analyst must provide appropriate advice and guidance in response to a call or email in line with the timescales dictated by the severity of the query.

ID	Category	Requirement	Sub Requirements
1.5.7	Business As Usual		Where the threat requires it, the analyst must be able to create good practice guides and white papers to provide additional 'how to' information to supplement the threat articles.
1.5.8	Business As Usual		<p>The Supplier Personnel must provide appropriate and ongoing advice and guidance to support organisations who suspect or have a live security issue or incident.</p> <p>For internal support requests, the analyst must follow existing the Authority operational procedures for internal incident management.</p> <p>For external support requests, the analyst must follow existing the Authority/CareCERT processes for co-ordination and management of national or local security incidents.</p> <p>This will be further expanded on within the supporting information.</p>
1.5.9	Business As Usual		<p>The Supplier Personnel will be expected to contribute to the development of processes, procedures and playbooks within the security operations team.</p> <p>Knowledge of ITIL Best Practice is required</p>
1.5.10	Business As Usual		The number of Supplier Personnel (in FTE's) must be able to increase or decrease based on demand from the SOC, which will be reviewed on a quarterly basis. REDACTED if recommended as an output of the SOM Discovery and Design phase or due to additional resource requirements stemming from approved innovation.

ID	Category	Requirement	Sub Requirements
1.5.11	Business As Usual		The Supplier Personnel must provide an executive summary (which must be understood by a non-technical audience) of the specific threat in addition to full remediation information and in-depth technical information.
1.5.12	Business As Usual		All Supplier co-located personnel must be Security Cleared.
1.5.13	Business As Usual		Supplier must be co-located with the Authority in Leeds.
1.5.14	Business As Usual		<p>REDACTED</p> <p>It is expected that the working hours for resources will be flexible to cover operating hours but there must be at least 1 FTE available during specified hours.</p>
1.6	Business As Usual	The Supplier shall provide additional personnel on a short-term ad-hoc basis in response to peaks in demand and incident response.	
1.6.1	Business As Usual		The Supplier shall make available personnel who are suitably qualified and experienced appropriate to the incident they are required for.
1.6.2	Business As Usual		REDACTED
1.6.3	Business As Usual		REDACTED
1.6.4	Business As Usual		All Supplier Personnel must be Security Cleared
1.6.5	Business As Usual		All Supplier Personnel must be based in England.

ID	Category	Requirement	Sub Requirements
1.7	Business As Usual	Where suitable the Supplier shall provide personnel to undertake specialist tasks (outside of the scope of day to day activities) remotely.	
1.7.1	Business As Usual		REDACTED. The SIEM analyst must have the REDACTED skills and experience to develop use cases for the SIEM.
1.7.2	Business As Usual		The SIEM analyst must have the REDACTED skills and experience to monitor and respond to the output from the SIEM.
1.7.3	Business As Usual		All Supplier Personnel must be Security Cleared.
1.7.4	Business As Usual		All Supplier Personnel must be based in England.
2	SOM	The Supplier shall develop a SOM for the Authority.	
2.1	SOM	The Supplier shall undertake a 'Discovery & Design Phase' which assesses the current state of Security Operations within the Authority and designs a unified SOM which must include consideration of the specific outputs detailed under each of the Views.	
2.1.1	SOM	The Supplier shall assess and describe the DSC's Customer View. The Customer View shall include but not be limited to the outputs listed at 2.1.1.1 - 2.1.1.3.	
2.1.1.1	SOM		The Supplier must develop a Contact Management Strategy: a single, accurate and high quality contact list for all DSC services, which provides staff with access to relevant contact information about our users.
2.1.1.2	SOM		The Supplier must develop a User Analysis: including logical grouping of DSC users; an approach for capturing the needs of each user group and of ensuring these needs are addressed through existing or new/enhanced services.

ID	Category	Requirement	Sub Requirements
2.1.1.3	SOM		<p>The Supplier must identify potential enhancements to SOC services (such as Threat Intelligence ), so that the SOC can provide specific and targeted alerts, guidance and intelligence to users based on:</p> <ul style="list-style-type: none"> <li>- the technology in use within their organisation;</li> <li>- specific job roles (e.g. strategic; operational; technical; other);</li> <li>- specific areas of interest.</li> </ul>
2.1.2	SOM	<p>The Supplier shall assess and describe the DSC's Security Risk View. The Security Risk View shall include but not be limited to the outputs listed at 2.1.2.1 - 2.1.2.3.</p>	
2.1.2.1	SOM		<p>The Supplier must develop a Baseline Threat and Risk Model: articulating current and emerging threats, along with suggested remediation plans and a gap analysis of emerging threats against SOC/DSC services to highlight areas of greatest risk.</p>
2.1.2.2	SOM		<p>The Supplier must develop a Threat Analysis Process: that provides the DSC and SOC with the ability to make decisions on how to effectively address existing or emerging security threats for specific user groups, based on the Threat Modelling and Risk Analysis undertaken above.</p>
2.1.3	SOM	<p>The Supplier shall assess and describe the DSC's Service View. The Service View shall include but not be limited to the outputs listed at 2.1.3.1 - 2.1.3.4.</p>	
2.1.3.1	SOM		<p>The Supplier must develop a SOC Service Catalogue: which captures the service definition, the customer value proposition, and customer journey to realise the proposition, for each of the current services.</p>
2.1.3.2	SOM		<p>The Supplier must develop a SIEM Roadmap: for onboarding of the Authority REDACTED to the SOC's Protective Monitoring solution (SIEM).</p>

ID	Category	Requirement	Sub Requirements
2.1.3.3	SOM		The Supplier must develop a SOC Service Improvement Plan: which identifies and proposes enhancements to existing SOC services and identifies new capabilities to be onboarded, based on consideration of the all of the views within the SOM.
2.1.3.4	SOM		<p>The Supplier must give consideration, assessment and recommendations to the provision of future capabilities or extensions as listed below:                      REDACTED</p> <p>For this reason, these capabilities are listed as 'for consideration' rather than 'costed capabilities'. Any new capabilities resulting from this analysis would be funded from the innovation fund.</p>
2.1.4	SOM	The Supplier shall assess and describe the DSC's Organisation View. The Organisation View shall include but not be limited to the outputs listed at 2.1.4.1 - 2.1.4.4.	
2.1.4.1	SOM		REDACTED
2.1.4.2	SOM		<p>The Supplier must develop a DSC Resourcing Strategy: which identifies opportunities for organisational efficiency by:</p> <ul style="list-style-type: none"> <li>- considering how relevant security professionals within the Authority could be resourced solely within the DSC;</li> <li>- ensuring the SOC is able to quickly and decisively recruit additional specialist security expertise to address specific issues and to meet potential spikes in activity (such as major security incidents).</li> </ul>
2.1.4.3	SOM		The Supplier must develop a Security Recruitment & Retention Strategy: to propose methods for recruiting and retaining security professionals within the Authority more

ID	Category	Requirement	Sub Requirements
			effectively, with clearly defined career paths and training plans.
2.1.5	SOM	The Supplier shall assess and describe the DSC's Process View. The Process View shall include but not be limited to the outputs listed at 2.1.5.1 - 2.1.5.2.	
2.1.5.1	SOM		<p>The Supplier must define all of the processes required to support the SOM and SOC, including but not limited to:</p> <ul style="list-style-type: none"> <li>• an overarching process model showing the flows and relationships between individual processes within the SOM;</li> <li>• the processes required for each of the views within the SOM;</li> <li>• the processes required to ensure the continuous maturing of the SOM and all of the Views within it;</li> <li>• the processes required to support and to drive innovation both internally to the Authority and for the services offered to health and care;</li> <li>• procedures and operational playbooks associated with live services.</li> </ul>
2.1.5.2	SOM		The Supplier must develop a SOC Operating Model: which describes how the services provided by the SOC operate in the wider context of the Authority SOM.
2.1.6	SOM	The Supplier shall assess and describe the DSC's Infrastructure View. The Infrastructure View shall include but not be limited to the outputs listed at 2.1.6.1 - 2.1.6.2.	
2.1.6.1	SOM		<p>The Supplier must define the infrastructure required to support the SOM and SOC, including but not limited to:</p> <ul style="list-style-type: none"> <li>• REDACTED</li> <li>• detailed designs for any components to be delivered by the partner.</li> </ul>

ID	Category	Requirement	Sub Requirements
2.1.7	SOM	The Supplier shall assess and describe the DSC's Information View. The Information View shall include but not be limited to the outputs listed at 2.1.7.1 - 2.1.7.3.	
2.1.7.1	SOM		The Supplier must develop a SOC Information Management Solution: to ensure that staff within the SOC have access to relevant information about an organisation's security risk profile, which correlates all of the information and intelligence available to the Authority about that organisation, framed against considerations of 'people, process & technology'.
2.1.7.2	SOM		The Supplier must develop a SOC Information Management Strategy: to ensure that the SOC has a clear approach for engaging with users and capturing information, including via existing sources (e.g. DSP Toolkit, on-site assessments, CareCERT) as well as potential new capabilities (e.g. online collaboration tools/forums).
2.1.7.3	SOM		The Supplier must define the information required to support the SOM and SOC, including but not limited to: <ul style="list-style-type: none"> <li>- Customer / engagement information;</li> <li>- REDACTED</li> <li>- Management Information;</li> <li>- Information supporting each of the other views.</li> </ul>
2.1.8	SOM	The Supplier shall assess and describe the DSC's Governance View. The Governance View shall include but not be limited to the outputs listed at 2.1.8.1.	
2.1.8.1	SOM		The Supplier must define the governance structure to support the SOM within the Authority, including but not limited to: <ul style="list-style-type: none"> <li>REDACTED</li> <li>• REDACTED</li> <li>• stakeholder analysis and definition of stakeholder</li> </ul>

ID	Category	Requirement	Sub Requirements
			management processes; • definition of the governance and procedures required to ensure that all the Authority applications and technologies are subject to high quality security testing and tracking activities as part of design, development and BAU activities; • processes for baselining and evaluating the evolving maturity of the SOM.
2.1.8.2	SOM		The Supplier shall engage with the Authority's Service Management team to ensure that the SOM includes implementation of organisational Service Management requirements.  REDACTED
2.1.9	SOM	The Supplier shall provide the following reports and attend the following meetings during the Discovery & Design phase:	
2.1.9.1	SOM		The Supplier must attend bi-weekly progress meetings with relevant Authority stakeholders during the Discovery & Design phase.  These should include, but not be limited to, updates on risks, issues, progress against plan, and opportunities.
2.1.9.2	SOM		The Supplier must provide a current state report for Authority approval as an output of the Discovery & Design phase. This should describe and provide an analysis of the current state of DSC services, highlighting key issues and concerns.
2.1.9.3	SOM		The Supplier must provide a SOM Design report for Authority approval as an output of the Discovery & Design phase, incorporating all of the Views described above. This should fully detail a unified SOM that addresses the Views detailed above and ensures the rectification of any

ID	Category	Requirement	Sub Requirements
			<p>issues or concerns highlighted in the current state report.</p> <p>SOM Design report to be approved by the Authority's Head of Security, and any changes and recommendations resulting from Authority review must be incorporated into the SOM Design.</p>
2.2	SOM	<p>Following the 'Discovery &amp; Design Phase', the Supplier shall provide an Implementation Plan for delivering a SOM that is aligned with the identified Views. This shall include but not be limited to:</p>	
2.2.1	SOM		<p>The Supplier must develop a Roadmap/Implementation Plan of delivering the business change from current state to unified SOM.</p>
2.2.2	SOM		<p>The Supplier must develop a cost profile to detail the cost of delivering the business change from current state to unified SOM.</p>
2.2.3	SOM		<p>The Supplier must seek Authority approval for the Implementation Plan before business changes are delivered.</p> <p>SOM Implementation Plan to be signed off as approved by the Authority Head of Security.</p>
2.3	SOM	<p>Following the phases above, and subject to approval of specified deliverables, the Supplier shall implement the Implementation Plan in collaboration with the Authority. The following requirements will apply to the changes:</p>	
2.3.1	SOM		<p>Appropriate senior Supplier support to engage with senior Authority stakeholders to support implementation and ensure senior management buy-in.</p>
2.4	SOM	<p>The Supplier must provide a SOM Service Assessment &amp; Improvement Plan which incorporates procedures and processes to review the effectiveness of the SOM on an ongoing basis throughout the life of the contract.</p>	

ID	Category	Requirement	Sub Requirements
3	New Capability	The Supplier shall deliver the following new capabilities to the SOC, providing fully detailed and costed proposals for each:	
3.1	New Capability	Threat Hunting & Research	<p>The Supplier shall provide the SOC with the capability to conduct threat hunting and research.</p> <p>REDACTED</p> <p>The Supplier shall identify and deliver formal training to SOC resources, and provide any relevant tooling and procedures to support this capability.</p>
3.2	New Capability	Malware Analysis & Forensics	<p>The Supplier shall provide the SOC with the capability to conduct malware analysis and forensics.</p> <p>REDACTED</p> <p>The Supplier shall over the life of the contract following initial implementation identify and deliver formal training to SOC resources, and provide any relevant tooling and procedures to support this capability.</p>

ID	Category	Requirement	Sub Requirements
3.3	New Capability	SOC Wiki	<p>The Supplier shall provide the SOC with a solution (WIKI) to enable the recording, capture and sharing of information internally between SOC resources.</p> <p>The Supplier shall populate the solution with a baseline set of knowledge articles and materials, classified in a logical fashion.</p> <p>Provision of knowledge and guidance is specified as an output of the SOM Design - Information View, and therefore tactical solutions will be considered while SOM Discovery &amp; Design work takes place.</p>
3.4	New Capability	Local Monitoring Pilot	<p>The Supplier shall undertake a pilot of Local Monitoring Solutions within a sample of priority NHS organisations (Acute Trusts, Ambulance Trusts). The proposal must consider the following sub-requirements:</p> <p>The pilot must test solutions that: REDACTED</p>
3.4.1	New Capability		<p>The Supplier should pilot at least three local monitoring technologies/solutions.</p> <p>Each Local Monitoring Solution must be piloted at least five organisations.</p>
3.4.2	New Capability		<p>Each pilot must incorporate a variety of different organisation types: Acute Trust; Ambulance Trust; Mental Health Trust, at a minimum. Each technology shall be piloted with at least 5 organisations of different size and scale.</p>
3.4.3	New Capability		<p>Where practicable each Local Monitoring Solution shall be piloted in broadly equivalent organisations (both in terms of number and scale).</p>

ID	Category	Requirement	Sub Requirements
3.4.4	New Capability		Each solution should be piloted for at least 12 months and the Supplier should improve and mature the solution over that timescale to provide increased value to the local pilot site.
3.4.5	New Capability		The Supplier shall provide a proposal which accounts for the Authority's funding model and proposes solutions which allow for investment of capital funding in assets where possible.
3.4.6	New Capability		The Supplier shall provide a proposal which incorporates a post-pilot plan for any assets procured as part of the pilot, taking into account a range of options for transition beyond the pilot phase.
3.4.7	New Capability		The Supplier shall provide an end of pilot report, which enables the Authority to judge the viability of the piloted solutions and provides a recommendation for further rollout as part of a subsequent procurement.
3.4.8	New Capability		The piloted solutions should be vendor agnostic where possible rather than single vendor technologies.
3.5	New Capability	Internal Vulnerability Scanning	<p>The Supplier shall provide the SOC with the capability to provide internal vulnerability scanning for the Authority applications and services.</p> <p>REDACTED</p> <p>The Supplier shall identify and deliver formal training to SOC resources, and provide any relevant tooling and procedures to support this capability.</p>
3.6	New Capability	External Vulnerability Scanning	<p>The Supplier shall provide the SOC with the capability to provide a vulnerability assessment service for health and care organisations, to reduce the attack surface of individual organisations and the health and care system as a whole.</p> <p>REDACTED</p>

ID	Category	Requirement	Sub Requirements
			<p>The Supplier shall identify and deliver formal training to SOC resources, and provide any relevant tooling and procedures to support this capability.</p> <p>Initial target audience for this service is 500 priority organisations covering primary and secondary care: Trusts, Clinical Commissioning Groups (CCGs) and Commissioning Support Units (CSUs).</p>
4	Innovation	The Supplier shall deliver a Horizon Scanning service to the DSC.	<p>The Horizon Scanning service shall:</p> <ul style="list-style-type: none"> <li>• Anticipate future threats and vulnerabilities that may impact the health and care sector;</li> <li>• Monitor market trends in technologies to inform early defences against anticipated future attacks;</li> <li>• Identify gaps in current capability, to develop a holistic approach to horizon scanning for cyber security across health and care;</li> </ul>
4.1	Innovation		<p>The Supplier shall make propositions and recommendations to the Authority on a quarterly basis throughout the life of the contract based on the horizon scanning it carries out.</p> <p>Propositions are to be for the development of a new service or introduction of new technology within the SOC. Recommendations are to be for the improvement of current services, processes and technologies. The Supplier should prioritise propositions and recommendations and seek approval for a suitable number each quarter.</p>
4.2	Innovation		<p>The Supplier may make propositions and recommendations to the Authority on an ad-hoc basis where urgent or time-sensitive.</p>

ID	Category	Requirement	Sub Requirements
4.3	Innovation		<p>The Supplier shall ensure that its recommendations and propositions are fully costed and shall include a cost benefit analysis in each case.</p> <p>Costs are expected to be fully transparent, itemised, and in line with rate cards agreed at point of tender.</p>
4.4	Innovation		<p>The Supplier shall ensure that its recommendations and propositions include an implementation/delivery plan.</p> <p>The Implementation Plan is expected to include:                      Test Success Criteria                      Schedule                      Milestones                      Roles and Responsibilities - The Authority and Supplier Risks</p>
4.5	Innovation		<p>Where caveats or changes are required by the Authority, the Supplier shall amend and resubmit recommendations or propositions with the required amendments.</p>
4.6	Innovation		<p>The Supplier shall implement recommendations and propositions following approval by the Authority</p> <p>Funding will be provided via the innovation fund mechanism.</p>
5	Training	The Supplier shall actively work to improve the capability and knowledge of SOC personnel.	
5.1	Training		<p>The Supplier shall deliver training packages to appropriate SOC personnel to improve the skills and capability within the DSC.</p>
5.2	Training		<p>The Supplier shall deliver a training schedule on a three month rolling cycle alongside its Innovation recommendations for approval by the Authority.</p>

ID	Category	Requirement	Sub Requirements
5.3	Training		The Supplier shall deliver ad-hoc training where appropriate.
5.4	Training		The Supplier shall ensure that it and its personnel undertake continuous knowledge transfer to SOC personnel.
6	Generic and Relationship	The Supplier shall work alongside the Authority on a strategic partner basis.	
6.1	Generic and Relationship		The Supplier shall be proactive in ensuring that the relationship is collaborative and mutually beneficial.
6.1.1	Generic and Relationship		The Supplier shall work alongside the Authority to achieve long-term “win-win” benefits for both parties via the innovation fund mechanism.
6.1.2	Generic and Relationship		The Supplier shall provide the service in alignment with the Authority values.
6.1.3	Generic and Relationship		The Supplier shall be proactive in driving and/or recommending efficiencies and cost-saving initiatives wherever possible.
6.2	Generic and Relationship	The Supplier shall be compliant with DSP Toolkit requirements and any potential DSP Toolkit replacement .	
6.3	Generic and Relationship	The Supplier shall ensure that it abides by the cyber security requirements contained in schedule 11( <i>Cyber Security</i> ) of this Agreement.	
6.4	Generic and Relationship	The Supplier shall agree to the IPR clause contained at clause 16 of this Agreement.	

ID	Category	Requirement	Sub Requirements
6.5	Generic and Relationship	For the purposes of the services specified above, the following locations will be considered as "home base" locations and shall not be subject to travel and subsistence claims: the Authority offices within Leeds and London including Trevelyan Square, Bridgewater Place, Vantage House, Whitehall 2, Skipton House and Buckingham Palace Road and any future the Authority locations.	
6.5.1	Generic and Relationship		Co-located Supplier Personnel requested to work at alternative locations outside those defined as home base locations shall be able to claim travel and subsistence in line with the Authority travel and subsistence policy.
6.6	Generic and Relationship	The Supplier shall produce an annual report on the anniversary of the contract award date. The report shall cover the Supplier activities over the preceding 12 month period.	The annual report should include: Achievements Efficiencies and savings realised Benefits realised Challenges Risks Case studies 12 month forward view
6.7	Generic and Relationship	It is important for the DSC to become self-sufficient over time in areas where the capability is sufficiently mature. Therefore, where required the Supplier shall work with the Authority to migrate capabilities in house over the life of the contract.	
6.8	Generic and Relationship	The Supplier shall maintain a live financial model.	The model should include: Run rates Approved funding Cost by line item broken down by month Cost profile

ID	Category	Requirement	Sub Requirements
6.9	Generic and Relationship	The Supplier shall maintain and update a register of Assets delivered as part of the contract.	To include: Type of Asset Description Cost Delivery Date
6.10	Generic and Relationship	The Supplier shall attend joint monthly service meetings to be held between the Supplier's account manager and the Authority's Service Management representatives.	These shall be held at the Authority home base locations. These meetings shall include: - Discussion of any service delivery issues from any of the Supplier provided or supported services, improvement processes, performance and costs.
6.11	Generic and Relationship	The Supplier shall generate a monthly report to provide a summary of the activities completed during the period and the supplier's view of performance.	
6.12	Generic and Relationship	The Supplier shall send a representative to attend the monthly Security Operations Board meeting.	These shall be held at the Authority home base locations.
6.13	Generic and Relationship	The Supplier shall support the Authority in the realisation of benefits from all services provided.	Including but not limited to:  <ul style="list-style-type: none"> <li>• Delivery of required outcomes;</li> <li>• Ongoing support;</li> <li>• Measurement of benefits;</li> <li>• The use of appropriate and relevant standards, tools and methodologies.</li> </ul>
6.14	Generic and Relationship	The Supplier shall ensure appropriate programme and project management for all services provided.	

**SCHEDULE 2.2: PERFORMANCE LEVELS**

**1. Definitions**

In this schedule, the following definitions shall apply:

**"Performance Monitoring Report"** has the meaning given in paragraph 1.1(a) of Part B;

**"Performance Review Meeting"** the regular meetings between the Supplier and the Authority to manage and review the Supplier's performance under this Agreement, as further described in paragraph 1.5 of Part B;

**"Repeat KPI Failure"** has the meaning given in paragraph 3.1 of Part A; and

**"Working Hours"** means 8am to 6pm Monday to Friday, excluding UK Bank Holidays.

**Part A: Performance Indicators**

**1. Performance Indicators**

- 1.1 Annex 1 sets out the Key Performance Indicators and Subsidiary Performance Indicators which the Parties have agreed shall be used to measure the performance of the Services by the Supplier.
- 1.2 The Supplier shall monitor its performance against each Performance Indicator and shall send the Authority a report detailing the level of service actually achieved in accordance with Part B.
- 1.3 Service Points shall accrue for any KPI Failure and shall be calculated in accordance with paragraphs 2 and 3.
- 1.4 Key Performance Indicators and Subsidiary Performance Indicators will be agreed for the Security Operations Centre as a result of the Security Operations Model Implementation Plan (Services Description ID. 2.2.3) in accordance with the Change Control Procedure. Administration of any resulting Contract Change (including the Key Performance Indicators and Subsidiary Performance Indicators for the Security Operations Centre) will form part of the Test Success Criteria for Milestone ID: M11/PPP1 (as set out in schedule 6.2 (*Testing Procedures*)).
- 1.5 The Supplier's entitlement to increase the Charges under the Contract Change contemplated in paragraph 1.4 above shall be subject to and in accordance with the following:
  - (a) the Supplier shall only be entitled to increase the Charges to take account of any consequent and necessary changes to the Supplier System and set-up Cost, provided always that any such adjustment does not increase the Supplier Profit Margin and is evidenced by a full breakdown of associated Costs;
  - (b) the Supplier shall not be entitled to increase the Charges other than as specified in this paragraph 1.5, including for the avoidance of doubt to take account of any additional ongoing Supplier Personnel effort to deliver the Services so as to meet the Target Performance Indicators for the Key Performance Indicators and Subsidiary Performance Indicators which are the subject of the Change, or to report thereon; and
  - (c) to the extent the Contract Change is cost neutral to the Supplier and/or its Sub-contractors, there shall be no increase in the Charges.
- 1.6 Key Performance Indicators and Subsidiary Performance Indicators may be agreed for Additional Services.
- 1.7 Where the Supplier's X-Force Exchange service is enhanced to include performance measures (including any availability metric), the Supplier shall propose a Change to incorporate such enhancements in this Agreement.

**2. Service Points**

- 2.1 If the level of performance of the Supplier during a Service Period achieves the Target Performance Level in respect of a Key Performance Indicator, no Service Points shall accrue to the Supplier in respect of that Key Performance Indicator.
- 2.2 If the level of performance of the Supplier during a Service Period is below the Target Performance Level in respect of a Key Performance Indicator, Service Points shall accrue to the Supplier in respect of that Key Performance Indicator as set out in paragraph 2.3.
- 2.3 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure shall be the applicable number as set out in annex 1 depending on whether the KPI Failure is a Minor KPI Failure, a Serious KPI Failure or a Severe KPI Failure, unless the KPI Failure is a Repeat KPI Failure when the provisions of paragraph 3.2 shall apply.

**3. Repeat KPI Failures**

- 3.1 If a KPI Failure occurs in respect of the same Key Performance Indicator in any two consecutive Measurement Periods, the second and any subsequent such KPI Failure shall be a "Repeat KPI Failure".
- 3.2 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure that is a Repeat KPI Failure shall be calculated as follows:

**SP = P x 2**

where:

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

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

**4. Threat Intelligence Capability Failure Escalation Procedure**

REDACTED

- 4.1 For the purposes of this Paragraph 4, the Supplier Threat Intelligence Escalation contacts are as follows:

<b>Supplier Threat Intelligence Escalation contact</b>	<b>Contact Details</b>
REDACTED	REDACTED
REDACTED	REDACTED
REDACTED	REDACTED

**Part B: Performance Monitoring**

**1. PERFORMANCE MONITORING AND PERFORMANCE REVIEW**

- 1.1 Within 10 Working Days of the end of each Service Period, the Supplier shall provide:
- (a) a report to the Authority Representative which summarises the performance by the Supplier against each of the Performance Indicators as more particularly described in paragraph 1.2 (the "**Performance Monitoring Report**"); and
  - (b) a report to the Authority's senior responsible officer which summarises the Supplier's performance over the relevant Service Period as more particularly described in paragraph 1.3 (the "**Balanced Scorecard Report**").

**Performance Monitoring Report**

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

**Information in respect of the Service Period just ended**

- (a) for each Key Performance Indicator and Subsidiary Performance Indicator, the actual performance achieved over the Service Period, and that achieved over the previous three Measurement Periods;
- (b) a summary of all Performance Failures that occurred during the Service Period;
- (c) the severity level of each KPI Failure which occurred during the Service Period and whether each PI Failure which occurred during the Service Period fell below the PI Service Threshold;
- (d) which Performance Failures remain outstanding and progress in resolving them;
- (e) for any Material KPI Failures or Material PI Failures occurring during the Service Period, the cause of the relevant KPI Failure or PI Failure and the action being taken to reduce the likelihood of recurrence;
- (f) the status of any outstanding Rectification Plan processes, including:
  - (i) whether or not a Rectification Plan has been agreed; and
  - (ii) where a Rectification Plan has been agreed, a summary of the Supplier's progress in implementing that Rectification Plan;
- (g) for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;
- (h) the number of Service Points awarded in respect of each KPI Failure;
- (i) the conduct and performance of any agreed periodic tests that have occurred, such as the annual failover test of the BCDR Plan;
- (j) relevant particulars of any aspects of the Supplier's performance which fail to meet the requirements of this Agreement;

- (k) such other details as the Authority may reasonably require from time to time; and

**Information in respect of previous Service Periods**

- (l) a rolling total of the number of Performance Failures that have occurred over the past six Service Periods;
- (m) the conduct and performance of any agreed periodic tests that have occurred in such Service Period such as the annual failover test of the BCDR Plan; and

**Information in respect of the next Quarter**

- (n) any scheduled Service Downtime for Permitted Maintenance and Updates that has been agreed between the Authority and the Supplier for the next Quarter.

**Balanced Scorecard Report**

1.3 The Balanced Scorecard Report shall be presented in the form of a dashboard and, as a minimum, shall contain a high level summary of the Supplier's performance over the relevant Service Period, including details of the following:

- (a) financial indicators;
- (b) the Target Performance Levels achieved;
- (c) behavioural indicators;
- (d) performance against its obligation to pay its Sub-contractors within 30 days of receipt of an undisputed invoice;
- (e) Milestone trend chart, showing performance of the overall programme; and
- (f) sustainability and energy efficiency indicators, for example energy consumption and recycling performance.

1.4 The Performance Monitoring Report and the Balanced Scorecard Report shall be reviewed and their contents agreed by the Parties at the next Performance Review Meeting held in accordance with paragraph 1.5.

1.5 The Parties shall attend meetings on a monthly basis (unless otherwise agreed) to review the Performance Monitoring Reports and the Balanced Scorecard Reports. The Performance Review Meetings shall (unless otherwise agreed):

- (a) take place within five Working Days of the Performance Monitoring Report being issued by the Supplier;
- (b) take place at such location and time (within normal business hours) as the Authority shall reasonably require (unless otherwise agreed in advance); and
- (c) be attended by the Supplier Representative and the Authority Representative.

1.6 The Authority shall be entitled to raise any additional questions and/or request any further information from the Supplier regarding any KPI Failure and/or PI Failure.

**2. PERFORMANCE RECORDS**

- 2.1 The Supplier shall keep appropriate documents and records (including help desk records, staff records, timesheets, training programmes, staff training records, goods received documentation, supplier accreditation records, complaints received etc) in relation to the Services being delivered. Without prejudice to the generality of the foregoing, the Supplier shall maintain accurate records of call histories for a minimum of 12 months and provide prompt access to such records to the Authority upon the Authority's request. The records and documents of the Supplier shall be available for inspection by the Authority and/or its nominee at any time and the Authority and/or its nominee may make copies of any such records and documents.
- 2.2 In addition to the requirement in paragraph 2.1 to maintain appropriate documents and records, the Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance of the Supplier both before and after each Operational Service Commencement Date.
- 2.3 The Supplier shall ensure that the Performance Monitoring Report, the Balanced Scorecard Report and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by the Authority are available to the Authority on-line and are capable of being printed.

**3. PERFORMANCE VERIFICATION**

The Authority reserves the right to verify the Availability of the IT Environment and/or the Services and the Supplier's performance under this Agreement against the Performance Indicators including by sending test transactions through the IT Environment or otherwise. Where such verification causes a KPI Failure, such failure shall be disregarded from the Measurement Period.

## ANNEX 1: Key Performance Indicators And Subsidiary Performance Indicators

### Part 1: Key Performance Indicators And Subsidiary Performance Indicators Tables

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

#### 1. Key Performance Indicators

Intentionally left blank at the Effective Date. Subject to change in accordance with paragraph 1.4 of Part A of this schedule 2.2 (*Performance Levels*).

No.	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points
KPI1				REDACTED	REDACTED

#### 2. Subsidiary Performance Indicators

Intentionally left blank at the Effective Date. Subject to change in accordance with paragraph 1.4 of Part A of this schedule 2.2 (*Performance Levels*).

No.	Subsidiary Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels
PI1				
PI2				

**SCHEDULE 2.3: STANDARDS**

## 1. Definitions

In this Schedule, the following definitions shall apply:

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

## 2. General

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

## 3. Technology And Digital Services Practice

The Supplier shall (when designing, implementing and delivering the Services) adopt the applicable elements of HM Government's Technology Code of Practice as documented at <https://www.gov.uk/service-manual/technology/code-of-practice.html>.

## 4. Open Data Standards & Standards Hub

- 4.1 The Supplier shall comply to the extent within its control with UK Government's Open Standards Principles as documented at <https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles>, as they relate to the specification of standards for software interoperability, data and document formats in the IT Environment.
- 4.2 Without prejudice to the generality of paragraph 2.2, the Supplier shall, when implementing or updating a technical component or part of the Software or Supplier Solution where there is a requirement under this Agreement or opportunity to use a new or emergent standard, submit a Suggested Challenge compliant with the UK Government's Open Standards Principles (using the process detailed on Standards Hub and documented at <http://standards.data.gov.uk/>). Each Suggested Challenge submitted by the Supplier shall detail, subject to the security and confidentiality provisions in this Agreement, an illustration of such requirement or opportunity within the IT Environment, Supplier Solution and Government's IT infrastructure and the suggested open standard.

- 4.3 The Supplier shall ensure that all documentation published on behalf of the Authority pursuant to this Agreement is provided in a non-proprietary format (such as PDF or Open Document Format (ISO 26300 or equivalent)) as well as any native file format documentation in accordance with the obligation under paragraph 4.1 to comply with the UK Government's Open Standards Principles, unless the Authority otherwise agrees in writing.

## **5. Technology Architecture Standards**

The Supplier shall produce full and detailed technical architecture documentation for the Supplier Solution in accordance with Good Industry Practice. If documentation exists that complies with TOGAF 9.2 or its equivalent, then this shall be deemed acceptable.

## **6. Accessible Digital Standards**

The Supplier shall comply with (or with equivalents to):

- (a) the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.1 Conformance Level AA; and
- (b) ISO/IEC 13066-1: 2011 Information Technology – Interoperability with assistive technology (AT) – Part 1: Requirements and recommendations for interoperability.

## **7. Service Management Software & Standards**

- 7.1 Subject to paragraphs 2 to 4 (inclusive), the Supplier shall reference relevant industry and HM Government standards and best practice guidelines in the management of the Services, including the following and/or their equivalents:

- (a) ITIL v3 2011;
- (b) ISO/IEC 20000-1 2011 "ITSM Specification for Service Management";
- (c) ISO/IEC 20000-2 2012 "ITSM Code of Practice for Service Management";
- (d) ISO 10007 2017 "Quality management systems – Guidelines for configuration management";
- (e) ISO 9000; ISO 9001 : 2015 "Quality Management"; and
- (f) BS EN ISO 22313:2014 " Societal security: Business continuity management systems " and, ISO/IEC 27031:2011, ISO 22301 and ISO/IEC 24762:2008 in the provision of "IT Service Continuity Strategy" or "Disaster Recovery" plans.

- 7.2 For the purposes of management of the Services and delivery performance the Supplier shall make use of Software that complies with Good Industry Practice including availability, change, incident, knowledge, problem, release & deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio management. If such Software has been assessed under the ITIL Software Scheme as being compliant to "Bronze Level", then this shall be deemed acceptable.

## **8. Environmental standards**

- 8.1 The Supplier warrants that it has obtained ISO 14001 (or equivalent) certification for its environmental management and shall comply with and maintain certification requirements throughout the Term. The Supplier shall follow a sound environmental management policy, ensuring that any Goods and the Services are procured, produced, packaged, delivered, and are capable of being used and ultimately disposed of in ways appropriate to such standard.
- 8.2 The Supplier shall comply with relevant obligations under the Waste Electrical and Electronic Equipment Regulations 2006 in compliance with Directive 2002/96/EC and subsequent replacements (including those in compliance with Directive 2012/19/EU).
- 8.3 The Supplier shall (when designing, procuring, implementing and delivering the Services) ensure compliance with article 6 and annex III of the Energy Efficiency Directive 2012/27/EU and subsequent replacements.
- 8.4 The Supplier shall comply with the EU Code of Conduct on Data Centres' Energy Efficiency. The Supplier shall ensure that any data centre used in delivering the Services are registered as a Participant under such Code of Conduct.
- 8.5 The Supplier shall comply with the Authority and HM Government's objectives to reduce waste and meet the aims of the Greening Government: IT strategy contained in the document "Greening Government: ICT Strategy issue (March 2011)" at <https://www.gov.uk/government/publications/greening-government-ict-strategy>.

## **9. Hardware safety standards**

- 9.1 The Supplier shall comply with those BS or other standards relevant to the provision of the Services, including the following or their equivalents:
- (a) any new hardware required for the delivery of the Services (including printers), shall conform to BS EN 62368-1:2014 or subsequent replacements. In considering where to site any such hardware, the Supplier shall consider the future working user environment and shall position the hardware sympathetically, wherever possible;
  - (b) any new audio, video and similar electronic apparatus required for the delivery of the Services, shall conform to the following standard: BS EN 60065:2014+A11:2017 or any subsequent replacements;
  - (c) any new laser printers or scanners using lasers, required for the delivery of the Services, shall conform to either of the following safety Standards: BS EN 60825-1:2014 or any subsequent replacements ; and
  - (d) any new apparatus for connection to any telecommunication network, and required for the delivery of the Services, shall conform to the following safety Standard: BS EN 62949:2017 or any subsequent replacements.
- 9.2 Where required to do so as part of the Services, the Supplier shall perform electrical safety checks in relation to all equipment supplied by the Supplier under this Agreement in accordance with the relevant health and safety regulations.

## **10. Security Standards**

- 10.1 The Supplier is required to have and maintain accreditation to the following Standards:
- (e) IG Toolkit or Data Security and Protection Toolkit (as detailed in <https://www.igt.hscic.gov.uk/> and <https://www.dsptoolkit.nhs.uk/> ) / SCCI 0086; and
  - (f) BS ISO 27001: 2013 "Requirements for Information Security Management Systems". Certification to BS ISO 27001:2013 must be against an appropriate Statement of Applicability for the business areas conducting the Services as part of this Agreement and must be provided by a UKAS accredited body as per (<https://www.ukas.com/>).
- 10.2 The Supplier is required to demonstrate and maintain alignment to the following guidance and procedures wherever they apply:
- (a) 10 Steps to Cyber Security' guidance (<https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>);
  - (b) National Data Guardian data security reports, standards and recommendations; (<https://www.gov.uk/government/publications/review-of-data-security-consent-and-opt-outs> ); and
  - (c) NCSC – 14 Cloud Security Principles (<https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles>).

**ANNEX A: STANDARDS BASELINE**

For the avoidance of doubt, the Supplier shall be compliant, from the Effective Date, with the following versions of the Standards, and shall use these as the baseline for any changes to the Standards agreed through the Change Control Procedure in accordance with paragraph 2.1:

<b>Standard</b>	<b>Version / publication date at Effective Date</b>	<b>Link (or route to identification of Effective Date versions)</b>
HMG's Technology Code of Practice	26 February 2018	<a href="https://www.gov.uk/service-manual/technology/code-of-practice.html">https://www.gov.uk/service-manual/technology/code-of-practice.html</a>  <a href="http://webarchive.nationalarchives.gov.uk">http://webarchive.nationalarchives.gov.uk</a>
UK Government's Open Standards Principles	05 April 2018	<a href="https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles">https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles</a>  <a href="http://webarchive.nationalarchives.gov.uk">http://webarchive.nationalarchives.gov.uk</a>
UK Government's Open Standards Principles (using the process detailed on Standards Hub)	12 July 2017	<a href="http://standards.data.gov.uk/">http://standards.data.gov.uk/</a>  <a href="http://webarchive.nationalarchives.gov.uk">http://webarchive.nationalarchives.gov.uk</a>
ISO 26300	July 2015	<a href="https://www.iso.org/standard/66363.html">https://www.iso.org/standard/66363.html</a>
TOGAF 9.2	(version 9.2)	<a href="http://www.opengroup.org/About-TOGAF-Version-9.2">http://www.opengroup.org/About-TOGAF-Version-9.2</a>
WCAG 2.1	24 April 2018	<a href="http://www.w3.org/TR/WCAG21/">http://www.w3.org/TR/WCAG21/</a>
ISO/IEC 13066-1: 2011	May 2011	<a href="https://www.iso.org/standard/53770.html">https://www.iso.org/standard/53770.html</a>
ITIL v3 2011	2011	
ISO/IEC 20000-1 2011	April 2011	<a href="https://www.iso.org/standard/51986.html">https://www.iso.org/standard/51986.html</a>
ISO/IEC 20000-2 2012	February 2012	<a href="https://www.iso.org/standard/51987.html">https://www.iso.org/standard/51987.html</a>

ISO 10007	March 2017	<a href="https://www.iso.org/standard/70400.html">https://www.iso.org/standard/70400.html</a>
ISO 9000, ISO 9001	2015	<a href="https://www.iso.org/publication/PUB100080.html">https://www.iso.org/publication/PUB100080.html</a>
BS EN ISO 22313:2014 Societal security: Business continuity management systems	31 December 2014	
ISO/IEC 27031:2011	March 2011	<a href="https://www.iso.org/standard/44374.html">https://www.iso.org/standard/44374.html</a>
ISO/IEC 24762:2008	February 2008	<a href="https://www.iso.org/standard/41532.html">https://www.iso.org/standard/41532.html</a>
ISO 14001	Amended 2015	<a href="https://www.iso.org/iso-14001-environmental-management.html">https://www.iso.org/iso-14001-environmental-management.html</a>
Greening Government: ICT Strategy issue	March 2011	<a href="https://www.gov.uk/government/publications/greening-government-ict-strategy">https://www.gov.uk/government/publications/greening-government-ict-strategy</a> .  <a href="http://webarchive.nationalarchives.gov.uk">http://webarchive.nationalarchives.gov.uk</a>
BS EN 62368-1:2014  Audio/video, information and communication technology equipment. Safety requirements	September 2014	
BS EN 6065:2002+A12:2011	June 2002	
BS EN 60825-1:2014 Safety of laser products. Equipment classification and requirements	2014	
BS EN 62949:2017	September 2017	
ISO/IEC 27001:2013	October 2013	<a href="https://www.iso.org/standard/54534.html">https://www.iso.org/standard/54534.html</a>

10 Steps to Cyber Security	09 August 2017	<a href="https://www.ncsc.gov.uk/guidance/10-steps-cyber-security">https://www.ncsc.gov.uk/guidance/10-steps-cyber-security</a>  <a href="http://webarchive.nationalarchives.gov.uk">http://webarchive.nationalarchives.gov.uk</a>
National Data Guardian data security reports, standards and recommendations	June 2016	<a href="https://www.gov.uk/government/publications/review-of-data-security-consent-and-opt-outs">https://www.gov.uk/government/publications/review-of-data-security-consent-and-opt-outs</a>  <a href="http://webarchive.nationalarchives.gov.uk">http://webarchive.nationalarchives.gov.uk</a>
14 Cloud Security Principles	21 September 2016	<a href="https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles">https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles</a>  <a href="http://webarchive.nationalarchives.gov.uk">http://webarchive.nationalarchives.gov.uk</a>

OFFICIAL - SENSITIVE - COMMERCIAL

**SCHEDULE 2.4: SECURITY MANAGEMENT**

## 1. Definitions

In this schedule, the following definitions shall apply:

<b>"Breach of Security"</b>	<p>the occurrence of:</p> <ul style="list-style-type: none"><li>(a) any unauthorised access to or use of the Services, the Authority Premises, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and/or any IT, information or data (including the Confidential Information and the Authority Data) used by the Authority and/or the Supplier in connection with this Agreement; and/or</li><li>(b) the loss, corruption and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including any copies of such information or data, used by the Authority and/or the Supplier in connection with this Agreement,</li></ul> <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>"CHECK Scheme"</b>	<p>The scheme for penetration testing of data processing systems operated by the Communications-Electronics Security Group;</p>
<b>"ISMS"</b>	<p>the information security management system and processes developed by the Supplier in accordance with paragraph 3 as updated from time to time in accordance with this schedule;</p>
<b>"Security Policy Framework"</b>	<p>The Security Policy Framework published by the Cabinet Office as updated from time to time including any details notified by the Authority to the Supplier.</p>
<b>"Security Tests"</b>	<p>tests carried out where relevant in accordance with the CHECK Scheme or to an equivalent standard to validate the ISMS and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security.</p>

## 2. INTRODUCTION

- 2.1 The Parties acknowledge that the purpose of the ISMS and Security Management Plan are to ensure a good organisational approach to security under which the specific requirements of this Agreement will be met.
- 2.2 The Parties shall each appoint a member of the Programme Board to be responsible for security. The initial member of the Programme Board appointed by the Supplier for such purpose shall be the person named as such in schedule 9.2 (*Key Personnel*) and the provisions of Clauses 14.5 and 14.6 (*Key Personnel*) shall apply in relation to such person.

- 2.3 The Authority shall clearly articulate its high level security requirements so that the Supplier can ensure that the ISMS, security related activities and any mitigations are driven by these fundamental needs.
- 2.4 Both Parties shall provide a reasonable level of access to any members of their personnel for the purposes of designing, implementing and managing security.
- 2.5 The Supplier shall use as a minimum Good Industry Practice in the day to day operation of any system holding, transferring or processing Authority Data and any system that could directly or indirectly have an impact on that information, and shall ensure that Authority Data remains under the effective control of the Supplier at all times.
- 2.6 The Supplier shall ensure the up-to-date maintenance of a security policy relating to the operation of its own organisation and systems and on request shall supply this document as soon as practicable to the Authority.
- 2.7 The Authority and the Supplier acknowledge that information security risks are shared between the Parties and that a compromise of either the Supplier or the Authority's security provisions represents an unacceptable risk to the Authority requiring immediate communication and co-operation between the Parties.

### **3. ISMS**

- 3.1 By the date specified in the Implementation Plan the Supplier shall develop and submit to the Authority for the Authority's approval in accordance with paragraph 4.4 an ISMS (information security management system) for the purposes of this Agreement, which:
  - (a) shall have been tested in accordance with schedule 6.2 (*Testing Procedures*); and
  - (b) shall comply with the requirements of paragraphs 3.3 to 3.5.
- 3.2 The Supplier acknowledges that the Authority places great emphasis on the reliability of the Services and confidentiality, integrity and availability of information and consequently on the security provided by the ISMS and that it shall be responsible for the effective performance of the ISMS.
- 3.3 The ISMS shall:
  - (a) unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Authority Premises (to the extent that they are under the control of the Supplier), the Sites (to the extent that they are under the control of the Supplier), the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and any IT, information and data (including the Authority Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Agreement;
  - (b) meet the relevant standards in ISO/IEC 27001 and ISO/IEC 27002 in accordance with paragraph 7; and
  - (c) at all times provide a level of security which:
    - (i) is in accordance with Law and this Agreement;

- (ii) as a minimum demonstrates Good Industry Practice;
  - (iii) complies with the Baseline Security Requirements;
  - (iv) addresses issues of incompatibility with the Supplier's own organisational security policies;
  - (v) meets any specific security threats of immediate relevance to the Services and/or Authority Data;
  - (vi) complies with the security requirements as set out in schedule 2.1 (*Services Description*);
  - (vii) complies with the Authority's IT policies; and
  - (viii) is in accordance with the Security Policy Framework.
- (d) document the security incident management processes and incident response plans;
- (e) document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Services of any new threat, vulnerability or exploitation technique of which the Supplier becomes aware, prioritisation of security patches, testing of security patches, application of security patches, a process for Authority approvals of exceptions, and the reporting and audit mechanism detailing the efficacy of the patching policy; and
- (f) be certified by (or by a person with the direct delegated authority of) a Supplier's main board representative, being the Chief Security Officer, Chief Information Officer, Chief Technical Officer or Chief Financial Officer (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Security Management Plan).
- 3.4 Subject to clause 20.10 (*Authority Data and Security Requirements*) the references to standards, guidance and policies set out in paragraph 3.3 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
- 3.5 In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in paragraph 3.3, the Supplier shall immediately notify the Authority Representative of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which provision the Supplier shall comply with.
- 3.6 If the ISMS submitted to the Authority pursuant to paragraph 3.1 is approved by the Authority, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this schedule. If the ISMS is not approved by the Authority, the Supplier shall amend it within 10 Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for approval. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute

Resolution Procedure. No approval to be given by the Authority pursuant to this paragraph 3 may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in paragraphs 3.3 to 3.5 shall be deemed to be reasonable.

- 3.7 Approval by the Authority of the ISMS pursuant to paragraph 3.6 or of any change to the ISMS shall not relieve the Supplier of its obligations under this schedule.

#### **4. SECURITY MANAGEMENT PLAN**

- 4.1 Within 20 Working Days after the Effective Date, the Supplier shall prepare and submit to the Authority for approval in accordance with paragraph 4.3 a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of paragraph 4.2.

- 4.2 The Security Management Plan shall:

- (a) be based on the initial Security Management Plan set out in annex 2;
- (b) comply with the Baseline Security Requirements;
- (c) identify the necessary delegated organisational roles defined for those responsible for ensuring this schedule is complied with by the Supplier;
- (d) detail the process for managing any security risks from Sub-contractors and third parties authorised by the Authority with access to the Services, processes associated with the delivery of the Services, the Authority Premises, the Sites, the Supplier System, the Authority System (to extent that it is under the control of the Supplier) and any IT, Information and data (including the Authority Confidential Information and the Authority Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Services;
- (e) unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Authority Premises, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and any IT, Information and data (including the Authority Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Agreement or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Services;
- (f) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this schedule (including the requirements set out in paragraph 3.4);
- (g) demonstrate that the Supplier Solution has minimised the Authority and Supplier effort required to comply with this schedule through consideration of available, appropriate and practicable pan-government accredited services (for example, 'platform as a service' offerings from the G-Cloud catalogue);

- (h) set out the plans for transiting all security arrangements and responsibilities from those in place at the Effective Date to those incorporated in the ISMS at the date set out in schedule 6.1 (*Implementation Plan*) for the Supplier to meet the full obligations of the security requirements set out in schedule 2.1 (*Services Description*) and this schedule;
  - (i) set out the scope of the Authority System that is under the control of the Supplier;
  - (j) be structured in accordance with ISO/IEC 27001 and ISO/IEC 27002, cross-referencing if necessary to other schedules which cover specific areas included within those standards;
  - (k) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Authority engaged in the Services and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this schedule; and
  - (l) be in accordance with the Security Policy Framework.
- 4.3 If the Security Management Plan submitted to the Authority pursuant to paragraph 4.1 is approved by the Authority, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this schedule. If the Security Management Plan is not approved by the Authority, the Supplier shall amend it within 10 Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for approval. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Authority pursuant to this paragraph 4.3 may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 4.2 shall be deemed to be reasonable.
- 4.4 Approval by the Authority of the Security Management Plan pursuant to paragraph 4.3 or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this schedule.
- 5. AMENDMENT AND REVISION OF THE ISMS AND SECURITY MANAGEMENT PLAN**
- 5.1 The ISMS and Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:
- (a) emerging changes in Good Industry Practice;
  - (b) any change or proposed change to the IT Environment, the Services and/or associated processes;
  - (c) any new perceived or changed security threats; and
  - (d) any reasonable change in requirement requested by the Authority.

- 5.2 The Supplier shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Authority. The results of the review shall include, without limitation:
- (a) suggested improvements to the effectiveness of the ISMS;
  - (b) updates to the risk assessments;
  - (c) proposed modifications to respond to events that may impact on the ISMS including the security incident management process, incident response plans and general procedures and controls that affect information security; and
  - (d) suggested improvements in measuring the effectiveness of controls.
- 5.3 Subject to paragraph 5.4, any change which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to paragraph 5.1, an Authority request, a change to schedule 2.1 (*Services Description*) or otherwise) shall be subject to the Change Control Procedure and shall not be implemented until approved in writing by the Authority.
- 5.4 The Authority may, where it is reasonable to do so, approve and require changes or amendments to the ISMS or Security Management Plan to be implemented on timescales faster than set out in the Change Control Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Agreement.

## **6. SECURITY TESTING**

- 6.1 The Supplier shall conduct relevant Security Tests from time to time (and at least annually across the scope of the ISMS) and additionally after significant architectural changes to the IT Environment or after any change or amendment to the ISMS, (including security incident management processes and incident response plans) or the Security Management Plan. 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 Target Performance Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the Security Tests.
- 6.2 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Authority with the results of such tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.
- 6.3 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 upon giving reasonable notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Authority may notify the Supplier of the results of such tests after completion of each such test. If any such Authority test adversely affects the Supplier's ability to deliver the Services so as to meet the Target

Performance Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the Authority test.

- 6.4 Where any Security Test carried out pursuant to paragraphs 6.2 or 6.3 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 ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Authority's prior written approval, the Supplier shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Baseline Security Requirements or security requirements (as set out in schedule 2.1 (*Services Description*)) or the requirements of this schedule, the change to the ISMS or Security Management Plan shall be at no cost to the Authority.
- 6.5 If any repeat Security Test carried out pursuant to paragraph 6.4 reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall constitute a material Default for the purposes of clause 27.1.3 (*Rectification Plan Process*).

## **7. ISMS COMPLIANCE**

- 7.1 The Authority shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001, the specific security requirements set out in schedule 2.1 (*Services Description*) and the Baseline Security Requirements.
- 7.2 If, on the basis of evidence provided by such audits, it is the Authority's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001, the specific security requirements set out in schedule 2.1 (*Services Description*) and/or the Baseline Security Requirements is not being achieved by the Supplier, then the Authority shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to implement any necessary remedy. If the Supplier does not become compliant within the required time then the Authority shall have the right to obtain an independent audit against these standards in whole or in part.
- 7.3 If, as a result of any such independent audit as described in paragraph 7.2 the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001, the specific security requirements set out in schedule 2.1 (*Services Description*) and/or the Baseline Security Requirements then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Authority in obtaining such audit.

## **8. BREACH OF SECURITY**

- 8.1 Either Party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any Breach of Security or attempted Breach of Security.
- 8.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 8.1, the Supplier shall:

- (a) immediately take all reasonable steps (which shall include any action or changes reasonably required by the Authority) necessary to:
  - (i) minimise the extent of actual or potential harm caused by any Breach of Security;
  - (ii) remedy such Breach of Security to the extent possible and protect the integrity of the IT Environment to the extent within its control against any such Breach of Security or attempted Breach of Security;
  - (iii) apply a tested mitigation against any such Breach of Security 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 Target Performance 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;
  - (iv) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure; and
  - (v) supply any requested data to the Authority or the Computer Emergency Response Team for UK Government ("GovCertUK") on the Authority's request within 2 Working Days and without charge (where such requests are reasonably related to a possible incident or compromise); and
- (b) as soon as reasonably practicable provide to the Authority full details (using the reporting mechanism defined by the ISMS) 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 potential or attempted Breach of Security that demonstrates non-compliance of the ISMS with the Baseline Security Requirements or security requirements (as set out in schedule 2.1 (*Services Description*)) or the requirements of this schedule, then any required change to the ISMS shall be at no cost to the Authority.

## **9. VULNERABILITIES AND CORRECTIVE ACTION**

9.1 The Authority and the Supplier acknowledge that from time to time vulnerabilities in the IT Environment will be discovered which unless mitigated will present an unacceptable risk to the Authority's information.

9.2 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 ISMS and using the appropriate vulnerability scoring systems including:

- (a) the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST <http://nvd.nist.gov/cvss.cfm>); and

- (b) Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.
- 9.3 The Supplier shall procure the application of security patches to vulnerabilities within a maximum period from the public release of such patches with those vulnerabilities categorised as 'Critical' within 14 days of release, 'Important' within 30 days of release and all 'Other' within 60 Working Days of release, except where:
- (a) the Supplier can demonstrate that a vulnerability is not exploitable within the context of any Service (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 a Service must be remedied by the Supplier within the above timescales if the vulnerability becomes exploitable within the context of the Service;
  - (b) the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of five days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Authority; or
  - (c) the Authority agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the ISMS.
- 9.4 The Supplier Solution and Implementation Plan shall include provisions for major version upgrades of all Supplier COTS Software and Third Party COTS Software to be upgraded within six months of the release of the latest version, such that it is no more than one major version level below the latest release (normally codified as running software no older than the 'n-1 version') throughout the Term unless:
- (a) where upgrading such Supplier COTS Software and Third Party COTS Software reduces the level of mitigations for known threats, vulnerabilities or exploitation techniques, provided always that such upgrade is made within 12 months of release of the latest version ; or
  - (b) is agreed with the Authority in writing.
- 9.5 The Supplier shall:
- (a) implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent Central Government Body;
  - (b) ensure that the IT Environment (to the extent that the IT Environment is within the control of the Supplier) is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;
  - (c) ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the IT Environment by actively monitoring the threat landscape during the Term;
  - (d) pro-actively scan the IT Environment (to the extent that the IT Environment is within the control of the Supplier) for vulnerable components and address

discovered vulnerabilities through the processes described in the ISMS as developed under paragraph 3.3(e);

- (e) from the date specified in the Security Management Plan (and before the first Operational Service Commencement Date) provide a report to the Authority within five Working Days of the end of each month detailing both patched and outstanding vulnerabilities in the IT Environment (to the extent that the IT Environment is within the control of the Supplier) and any elapsed time between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report;
- (f) propose interim mitigation measures to vulnerabilities in the IT Environment known to be exploitable where a security patch is not immediately available;
- (g) remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the Supplier Solution and IT Environment); and
- (h) 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 IT Environment and provide initial indications of possible mitigations.

9.6 If the Supplier is unlikely to be able to mitigate the vulnerability within the timescales under paragraph 9, the Supplier shall immediately notify the Authority.

9.7 A failure to comply with paragraph 9.3 shall constitute a Notifiable Default, and the Supplier shall comply with the Rectification Plan Process.

## **10. COMPLIANCE WITH CLAUSE 23 (*PROTECTION OF PERSONAL DATA*)**

10.1 In compliance with clause 23 (*Protection of Personal Data*) and specifically clauses 23.5.3 and 23.8, a Data Processing Addendum is included in the initial Security Management Plan at annex 2 (*Initial Security Management Plan*) to this schedule 2.4, which includes a description of the technical and organisational measures implemented to protect the Personal Data which measures are hereby agreed by the Authority.

## ANNEX 1: Baseline Security Requirements

### 1. Higher Classifications

The Supplier shall not handle Authority information classified SECRET or TOP SECRET except if there is a specific requirement and in this case prior to receipt of such information the Supplier shall seek additional specific guidance from the Authority.

### 2. End User Devices

2.1 When Authority data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or system component which has been formally assured through a recognised certification process of the UK Government National Cyber Security Centre ("NCSC") to at least Foundation Grade, for example, under the NCSC Commercial Product Assurance scheme ("CPA").

2.2 Devices used to access or manage Authority data and services must be under the management authority of Authority or Supplier and have a minimum set of security policy configuration enforced. These devices must be placed into a 'known good' state prior to being provisioned into the management authority of the Authority. Unless otherwise agreed with the Authority in writing, all Supplier devices are expected to meet the set of security requirements set out in the NCSC End User Device Security Collection (<https://www.ncsc.gov.uk/guidance/end-user-device-security>). Where the guidance highlights shortcomings in a particular platform the Supplier may wish to use, then these should be discussed with the Authority and a joint decision shall be taken on whether the residual risks are acceptable. Where the Supplier wishes to deviate from the NCSC guidance, then this should be agreed in writing on a case by case basis with the Authority.

### 3. Data Processing, Storage, Management and Destruction

3.1 The Supplier and Authority recognise the need for the Authority's information to be safeguarded under the UK Data Protection regime or a similar regime. To that end, the Supplier must be able to state to the Authority the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks Authority information will be subject to at all times.

3.2 The Supplier shall agree any change in location of data storage, processing and administration with the Authority in advance where the proposed location is outside the UK. Such approval shall not be unreasonably withheld or delayed unless specified otherwise in this Agreement and provided that storage, processing and management of any Authority information is only carried out offshore within:

- (a) the European Economic Area (EEA);
- (b) in the US if the Supplier and or any relevant Subcontractor have signed up to the US-EU Privacy Shield Agreement; or
- (c) in another country or territory outside the EEA if that country or territory ensures an adequate level of protection by reason of its domestic law or of the international commitments it has entered into which have been defined as adequate by the EU Commission.

3.3 The Supplier shall:

- (a) provide the Authority with all Authority Data on demand in an agreed open format;
- (b) have documented processes to guarantee availability of Authority Data in the event of the Supplier ceasing to trade;
- (c) securely destroy all media that has held Authority Data at the end of life of that media in line with Good Industry Practice; and
- (d) securely erase any or all Authority Data held by the Supplier when requested to do so by the Authority.

**4. Networking**

- 4.1 The Authority requires that any Authority Data transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device must be encrypted using a product or system component which has been formally assured through a certification process recognised by NCSC, to at least Foundation Grade, for example, under CPA or through the use of pan-government accredited encrypted networking services via the Public Sector Network ("PSN") framework (which makes use of Foundation Grade certified products).
- 4.2 The Authority requires that the configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice.

**5. Security Architectures**

- 5.1 The Supplier shall apply the 'principle of least privilege' (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of IT systems which will process or store Authority Information.
- 5.2 When designing and configuring the IT Environment (to the extent that the IT Environment is within the control of the Supplier) the Supplier shall follow Good Industry Practice and seek guidance from recognised security professionals with the appropriate skills and/or a NCSC Certified Professional certification (<https://www.ncsc.gov.uk/scheme/certified-professional>) for all bespoke or complex components of the Supplier Solution.

**6. Personnel Security**

- 6.1 Supplier Personnel shall be subject to pre-employment checks that include, as a minimum: employment history for at least the last three years, identity, unspent criminal convictions and right to work (including nationality and immigration status).
- 6.2 The Supplier shall agree on a case by case basis Supplier Personnel roles which require specific government clearances (such as 'SC') including system administrators with privileged access to IT systems which store or process Authority Data.
- 6.3 The Supplier shall prevent Supplier Personnel who are unable to obtain the required security clearances from accessing systems which store, process, or are used to manage Authority Data except where agreed with the Authority in writing.

- 6.4 All Supplier Personnel that have the ability to access Authority Data or systems holding Authority Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Authority in writing, this training must be undertaken annually.
- 6.5 Where the Supplier or Sub-Contractors grants increased IT privileges or access rights to Supplier Personnel, those Supplier Personnel shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need elevated privileges or leave the organisation, their access rights shall be revoked within one Working Day.

## **7. Identity, Authentication and Access Control**

- 7.1 The Supplier shall operate an access control regime to ensure all users and administrators of the Supplier Solution are uniquely identified and authenticated when accessing or administering the Services. Applying the 'principle of least privilege', users and administrators shall be allowed access only to those parts of the Supplier Solution they require. The Supplier shall retain an audit record of accesses.

## **8. Audit and Monitoring**

- 8.1 The Supplier shall collect audit records which relate to security events in the systems or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include:
- (a) Logs to facilitate the identification of the specific asset which makes every outbound request external to the IT Environment (to the extent that the IT Environment is within the control of the Supplier). To the extent the design of the Supplier Solution and Services allows such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers.
  - (b) Security events generated in the IT Environment (to the extent that the IT Environment is within the control of the Supplier) and shall include: privileged account logon and logoff events, the start and termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.
- 8.2 The Supplier and the Authority shall work together to establish any additional audit and monitoring requirements for the IT Environment.
- 8.3 The Supplier shall retain audit records collected in compliance with paragraph 7 for a period of at least six months.

## ANNEX 2: INITIAL SECURITY MANAGEMENT PLAN

### Summary of Security Plan Approach

Security Management Plan shall be in full compliance with the following;

- a) What is set out in annex 1
- b) Baseline Security Requirements
- c) Identify the necessary delegated organisational roles for those responsible for ensuring this schedule is complied with by the Supplier
- d) Detail the process for managing any security risks from Sub-contractors and third parties authorised by the Authority with access to the Services, including processes associated with the delivery of the Services.
- e) To protect all aspects of the Services and all processes associated with the delivery of the Services, including the Authority Premises, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and any IT, Information and data (including the Authority Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Agreement or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Services.
- f) Security Measures to be implemented and maintained by the Supplier in all aspects of services and at all times comply with security measures and procedures are as follows;

REDACTED

- g) Solution supplier has minimised the Authority and Supplier effort required to comply with schedule through consideration of available, appropriate and practical pan government accredited services such as Software As A Service offerings from G-Cloud catalogue.
- h) set out the plans for transiting all security arrangements and responsibilities from those in place at the Effective Date to those incorporated in the ISMS at the date set out in schedule 6.1 (*Implementation Plan*) for the Supplier to meet the full obligations of the security requirements set out in schedule 2.1 (*Services Description*) and this schedule.
- i) schedule of regular security activities and outputs;
- j) Compliance processes and methods for evidencing compliance with the relevant Authority, supplier and services specific security standards, such as the Authority ISMS;
- k) Accreditation processes and alignment with ISO27001/27002;

- l) ISO 27001 Certification;
- m) Compliance with Data Protection Act and Protection of Freedoms Act
- n) Document lifecycle management, including planned reviews and approval processes for new versions of the Security Management Plan;
- o) Planned and additional update to the document;
- p) Security Testing (known as IT Health Checks);
- q) Protective monitoring, Vulnerability Management Scanning, Perimeter firewall protection

**Data Processing Addendum Exhibit**

REDACTED

**Appendix A - Technical and Organisational Measures**

REDACTED

**SCHEDULE 2.5: INSURANCE REQUIREMENTS**

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

- 1.1 Without prejudice to its obligations to the Authority under this Agreement, including its indemnity obligations, the Supplier shall for the periods specified in this schedule take out and maintain, or procure the taking out and maintenance of the insurances as set out in annex 1 and any other insurances as may be required by applicable Law (together the "**Insurances**"). The Supplier shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are:
- (a) of good financial standing;
  - (b) appropriately regulated; and
  - (c) except in the case of any Insurances provided by an Affiliate of the Supplier, of good repute in the international insurance market.
- 1.4 Where any Insurances are provided by an Affiliate of the Supplier, the Supplier shall provide to the Authority on the Effective Date (or inception of the relevant Insurances if later) and thereafter within 10 Working Days of written request from the Authority evidence of good financial standing of the relevant Affiliate in a form satisfactory to the Authority. In the absence of a Financial Distress Event, the Authority shall not make any such request more than annually.
- 1.5 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 Services and for which the Supplier is legally liable.

## **2. GENERAL OBLIGATIONS**

Without limiting the other provisions of this Agreement, the Supplier shall:

- (a) take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
- (b) promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
- (c) 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 INSURANCES**

The Supplier shall upon the Effective Date and within 15 Working Days after the renewal or replacement of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this schedule. 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**

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

- (a) if a claim or claims which do not relate to this 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:
  - (i) details of the policy concerned; and
  - (ii) its proposed solution for maintaining the minimum limit of indemnity specified; and
- (b) 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 Agreement are paid by insurers, the Supplier shall:
  - (i) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Agreement; or
  - (ii) 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 Subject to paragraph 6.2, the Supplier shall notify the Authority in writing at least five Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 6.2 Without prejudice to the Supplier's obligations under paragraph 4, paragraph 6.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this schedule.

**7. INSURANCE CLAIMS**

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this 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 Services and/or this Agreement, the Supplier shall co-operate with the Authority and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.
- 7.2 Except where the Authority is the claimant party, the Supplier shall give the Authority notice within 20 Working Days after any insurance claim in excess of £100,000 relating to or arising out of the provision of the Services or this 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 Agreement or otherwise.

**ANNEX 1: REQUIRED INSURANCES**

**PART A: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE**

REDACTED

**PART B: PROFESSIONAL INDEMNITY INSURANCE**

REDACTED

**PART C: UNITED KINGDOM COMPULSORY INSURANCES**

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

**SCHEDULE 3: AUTHORITY RESPONSIBILITIES**

## 1. INTRODUCTION

- 1.1 The responsibilities of the Authority set out in this schedule shall constitute the Authority Responsibilities under this Agreement. Any obligations of the Authority in schedule 2.1 (*Services Description*) and schedule 4.1 (*Supplier Solution*) shall not be Authority Responsibilities and the Authority shall have no obligation to perform any such obligations unless they are specifically stated to be "Authority Responsibilities" and cross referenced in the table in paragraph 3.
- 1.2 The responsibilities specified within this schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.

## 2. GENERAL OBLIGATIONS

The Authority shall:

- (a) perform those obligations of the Authority which are set out in the clauses of this Agreement and the paragraphs of the schedules (except schedule 2.1 (*Services Description*) and schedule 4.1 (*Supplier Solution*));
- (b) use its reasonable endeavours to provide the Supplier with access to appropriate members of the Authority's staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and the Termination Assistance Period;
- (c) provide sufficient and suitably qualified staff to fulfil the Authority's roles and duties under this Agreement as defined in the Implementation Plan;
- (d) use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Agreement provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority; and
- (e) procure for the Supplier such agreed access and use of the Authority Premises (as a licensee only) and facilities (including relevant IT systems) as is reasonably required for the Supplier to comply with its obligations under this Agreement, such access to be provided during the Authority's normal working hours on each Working Day or as otherwise agreed by the Authority (such agreement not to be unreasonably withheld or delayed).

## 3. SPECIFIC OBLIGATIONS

The Authority shall, in relation to this Agreement perform the Authority's responsibilities identified as such in this Agreement the details of which are set out below and in annex 1 (*Outline Implementation Plan*) of schedule 6.1 (*Implementation Plan*):

REDACTED

**ANNEX -  
REDACTED**

**SCHEDULE 4.1: SUPPLIER SOLUTION**

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REDACTED

**SCHEDULE 4.2: COMMERCIALLY SENSITIVE INFORMATION**

No.	Date	Item(s)	Duration of Confidentiality
		<p>Proprietary and Supplier Confidential Information elements of the Supplier Solution and related processes, organisation and technology.</p> <p>The Supplier Solution is set out in the Supplier ITN Response and/ or schedule 4.1</p>	The Term
		<p>All price (other than the overall price), day rate, margin, cost, overhead, IRR, and discount information, Allowable Assumptions, price and charge components.</p> <p>The breakdown of charges is set out in the financial submission (submitted as part of the Supplier ITN Response) and/or in schedule 7.1.</p>	The Term
		<p>The financial and percentage caps on liability.</p> <p>The financial and percentage caps on liability are set out in clause 25 of this Agreement</p>	The Term
		<p>The insurance amounts and insurers.</p> <p>The insurance amounts and insurers are set out in schedule 2.5</p>	The Term
		Details of the Supplier's IPRs	Survives expiry or earlier termination
		The Supplier's business and investment plans	Survives expiry or earlier termination

**SCHEDULE 4.3: NOTIFIED KEY SUB-CONTRACTORS**

1. In accordance with clause 15.7 (*Appointment of Key Sub-contractors*), the Supplier is entitled to sub-contract its obligations under this Agreement to the Key Sub-contractors listed in the table below.
2. The Parties agree that they will update this schedule periodically to record any Key Sub-contractors appointed by the Supplier with the consent of the Authority after the Effective Date for the purposes of the delivery of the Services.

<b>Key Sub-contractor name and address (if not the same as the registered office)</b>	<b>Registered office and company number</b>	<b>Related product/Service description</b>	<b>Key Sub-contract price expressed as a percentage of total projected Charges over the Term</b>	<b>Key role in delivery of the Services</b>	<b>Credit Rating Threshold</b>
None	N/A	N/A	N/A		[Level 1]

**SCHEDULE 4.4: THIRD PARTY CONTRACTS**

1. The contracts listed in the table below constitute Third Party Contracts entered into exclusively for the purposes of delivering the Services.
2. The Supplier shall be entitled to update this schedule in accordance with clause 15.5 (*Appointment of Sub-contractors*).

REDACTED

**SCHEDULE 5: SOFTWARE**

## 1. THE SOFTWARE

- 1.1 The Software below is licensed to the Authority in accordance with clauses 16 (*Intellectual Property Rights*) and 17 (*Transfer and Licences Granted by the Supplier*).
- 1.2 During the pilot phase, (being a maximum period of 12 months from the Effective Date), in addition to the rights granted to the Authority for use of the Supplier COTS Software, in the case of REDACTED, the Authority may transfer such licences to any Pilot Organisation ("**Transferee**"), provided that: a) the Authority and the Transferee enter into a three party licence transfer agreement with the Supplier (which entry the Supplier will not withhold or delay) which shall identify the REDACTED part number and quantity of the licences being transferred and which shall not extend the obligations of the Authority or the Transferee under the licence terms; and b) the Transferee's use of REDACTED shall be subject to the Supplier's licence terms as set out in the final column of the table at paragraph 2 to schedule 5 (*Software*). For the avoidance of doubt, the Authority shall remain responsible for the payment of all Charges in connection with REDACTED as provided for in schedule 7.1 (*Charges and Invoicing*).
- 1.3 The Authority may assign or novate the licences granted pursuant to paragraph 2 of schedule 5 (*Software*) to any UK public sector body which performs or carries out any of the functions and/or activities that previously had been performed and/or carried out by the Authority, provided that use by the UK public sector body to whom the licences are assigned or novated shall be subject to the Supplier's licence terms as set out in the final column of the table at paragraph 2 to schedule 5 (*Software*).
- 1.4 The Supplier, shall agree, upon request, to allow use of the licences granted pursuant to paragraph 2 of schedule 5 (*Software*) to any body (including any private sector body) which performs or carries out any of the functions and/or activities that previously had been performed and/or carried out by the Authority, provided that:
- (a) the Supplier COTS Software to which the licence(s) relate is accessed solely on machines which are dedicated to the business (or former business) of the Authority;
  - (b) access and use by the body to whom access is granted shall be subject to the Supplier's licence terms as set out in the final column of the table at paragraph 2 to schedule 5 (*Software*); and
  - (c) the body to whom access is granted enters into confidentiality undertakings equivalent to those set out in this Agreement.
- 1.5 Any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted under paragraph 2 of schedule 5 (*Software*). If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licence granted under paragraph 2 of schedule 5 (*Software*).
- 1.6 If a licence granted under paragraph 2 of schedule 5 (*Software*) is novated under paragraph 1.3 or there is a change of the Authority's status pursuant to paragraph 1.4, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.

- 1.7 In relation to Specially Written Software and/or the Project Specific IPRs, the Authority may sub license under equivalent rights to those under clause 17.3.1 (*Supplier Software and Supplier Background IPRs*) to any Approved Sub Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software and/or the Project Specific IPRs provided that:
- (a) the sub-licence is on terms no broader than those granted to the Authority (but may include equivalent rights to sub-licence, assign or novate as set out in clauses 17.6 and 17.7); and
  - (b) any Approved Sub Licensee that is not a Central Government Body shall be subject to confidentiality undertakings equivalent to those set out in this Agreement.
- 1.8 The Parties agree that they will update this schedule periodically to record any Supplier Software or Third Party Software subsequently licensed by the Supplier or third parties for the purposes of the delivery of the Services.

**2. SUPPLIER SOFTWARE**

The Supplier Software includes the following items:

REDACTED.

**3. THIRD PARTY SOFTWARE**

The Third Party Software shall include the following items:

REDACTED.

**ANNEX 1: FORM OF LETTER RE SUB-LICENSING OF SUPPLIER COTS SOFTWARE  
AND SUPPLIER COTS BACKGROUND IPRS**

*[Supplier letterhead]*

*[insert Authority  
name and address]*

*[Date]*

Dear Sirs

**LICENCES FOR SUPPLIER COTS SOFTWARE AND SUPPLIER COTS  
BACKGROUND IPRs**

We refer to the agreement between us dated *[insert date]* in respect of *[brief summary of subject of the Agreement]* ("**Agreement**"). Capitalised expressions used in this letter have the same meanings as in the Agreement.

In accordance with clause 17.3.2 of the Agreement we confirm that:

- the Authority is licensed by the Supplier to use the Supplier COTS Software and Supplier COTS Background IPRs identified in the first column of the Appendix to this letter ("**Appendix**") on the terms of the licences identified in the second column of the Appendix ("**Licences**"); and
- notwithstanding any provision to the contrary in the Licences, it is agreed that the Authority may sub-license, assign and novate the Supplier COTS Software and Supplier COTS Background IPRs as referred to in clause 17.3.2 of the Agreement.

Yours faithfully,

Signed:

**On behalf of** *[name of the Supplier]*

**ANNEX 2: FORM OF CONFIDENTIALITY UNDERTAKING**

**CONFIDENTIALITY AGREEMENT**

**THIS AGREEMENT** is made on *[date]* 20◆

**BETWEEN:**

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

**WHEREAS:**

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

**IT IS AGREED as follows:**

**1. Interpretation**

1.1 In this Agreement, unless the context otherwise requires:

**"Confidential Information"** means:

- (a) Information, including all personal data within the meaning of the Data Protection Act 1998, and however it is conveyed, provided by the Authority to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:
  - (i) the Supplier; or
  - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;
- (b) the source code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation supplied by the Supplier to the Authority pursuant to or in connection with the Sub-licence;

- (c) other Information provided by the Authority pursuant to this Agreement to the Sub-licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub-licensee's attention or into the Sub-licensee's possession in connection with the Sub-licence; and
- (d) Information derived from any of the above, but not including any Information that:
  - (i) was in the possession of the Sub-licensee without obligation of confidentiality prior to its disclosure by the Authority;
  - (ii) the Sub-licensee obtained on a non-confidential basis from a third party who is not, to the Sub-licensee's knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Sub-licensee;
  - (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
  - (iv) was independently developed without access to the Confidential Information;

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

**"Sub-licence"** has the meaning given to that expression in recital (B) to this Agreement.

1.2 In this Agreement:

- (a) a reference to any gender includes a reference to other genders;
- (b) the singular includes the plural and vice versa;
- (c) the words "include" and cognate expressions shall be construed as if they were immediately followed by the words "without limitation";
- (d) references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;
- (e) headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- (f) references to Clauses are to clauses of this Agreement.

**2. Confidentiality Obligations**

2.1 In consideration of the Authority entering into the Sub-licence, the Sub-licensee shall:

- (a) treat all Confidential Information as secret and confidential;

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

### **3. Permitted Disclosures**

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

- (b) ask the court or other public body to treat the Confidential Information as confidential.

#### **4. General**

4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.

4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:

- (a) to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;
- (b) to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
- (c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.

4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub-licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub-licensee of any of the provisions of this Agreement. Accordingly, the Sub-licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.

4.5 The maximum liability of the Sub-licensee to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).

4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.

4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.

4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

#### **5. Notices**

5.1 Any notice to be given under this Agreement (each a "**Notice**") shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of

delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in clause 5.2.

5.2 Any Notice:

(a) if to be given to the Supplier shall be sent to:

[Address]

Attention: [Contact name and/or position, eg "The Finance Director"]

(b) if to be given to the Sub-licensee shall be sent to:

[Name of Organisation]

[Address]

Attention: [◆ ]

**6. Governing law**

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

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

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

**For and on behalf of [name of Supplier]**

Signature: \_\_\_\_\_

Date:

Name:

Position:

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

Signature: \_\_\_\_\_

Date:

Name:

Position:

**SCHEDULE 6.1: IMPLEMENTATION PLAN**

## Implementation Plan

### 1. INTRODUCTION

This schedule:

- (a) defines the process for the preparation and implementation of the Outline Implementation Plan and Detailed Implementation Plan; and
- (b) identifies the Milestones (and associated Deliverables) including the Milestones which are linked to a CPP Milestone.

### 2. OUTLINE IMPLEMENTATION PLAN

- 2.1 The Outline Implementation Plan is set out in annex 1.
- 2.2 All changes to the Outline Implementation Plan shall be subject to the Change Control Procedure provided that the Supplier shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise, unless otherwise agreed with the Authority (except in accordance with clause 31 (*Authority Cause*)).

### 3. APPROVAL OF THE DETAILED IMPLEMENTATION PLAN

- 3.1 The Supplier shall submit a draft of the Detailed Implementation Plan to the Authority for approval within 20 Working Days of the Effective Date.
- 3.2 The Supplier shall ensure that the draft Detailed Implementation Plan:
  - (a) incorporates all of the Milestones and Milestone Dates set out in the Outline Implementation Plan;
  - (b) includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones:
    - (i) the completion of each design document;
    - (ii) the completion of the build phase;
    - (iii) the completion of any Testing to be undertaken in accordance with schedule 6.2 (*Testing Procedures*); and
    - (iv) training and roll-out activities;
  - (c) clearly outlines all the steps required to implement the Milestones to be achieved in the next 15 months, and;
  - (d) together with a high level plan for the rest of the programme, in conformity with the Authority Requirements;
  - (e) clearly outlines the required roles and responsibilities of both Parties, including staffing requirements; and
  - (f) is produced using a software tool as specified, or agreed by the Authority.

- 3.3 Prior to the submission of the draft Detailed Implementation Plan to the Authority in accordance with paragraph 3.1, the Authority shall have the right:
- (a) to review any documentation produced by the Supplier in relation to the development of the Detailed Implementation Plan, including:
    - (i) details of the Supplier's intended approach to the Detailed Implementation Plan and its development;
    - (ii) copies of any drafts of the Detailed Implementation Plan produced by the Supplier; and
    - (iii) any other work in progress in relation to the Detailed Implementation Plan; and
  - (b) to require the Supplier to include any reasonable changes or provisions in the Detailed Implementation Plan.
- 3.4 Following receipt of the draft Detailed Implementation Plan from the Supplier, the Authority shall:
- (a) review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and
  - (b) notify the Supplier in writing that it approves or rejects the draft Detailed Implementation Plan no later than five days after the date on which the draft Detailed Implementation Plan is first delivered to the Authority.
- 3.5 If the Authority rejects the draft Detailed Implementation Plan:
- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
  - (b) the Supplier shall then revise the draft Detailed Implementation Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Authority for the Authority's approval within five days of the date of the Authority's notice of rejection. The provisions of paragraph 3.4 and this paragraph 3.5 shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 3.6 If the Authority approves the draft Detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of the Authority's notice of approval.

#### **4. UPDATES TO AND MAINTENANCE OF THE DETAILED IMPLEMENTATION PLAN**

- 4.1 Following the approval of the Detailed Implementation Plan by the Authority:
- (a) the Supplier shall submit a revised Detailed Implementation Plan to the Authority every three months starting three months from the Effective Date;
  - (b) without prejudice to paragraph 4.1(a), the Authority shall be entitled to request a revised Detailed Implementation Plan at any time by giving written notice to the

Supplier and the Supplier shall submit a draft revised Detailed Implementation Plan to the Authority within 20 Working Days of receiving such a request from the Authority (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure);

- (c) any revised Detailed Implementation Plan shall (subject to paragraph 4.2) be submitted by the Supplier for approval in accordance with the procedure set out in paragraph 3; and
- (d) the Supplier's performance against the Implementation Plan shall be monitored at meetings of the Service Management Board (as defined in schedule 8.1 (*Governance*)). In preparation for such meetings, the current Detailed Implementation Plan shall be provided by the Supplier to the Authority not less than five Working Days in advance of each meeting of the Service Management Board.

4.2 Save for any amendments which are of a type identified and notified by the Authority (at the Authority's discretion) to the Supplier in writing as not requiring approval, any material amendments to the Detailed Implementation Plan shall be subject to the Change Control Procedure provided that:

- (a) any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments; and
- (b) in no circumstances shall the Supplier be entitled to alter or request an alteration to any Milestone Date, unless otherwise agreed with the Authority, except in accordance with clause 31 (*Authority Cause*).

4.3 Any proposed amendments to the Detailed Implementation Plan shall not come into force until they have been approved in writing by the Authority.

## 5. GOVERNMENT REVIEWS

The Supplier acknowledges that the Services may be subject to Government review at key stages of the project. The Supplier shall cooperate with any bodies undertaking such review and shall allow for such reasonable assistance as may be required for this purpose within the Charges.

**ANNEX 1: OUTLINE IMPLEMENTATION PLAN**

Milestone Date is the date by which Deliverables will be submitted for approval.

REDACTED

OFFICIAL - SENSITIVE - COMMERCIAL

**SCHEDULE 6.2: TESTING PROCEDURES**

## 1. DEFINITIONS

In this schedule, the following definitions shall apply:

**"Component"** means any constituent parts of the infrastructure for a Service, hardware or Software;

**"Documentary Deliverable(s)"** means a Deliverable or a component part of a Deliverable which is documentary in nature and does not of itself comprise the execution of a change or addition to, or the deletion, enhancement or modification of, any part of the Authority System or the Supplier System;

**"Material Test Issue"** means a Test Issue of Severity Level 1 or Severity Level 2;

**"Severity Level"** means the level of severity of a Test Issue, the criteria for which are described in annex 1;

**"Test Certificate"** means a certificate materially in the form of the document contained in annex 2 issued by the Authority when a Deliverable has satisfied its relevant Test Success Criteria;

**"Test Issue"** means any variance or non-conformity of a Deliverable from its requirements (such requirements being set out in the relevant Test Success Criteria);

**"Test Issue Threshold"** means, in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan;

**"Test Issue Management Log"** means a log for the recording of Test Issues as described further in paragraph 9.1;

**"Test Plan"** means a plan:

- (a) for the Testing of Deliverables; and
- (b) setting out other agreed criteria related to the achievement of Milestones,

as described further in paragraph 5;

**"Test Reports"** means the reports to be produced by the Supplier setting out the results of Tests;

**"Test Specification"** means the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in paragraph 7;

**"Test Strategy"** means a strategy for the conduct of Testing as described further in paragraph 4;

**"Test Success Criteria"** means in relation to a Test, the test success criteria for that Test as referred to in paragraph 6;

**"Test Witness"** means any person appointed by the Authority pursuant to paragraph 10.1; and

**"Testing Procedures"** means the applicable testing procedures and Test Success Criteria set out in this schedule.

## **2. RISK**

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

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

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

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

## **3. TESTING OVERVIEW**

3.1 Documentary Deliverables shall not be subject to Testing but shall be subject to the provisions of paragraph 14.

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

3.3 The Supplier shall not submit any Deliverable for Testing:

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

- 3.4 The Supplier shall use reasonable endeavours to submit each Deliverable which is not a Documentary Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.
- 3.5 Prior to the issue of a Test Certificate, the Authority shall be entitled to review the relevant Test Reports and the Test Issue Management Log.
- 3.6 Any Disputes between the Authority and the Supplier regarding Testing shall be referred to the Dispute Resolution Procedure using the Expedited Dispute Timetable.

#### **4. TEST STRATEGY**

- 4.1 The Supplier shall develop the final Test Strategy as soon as practicable after the Effective Date but in any case no later than 20 Working Days (or such other period as the Parties may agree in writing) after the Effective Date.
- 4.2 The final Test Strategy shall include:
  - (a) an overview of how Testing will be conducted in accordance with the Implementation Plan;
  - (b) the process to be used to capture and record Test results and the categorisation of Test Issues;
  - (c) the method for mapping the expected Test results to the Test Success Criteria;
  - (d) the procedure to be followed if a Deliverable fails to satisfy the Test Success Criteria or produces unexpected results, including a procedure for the resolution of Test Issues;
  - (e) the procedure to be followed to sign off each Test;
  - (f) the process for the production and maintenance of Test Reports and reporting, including templates for the Test Reports and the Test Issue Management Log, and a sample plan for the resolution of Test Issues;
  - (g) the names and contact details of the Authority's and the Supplier's Test representatives;
  - (h) a high level identification of the resources required for Testing, including facilities, infrastructure, personnel and Authority and/or third party involvement in the conduct of the Tests;
  - (i) the technical environments required to support the Tests; and
  - (j) the procedure for managing the configuration of the Test environments.

#### **5. TEST PLANS**

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

5.2 Each Test Plan shall include as a minimum:

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

5.3 The Authority shall not unreasonably withhold or delay its approval of the Test Plans provided that the Supplier shall incorporate any reasonable requirements of the Authority in the Test Plans.

## 6. TEST SUCCESS CRITERIA

The Test Success Criteria for:

- (a) each Test that must be Achieved for the Supplier to Achieve each CPP Milestone are set out in annex 4; and
- (b) all other Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to paragraph 5.

## 7. TEST SPECIFICATION

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

- 7.2 Each Test Specification shall include as a minimum:
- (a) the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Authority and the extent to which it is equivalent to live operational data;
  - (b) a plan to make the resources available for Testing;
  - (c) Test scripts;
  - (d) Test pre-requisites and the mechanism for measuring them; and
  - (e) expected Test results, including:
    - (i) a mechanism to be used to capture and record Test results; and
    - (ii) a method to process the Test results to establish their content.

## **8. TESTING**

- 8.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.
- 8.2 The Supplier shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with paragraph 10.
- 8.3 The Supplier shall notify the Authority at least 10 Working Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Tests and the Authority shall ensure that the Test Witnesses attend the Tests, except where the Authority has specified in writing that such attendance is not necessary.
- 8.4 The Authority may raise and close Test Issues during the Test witnessing process.
- 8.5 The Supplier shall provide to the Authority in relation to each Test:
- (a) a draft Test Report not less than 2 Working Days (or such other period as the Parties may agree in writing) prior to the date on which the Test is planned to end; and
  - (b) the final Test Report within five Working Days (or such other period as the Parties may agree in writing) of completion of Testing.
- 8.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
- (a) an overview of the Testing conducted;
  - (b) identification of the relevant Test Success Criteria that have been satisfied;
  - (c) identification of the relevant Test Success Criteria that have not been satisfied together with the Supplier's explanation of why those criteria have not been met;

- (d) the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
- (e) the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with paragraph 9.1; and
- (f) the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.

**9. TEST ISSUES**

- 9.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in annex 1 and the Test Issue Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.
- 9.2 The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Authority upon request.
- 9.3 The Authority shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Supplier. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

**10. TEST WITNESSING**

- 10.1 The Authority may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Authority, each of whom shall have appropriate skills to fulfil the role of a Test Witness.
- 10.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
- 10.3 The Test Witnesses:
  - (a) shall actively review the Test documentation;
  - (b) will attend and engage in the performance of the Tests on behalf of the Authority so as to enable the Authority to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;
  - (c) shall not be involved in the execution of any Test;
  - (d) shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
  - (e) may produce and deliver their own, independent reports on Testing, which may be used by the Authority to assess whether the Tests have been Achieved;

- (f) may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
- (g) may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

## 11. TEST QUALITY AUDIT

- 11.1 Without prejudice to its rights pursuant to clause 12.2.2 (*Records, Reports, Audits & Open Book Data*), the Authority may perform on-going quality audits in respect of any part of the Testing (each a "**Testing Quality Audit**") subject to the provisions set out in the agreed Quality Plan.
- 11.2 The focus of the Testing Quality Audits shall be on:
  - (a) adherence to an agreed methodology;
  - (b) adherence to the agreed Testing process;
  - (c) adherence to the Quality Plan;
  - (d) review of status and key development issues; and
  - (e) identification of key risk areas.
- 11.3 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 11.4 The Authority will give the Supplier at least five Working Days' written notice of the Authority's intention to undertake a Testing Quality Audit and the Supplier may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the Supplier's reasonable opinion, the carrying out of a Testing Quality Audit at the time specified by the Authority will materially and adversely impact the Implementation Plan.
- 11.5 A Testing Quality Audit may involve document reviews, interviews with the Supplier Personnel involved in or monitoring the activities being undertaken pursuant to this schedule, the Authority witnessing Tests and demonstrations of the Deliverables to the Authority. Any Testing Quality Audit shall be limited in duration to a maximum time to be agreed between the Supplier and the Authority on a case by case basis (such agreement not to be unreasonably withheld or delayed). The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Authority to enable it to carry out the Testing Quality Audit.
- 11.6 If the Testing Quality Audit gives the Authority concern in respect of the Testing Procedures or any Test, the Authority shall:
  - (a) discuss the outcome of the Testing Quality Audit with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities; and
  - (b) subsequently prepare a written report for the Supplier detailing its concerns,and the Supplier shall, within a reasonable timeframe, respond in writing to the Authority's report.

11.7 In the event of an inadequate response to the Authority's report from the Supplier, the Authority (acting reasonably) may withhold a Test Certificate (and consequently delay the grant of a Milestone Achievement Certificate) until the issues in the report have been addressed to the reasonable satisfaction of the Authority.

## **12. OUTCOME OF TESTING**

12.1 The Authority shall issue a Test Certificate as soon as reasonably practicable when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.

12.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Authority shall notify the Supplier and:

- (a) the Authority may issue a Test Certificate conditional upon the remediation of the Test Issues;
- (b) where the Parties agree that there is sufficient time prior to the relevant Milestone Date, the Authority may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or
- (c) where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Authority's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of clause 27.1 (*Rectification Plan Process*).

12.3 The Authority shall be entitled, without prejudice to any other rights and remedies that it has under this Agreement, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.

## **13. ISSUE OF MILESTONE ACHIEVEMENT CERTIFICATE**

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

- (a) the issuing by the Authority of Test Certificates and/or conditional Test Certificates in respect of all Deliverables (which are not Documentary Deliverables) related to that Milestone which are due to be Tested; and
- (b) the approval by the Authority of all Documentary Deliverables related to that Milestone in accordance with the provisions of paragraph 14 (*Documentary Deliverables*); and
- (c) performance by the Supplier of any other tasks identified in the Implementation Plan as associated with that Milestone.

13.2 The grant of a Milestone Achievement Certificate in respect of a CPP Milestone shall entitle the Supplier to the receipt of payment of all Service Charge Retentions which relate to that CPP Milestone in accordance with the provisions of schedule 7.1 (*Charges and Invoicing*).

- 13.3 If a Milestone is not Achieved, the Authority shall promptly issue a report to the Supplier setting out:
- (a) the applicable Test Issues; and
  - (b) any other reasons for the relevant Milestone not being Achieved.
- 13.4 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Authority shall issue a Milestone Achievement Certificate.
- 13.5 If there is one or more Material Test Issue(s), the Authority shall refuse to issue a Milestone Achievement Certificate and, without prejudice to the Authority's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of clause 27.1 (*Rectification Plan Process*).
- 13.6 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Authority may at its discretion (without waiving any rights in relation to the other options) choose to issue a Milestone Achievement Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:
- (a) any Rectification Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless the Authority agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Authority within 10 Working Days of receipt of the Authority's report pursuant to paragraph 13.3); and
  - (b) where the Authority issues a conditional Milestone Achievement Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

#### **14. DOCUMENTARY DELIVERABLES**

- 14.1 The Supplier shall submit a Documentary Deliverable for the Authority's approval once all associated Test Success Criteria have been met.
- 14.2 Before submitting any Documentary Deliverables for the Authority's approval, the Supplier shall subject the relevant Documentary Deliverables to its own internal quality control measures.
- 14.3 Unless otherwise specified in the Detailed Implementation Plan, the Authority shall, within five Working Days of receiving a Documentary Deliverable either approve the Documentary Deliverable or provide the Supplier with a written list of requested changes, which changes shall not vary the substance of the Supplier's obligations or the Test Success Criteria in relation to that Documentary Deliverable.
- 14.4 If the Documentary Deliverable is not approved by the Authority, the Supplier shall amend it within five Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for approval. If the Authority does not approve the Documentary Deliverable following its resubmission, the matter shall be referred to the Dispute Resolution Procedure or, in the circumstances set out in clause 27.1, the Rectification Plan Process.
- 14.5 In the event the Authority neither approves nor rejects the Documentary Deliverable within five Working Days of receipt, the Supplier will serve on the Authority a notice of non-

response. If the Authority does not respond within two Working Days of receipt of the notice of non-response the matter shall be referred to the Dispute Resolution Procedure.

**ANNEX 1: TEST ISSUES – SEVERITY LEVELS**

1. **Severity Level 1 Test Issue:** a Test Issue that causes non-recoverable conditions, eg it is not possible to continue using a Component, a Component crashes, there is database or file corruption, or data loss.
2. **Severity Level 2 Test Issue:** a Test Issue for which, as reasonably determined by the Authority, there is no practicable workaround available, and which:
  - 2.1 causes a Component to become unusable;
  - 2.2 causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
  - 2.3 has an adverse impact on any other Component(s) or any other area of the Services.
3. **Severity Level 3 Test Issue:** a Test Issue which:
  - 3.1 causes a Component to become unusable;
  - 3.2 causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
  - 3.3 has an impact on any other Component(s) or any other area of the Services,  
  
but for which, as reasonably determined by the Authority, there is a practicable workaround available.
4. **Severity Level 4 Test Issue:** a Test Issue which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Services.
5. **Severity Level 5 Test Issue:** a Test Issue that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Services.

**ANNEX 2: TEST CERTIFICATE**

To: [Name of Supplier]

FROM: [Name of Authority]

[Date]

Dear Sirs,

**TEST CERTIFICATE**

Deliverables: [insert description of Deliverables]

We refer to the agreement ("**Agreement**") relating to the provision of the Services between the [name of Authority] ("**Authority**") and [name of Supplier] ("**Supplier**") dated [date].

Capitalised terms used in this certificate have the meanings given to them in schedule 1 (*Definitions*) or schedule 6.2 (*Testing Procedures*) of the Agreement.

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

**OR**

[This Test Certificate is issued pursuant to paragraph 12.1 of schedule 6.2 (*Testing Procedures*) of the Agreement on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]\*

*\*delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of [name of Authority]

**ANNEX 3: MILESTONE ACHIEVEMENT CERTIFICATE**

To: *[Name of Supplier]*

FROM: *[Name of Authority]*

*[Date]*

Dear Sirs,

**MILESTONE ACHIEVEMENT CERTIFICATE**

Milestone: *[insert description of Milestone]*

We refer to the agreement ("**Agreement**") relating to the provision of the Services between the *[name of Authority]* (the "**Authority**") and *[name of Supplier]* ("**Supplier**") dated *[date]*.

Capitalised terms used in this certificate have the meanings given to them in schedule 1 (*Definitions*) or schedule 6.2 (*Testing Procedures*) of the Agreement.

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

**OR**

[This Milestone Achievement Certificate is granted pursuant to paragraph 13.1 of schedule 6.2 (*Testing Procedures*) of the Agreement on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]\*

**[For CPP Milestones only]**[You may now issue an invoice in respect of the Service Charge Retention associated with this CPP Milestone in accordance with the provisions of schedule 7.1 (*Charges and Invoicing*).]\*

*\*delete as appropriate*

Yours faithfully

*[Name]*

*[Position]*

acting on behalf of *[Authority]*

**REDACTED**

**SCHEDULE 7.1: CHARGES AND INVOICING**

## 1. DEFINITIONS

In this schedule, the following definitions shall apply:

**"Achieved Profit Margin"** means the cumulative Supplier Profit Margin calculated from (and including) the Effective Date (or, if applicable, the date of the last adjustment to the Charges made pursuant to paragraph 2.2 of part D) to (and including) the last day of the previous Contract Year;

**"Anticipated Contract Life Profit Margin"** means the anticipated Supplier Profit Margin over the Term as reflected in table 2 of annex 2 (*Service Charges*) to this schedule;

**"Certificate of Costs"** means a certificate of costs signed by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant certificate) and substantially in the format set out in annex 3;

**"Costs"** means the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:

- (a) the total cost to the Supplier or the Key Sub-contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including:
  - (i) base salary paid to the Supplier Personnel;
  - (ii) employer's national insurance contributions;
  - (iii) pension contributions;
  - (iv) car allowances;
  - (v) any other contractual employment benefits;
  - (vi) staff training;
  - (vii) work place accommodation;
  - (viii) work place IT equipment and tools reasonably necessary to perform the Services (but not including items included within limb (b) below); and
  - (ix) reasonable recruitment costs, as agreed with the Authority;
- (b) costs incurred in respect of those Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Assets by the Supplier to the Authority or (to the extent that risk and title in any Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Assets. Where the Supplier is using Supplier Software and Supplier Equipment in the delivery of the Services, the costs are based upon the charge to the Supplier by a business unit within the Supplier and represents the lowest price obtainable at the relevant time of purchase;

(c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the delivery of the Services;

(d) Reimbursable Expenses;

but excluding:

- (i) Overhead;
- (ii) financing or similar costs;
- (iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term, whether in relation to Assets or otherwise;
- (iv) taxation;
- (v) fines and penalties;
- (vi) amounts payable under schedule 7.3 (Benchmarking); and
- (vii) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

**"Firm Price"** means a price which is not subject to any change (including indexation or currency fluctuation) other than through the Change Control Procedure;

**"Man Day"** REDACTED Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;

**"Man Hours"** means the hours spent by the Supplier Personnel properly working on the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;

**"Maximum Permitted Profit Margin"** means the Anticipated Contract Life Profit Margin REDACTED

**"Overhead"** means those amounts which are intended to recover a proportion of the Supplier's or the Key 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" or the day cost set out in the Supplier Personnel Rate Cards at table 1 of annex 1;

**"Reimbursable Expenses"** means reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Authority's travel and subsistence policy current from time to time, but not including:

(a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are

principally to be performed, unless the Authority otherwise agrees in advance in writing; and

- (b) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;

**"Supplier Profit"** means in relation to a period or a Milestone (as the context requires), the difference between the total Charges (in nominal cash flow terms but excluding any deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;

**"Supplier Profit Margin"** means in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage; and

**"Supporting Documentation"** means sufficient information in writing to enable the Authority reasonably to assess whether the Charges, Reimbursable Expenses and other sums due from the Authority detailed in the information are properly payable, including any relevant evidence of the Supplier's performance of its obligations under this Agreement. For Milestones which are not linked to a CPP Milestone and which according to the Implementation Plan fall due for Achievement in the period to which the invoice relates, this may include copies of any applicable Milestone Achievement Certificates or receipts. For Milestones which are linked to a CPP Milestone, copies of any applicable Milestone Achievement Certificates or receipts shall be required only for invoices relating to the release of associated Service Charge Retentions.

REDACTED.

**PART A:**

REDACTED

**PART B:**

**ANNEX 2: CHARGES**

**REDACTED**

**ANNEX 3: PRO-FORMA CERTIFICATE OF COSTS**

I [*name of CFO or Director of Finance or equivalent as agreed in advance in writing with the Authority*] of [*insert name of Supplier*], certify that the financial information provided as part of this Certificate of Costs, incurred in relation to the [*insert name/reference for the Agreement*] ("**Agreement**") in relation to the following [Milestone]:

*[Insert details of Milestone]*

1. has been reasonably and properly incurred in accordance with [*name of Supplier*]'s books, accounts, other documents and records;
2. is accurate and not misleading in all key respects; and
3. is in conformity with the Agreement and with all generally accepted accounting principles within the United Kingdom.

Signed [*Director of Finance or equivalent*]

[*Name of Supplier*]

**ANNEX 4: RISK REGISTER**

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OFFICIAL - SENSITIVE - COMMERCIAL

**ANNEX 5: ALLOWABLE ASSUMPTIONS**

REDACTED

**ANNEX 6: EXPENSES POLICY**

REDACTED

**SCHEDULE 7.2: PAYMENTS ON TERMINATION**

## 1. DEFINITIONS

1.1 In this schedule, the following definitions shall apply:

**"Compensation Payment"** means the payment calculated in accordance with paragraphs 2.6 to 2.8;

**"Request for Estimate"** means a written request sent by the Authority to the Supplier, requiring that the Supplier provide it with an accurate estimate of the Termination Payment and Compensation Payment that would be payable if the Authority exercised its right under clause 33.1.1 (*Termination by the Authority*) to terminate this Agreement for convenience on a specified Termination Date;

**"Termination Estimate"** has the meaning given in paragraph 8.2; and

**"Third Party Contract"** means a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the Services, as listed in schedule 4.4 (*Third Party Contracts*).

## 2. TERMINATION PAYMENT

The Termination Payment payable pursuant to clause 34.3.1 (*Payments by the Authority*) shall be those costs incurred by the Supplier directly as a result of the termination of this Agreement which:

- (a) would not have been incurred had this Agreement continued until expiry of the Initial Term, or in the event that the Term has been extended, the expiry of the relevant extension period;
- (b) are unavoidable, proven, reasonable, and not capable of recovery;
- (c) are incurred under arrangements or agreements that are directly associated with this Agreement;
- (d) are not costs relating to contracts or Sub-contracts with Affiliates of the Supplier; and
- (e) relate directly to the termination of the Services.

### **Redundancy Costs**

2.2 The Authority shall not be liable under this schedule for any costs associated with Supplier Personnel (whether relating to redundancy, redeployment or otherwise).

2.3 The Supplier shall only be entitled to include in the Termination Payment costs in respect of Third Party Contracts or Sub-contracts which:

- (a) are not assigned or novated to a Replacement Supplier at the request of the Authority in accordance with schedule 8.5 (*Exit Management*); and
- (b) the Supplier can demonstrate:

- (i) are surplus to the Supplier's requirements after the Termination Date, whether in relation to use internally within its business or in providing services to any of its other customers; and
  - (ii) have been entered into by it in the ordinary course of business.
- 2.4 The Supplier shall seek to negotiate termination of any Third Party Contracts or Sub-contracts with the relevant third party or Sub-contractor (as the case may be) using all reasonable endeavours to minimise the cancellation or termination charges.
- 2.5 Except with the prior written agreement of the Authority, the Authority shall not be liable for any costs (including cancellation or termination charges) that the Supplier is obliged to pay in respect of:
  - (a) the termination of any contractual arrangements for occupation of, support of and/or services provided for Supplier premises which may arise as a consequence of the termination of this Agreement; and/or
  - (b) Assets not yet installed at the Termination Date.

### Compensation Payment

- 2.6 The Compensation Payment payable pursuant to clause 34.3.2 (*Payments by the Authority*) shall REDACTED
- 2.7 For the purposes of paragraph 2.6, the “**Shortfall Period**” means:
  - (a) where the Authority terminates this Agreement in its entirety pursuant to clause 33.1.1 (*Termination by the Authority*), a number of days equal to the number of days by which the notice given (or deemed given pursuant to paragraph 2.1(d) of part D of schedule 7.1 (*Charges and Invoicing*)) falls short of 365 days;but subject to the limit set out in paragraph 2.8.

2.8 REDACTED

### 3. MITIGATION OF TERMINATION PAYMENT COSTS

- 3.1 The Supplier agrees to use all reasonable endeavours to minimise and mitigate the Termination Payment costs by:
  - (a) the appropriation of Assets, employees and resources for other purposes;
  - (b) at the Authority's request, assigning any Third Party Contracts and Sub-contracts to the Authority or a third party acting on behalf of the Authority; and
  - (c) in relation Third Party Contracts and Sub-contract that are not to be assigned to the Authority or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.
- 3.2 If Assets, employees and resources can be used by the Supplier for other purposes, then there shall be an equitable reduction in the costs payable by the Authority or a third party to the Supplier. In the event of any Dispute arising over whether the Supplier can use any Assets, employees and/or resources for other purposes and/or over the amount of the relevant

equitable reduction, the Dispute shall be referred to an Expert for determination in accordance with the procedure detailed in schedule 8.3 (*Dispute Resolution Procedure*).

#### **4. FULL AND FINAL SETTLEMENT**

Any Termination Payment and/or Compensation Payment paid under this schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Authority pursuant to clause 33.1.1 (*Termination by the Authority*) or termination by the Supplier pursuant to clause 33.3.1 (*Termination by the Supplier*) (as applicable), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

#### **5. INVOICING FOR THE PAYMENTS ON TERMINATION**

All sums due under this schedule shall be payable by the Authority to the Supplier in accordance with the payment terms set out in schedule 7.1 (*Charges and Invoicing*).

#### **6. SET OFF**

The Authority shall be entitled to set off any outstanding liabilities of the Supplier against any amounts that are payable by it pursuant to this schedule.

#### **7. NO DOUBLE RECOVERY**

7.1 If any amount payable under this schedule (in whole or in part) relates to or arises from any Transferring Assets then, to the extent that the Authority makes any payments pursuant to schedule 8.5 (*Exit Management*) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this schedule.

7.2 The value of the Termination Payment and/or the Compensation Payment shall be reduced or extinguished to the extent that the Supplier has already received the Charges or the financial benefit of any other rights or remedy given under this Agreement so that there is no double counting in calculating the relevant payment.

7.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

#### **8. ESTIMATE OF TERMINATION PAYMENT AND COMPENSATION PAYMENT**

8.1 The Authority may issue a Request for Estimate at any time during the Term provided that no more than two Requests for Estimate may be issued in any six month period.

8.2 The Supplier shall within 20 Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Termination Payment and the Compensation Payment that would be payable by the Authority based on a postulated Termination Date specified in the Request for Estimate (such estimate being the "**Termination Estimate**"). The Termination Estimate shall:

- (a) be based on the relevant amounts set out in the Financial Model;
- (b) include:
  - (i) details of the mechanism by which the Termination Payment is calculated;

- (ii) full particulars of the estimated costs in respect of each Sub-contract or Third Party Contract and appropriate supporting documentation; and
    - (iii) such information as the Authority may reasonably require; and
  - (c) state the period for which that Termination Estimate remains valid, which shall be not less than 20 Working Days.
- 8.3 The Supplier acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Authority to terminate this Agreement.
- 8.4 If the Authority issues a Termination Notice to the Supplier within the stated period for which a Termination Estimate remains valid, the Supplier shall use the same mechanism to calculate the Termination Payment as was detailed in the Termination Estimate unless otherwise agreed in writing between the Supplier and the Authority.

**SCHEDULE 7.3: BENCHMARKING**

## 1. DEFINITIONS

In this schedule, the following definitions shall apply:

**"Benchmarked Service"** means a Service that the Authority elects to include in a Benchmark Review under paragraph 2.3;

**"Benchmarker"** means the independent third party appointed under paragraph 3.1;

**"Benchmark Report"** means the report produced by the Benchmarker following the Benchmark Review as further described in paragraph 5;

**"Benchmark Review"** means a review of one or more of the Services carried out in accordance with paragraph 4 to determine whether those Services represent Good Value;

**"Comparable Service"** means in relation to a Benchmark Service, a service that is identical or materially similar to the Benchmark Service (including in terms of scope, specification, volume and quality of performance);

**"Comparison Group"** means in relation to a Comparable Service, a sample group of organisations providing the Comparable Service identified by the Benchmarker under paragraph 4.8 which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker's professional opinion) fair comparators with the Supplier or which, in the professional opinion of the Benchmarker, are best practice organisations and, where there are a reasonable number of such organisations, referencing only those organisations that are carrying on at least a significant part of their business within the United Kingdom;

**"Equivalent Services Data"** means in relation to a Comparable Service, data derived from an analysis of the Comparable Service provided by the Comparison Group as adjusted in accordance with paragraphs 4.8(a) and 4.9 provided that the Benchmarker shall not use any such data that relates to a period which ended more than 36 months prior to the date of the appointment of the Benchmarker;

**"Good Value"** means in relation to a Benchmark Service, that:

- (a) having taken into account the Performance Indicators and Target Service Levels, the value for money of the Charges attributable to that Benchmark Service is at least as good as the value for money of the Upper Quartile; and
- (b) any Performance Indicators and Target Service Levels applicable to that Benchmark Service are, having taken into account the Charges, equal to or better than the median service levels for the Comparable Service using Equivalent Services Data; and

**"Upper Quartile"** means the top 25% of instances of provision of a Comparable Service by members of the Comparison Group ranked by best value for money to the recipients of that Comparable Service.

## **2. FREQUENCY, PURPOSE AND SCOPE OF BENCHMARK REVIEW**

- 2.1 The Authority may, by written notice to the Supplier, require a Benchmark Review of any or all of the Services in order to establish whether a Benchmarked Service is, and/or the Benchmarked Services as a whole are, Good Value.
- 2.2 The Authority shall not be entitled to carry out a Benchmark Review of any Services during the 12 month period from the Operational Service Commencement Date for those Services, nor at intervals of less than 12 months after any previous Benchmark Review relating to the same Services.
- 2.3 The Services that are to be the Benchmarked Services shall be identified by the Authority in the notice given under paragraph 2.1.

## **3. APPOINTMENT OF BENCHMARKER**

- 3.1 The Authority shall appoint as the Benchmarker to carry out the Benchmark Review either an organisation on the list of organisations set out in annex 1 or such other organisation as may be agreed in writing between the Parties.
- 3.2 The Authority shall, at the written request of the Supplier, require the Benchmarker to enter into a confidentiality agreement with the Supplier in, or substantially in, the form set out in annex [22](#).
- 3.3 The costs and expenses of the Benchmarker and the Benchmark Review shall be shared equally between both Parties provided that each Party shall bear its own internal costs of the Benchmark Review. The Benchmarker shall not be compensated on a contingency fee or incentive basis.
- 3.4 The Authority shall be entitled to pay the Benchmarker's costs and expenses in full and to recover the Supplier's share from the Supplier.

## **4. BENCHMARK REVIEW**

- 4.1 The Authority shall require the Benchmarker to produce, and to send to each Party for approval, a draft plan for the Benchmark Review within 10 Working Days after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker shall reasonably request in all the circumstances. The plan must include:
  - (a) a proposed timetable for the Benchmark Review;
  - (b) a description of the information that the Benchmarker requires each Party to provide;
  - (c) a description of the benchmarking methodology to be used;
  - (d) a description that clearly illustrates that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives under paragraph 2.1;
  - (e) an estimate of the resources required from each Party to underpin the delivery of the plan;
  - (f) a description of how the Benchmarker will scope and identify the Comparison Group;

- (g) details of any entities which the Benchmarker proposes to include within the Comparison Group; and
  - (h) if in the Benchmarker's professional opinion there are no Comparable Services or the number of entities carrying out Comparable Services is insufficient to create a Comparison Group, a detailed approach for meeting the relevant benchmarking objective(s) under paragraph 2.1 using a proxy for the Comparison Services and/or Comparison Group as applicable.
- 4.2 The Parties acknowledge that the selection and or use of proxies for the Comparison Group (both in terms of number and identity of entities) and Comparable Services shall be a matter for the Benchmarker's professional judgment.
- 4.3 Each Party shall give notice in writing to the Benchmarker and to the other Party within 10 Working Days after receiving the draft plan either approving the draft plan or suggesting amendments to that plan which must be reasonable. Where a Party suggests amendments to the draft plan pursuant to this paragraph 4.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 4.1 and this paragraph 4.3 shall apply to any amended draft plan.
- 4.4 Failure by a Party to give notice under paragraph 4.3 shall be treated as approval of the draft plan by that Party. If the Parties fail to approve the draft plan within 30 Working Days of its first being sent to them pursuant to paragraph 4.1 then the Benchmarker shall prescribe the plan.
- 4.5 Once the plan is approved by both Parties or prescribed by the Benchmarker, the Benchmarker shall carry out the Benchmark Review in accordance with the plan. Each Party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the Supplier fails to provide any information requested from it by the Benchmarker and described in the plan, such failure shall constitute a material Default for the purposes of clause 27.1.3 (*Rectification Plan Process*).
- 4.6 Each Party shall co-operate fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the Services.
- 4.7 Either Party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
- 4.8 Once it has received the information it requires, the Benchmarker shall:
- (a) finalise the sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The final selection of the Comparison Group (both in terms of number and identity of entities) and of the Comparable Services shall be a matter for the Benchmarker's professional judgment;
  - (b) derive the Equivalent Services Data by applying the adjustment factors listed in paragraph 4.9 and from an analysis of the Comparable Services;
  - (c) derive the relative value for money of the charges payable for the Comparable Services using the Equivalent Services Data and from that derive the Upper Quartile;

- (d) derive the median service levels relating to the Comparable Services using the Equivalent Services Data;
- (e) compare the value for money of the Charges attributable to the Benchmarked Services (having regard in particular to the applicable Performance Indicators and Target Service Levels) to the value for money of the Upper Quartile;
- (f) compare the Performance Indicators and Target Service Levels attributable to the Benchmarked Services (having regard to the Charges and Service Credits) with the median service levels using the Equivalent Services Data; and
- (g) determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.

4.9 The Benchmarker shall have regard to the following matters when performing a comparative assessment of a Benchmarked Service and a Comparable Service in order to derive Equivalent Services Data:

- (a) the contractual and business environment under which the Services are being provided (including the scope, scale, complexity and geographical spread of the Services);
- (b) any front-end investment and development costs of the Supplier;
- (c) the Supplier's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;
- (d) the extent of the Supplier's management and contract governance responsibilities;
- (e) any other reasonable factors demonstrated by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive (such as erroneous costing, non-sustainable behaviour including excessive consumption of energy or over-aggressive pricing).

## **5. BENCHMARK REPORT**

5.1 The Benchmarker shall be required to prepare a Benchmark Report and deliver it simultaneously to both Parties, at the time specified in the plan approved under paragraph 4, setting out its findings. The Benchmark Report shall:

- (a) include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;
- (b) include other findings (if any) regarding the quality and competitiveness or otherwise of those Services;
- (c) if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Charges, Performance Indicators and/or Target Performance Levels, that would be required to make that Benchmarked Service or those Benchmarked Services as a whole Good Value; and
- (d) illustrate the method used for any normalisation of the Equivalent Services Data

- 5.2 The Benchmarker shall act as an expert and not as an arbitrator.
- 5.3 If the Benchmark Report states that any Benchmarked Service is not Good Value or that the Benchmarked Services as a whole are not Good Value, then the Supplier shall (subject to paragraphs 5.5 and 5.6) implement the changes set out in the Benchmark Report as soon as reasonably practicable within timescales agreed with the Authority but in any event within no more than three months. Any associated changes to the Charges shall take effect only from the same date and shall not be retrospective.
- 5.4 The Supplier acknowledges and agrees that Benchmark Reviews shall not result in any increase to the Charges, disapplication of the Performance Indicators or any reduction in the Target Performance Levels.
- 5.5 The Supplier shall be entitled to reject any Benchmark Report if the Supplier reasonably considers that the Benchmarker has not followed the procedure for the related Benchmark Review as set out in this schedule in any material respect.
- 5.6 The Supplier shall not be obliged to implement any Benchmark Report to the extent this would cause the Supplier to provide the Services at a loss (as determined, by reference to the Financial Model), or to the extent the Supplier cannot technically implement the recommended changes.
- 5.7 In the event of any Dispute arising over whether the Benchmarker has followed the procedure for the related Benchmark Review under paragraph 5.5 and/or any matter referred to in paragraph 5.6, the Dispute shall be referred to Expert Determination. For the avoidance of doubt in the event of a Dispute between the Parties, the Authority shall continue to pay the Charges to the Supplier in accordance with the terms of this Agreement and the Performance Indicators and Target Performance Levels shall remain unchanged pending the conclusion of the Expert Determination.
- 5.8 On conclusion of the Expert Determination:
- (a) if the Expert determines that all or any part of the Benchmark Report recommendations regarding any reduction in the Charges shall be implemented by the Supplier, the Supplier shall immediately repay to the Authority the difference between the Charges paid by the Authority up to and including the date of the Expert's determination and the date upon which the recommended reduction in Charges should have originally taken effect pursuant to paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and
  - (b) if the Expert determines that all or any part of the Benchmark Report recommendations regarding any changes to the Performance Indicators and/or Target Performance Levels shall be implemented by the Supplier:
    - (i) the Supplier shall immediately implement the relevant changes;
    - (ii) the Supplier shall immediately pay an amount equal to any Service Credits which would have accrued up to and including the date of the Expert's determination if the relevant changes had taken effect on the date determined pursuant to paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and

- (iii) the relevant changes shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Agreement.

5.9 Any failure by the Supplier to implement the changes as set out in the Benchmark Report in accordance with the relevant timescales determined in accordance with paragraph 5.3 (unless the provisions of paragraph 5.6 and/or paragraph 5.7 apply) or in accordance with paragraph 5.8 shall, without prejudice to any other rights or remedies of the Authority, constitute a Supplier Termination Event.

**ANNEX 1: APPROVED BENCHMARKERS**

REDACTED

(a) **ANNEX 2: CONFIDENTIALITY AGREEMENT**

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

**BETWEEN:**

- (1) [insert name] of [insert address] ("**Supplier**"); and
- (2) [insert name] of [insert address] ("**Benchmark**") and together with the Supplier, "**Parties**").

**WHEREAS:**

- (A) ([insert name of Authority] ("**Authority**") and the Supplier are party to an Agreement dated [insert date] ("**Agreement**") for the provision by the Supplier of [insert brief description of services] to the Authority.
- (B) The Benchmark is to receive Confidential Information from the Supplier for the purpose of carrying out a benchmarking review for the Authority of one or more of such services pursuant to the terms of the Agreement ("**Permitted Purpose**").

**IT IS AGREED as follows:**

**1. Interpretation**

1.1 In this Agreement, unless the context otherwise requires:

"**Confidential Information**" means:

- (a) Information, including all personal data within the meaning of the Data Protection Act 1998, and however it is conveyed, provided by the Supplier to the Benchmark pursuant to this Agreement that relates to:
  - (i) the Supplier; or
  - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;
- (b) other Information provided by the Supplier pursuant to this Agreement to the Benchmark that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Benchmark's attention or into the Benchmark's possession in connection with the Permitted Purpose;
- (c) discussions, negotiations, and correspondence between the Supplier or any of its directors, officers, employees, consultants or professional advisers and the Benchmark or any of its directors, officers, employees, consultants and professional advisers in connection with the Permitted Purpose and all matters arising therefrom; and
- (d) Information derived from any of the above,

but not including any Information that:

- (e) was in the possession of the Benchmarker without obligation of confidentiality prior to its disclosure by the Supplier;
- (f) the Benchmarker obtained on a non-confidential basis from a third party who is not, to the Benchmarker's knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Benchmarker;
- (g) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
- (h) was independently developed without access to the Confidential Information;

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

**"Permitted Purpose"** has the meaning given to that expression in recital (B) to this Agreement.

1.2 In this Agreement:

- (a) a reference to any gender includes a reference to other genders;
- (b) the singular includes the plural and vice versa;
- (c) the words "include" and cognate expressions shall be construed as if they were immediately followed by the words "without limitation";
- (d) references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;
- (e) headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- (f) references to Clauses are to clauses of this Agreement.

**2. Confidentiality Obligations**

2.1 In consideration of the Supplier providing Confidential Information to the Benchmarker, the Benchmarker shall:

- (a) treat all Confidential Information as secret and confidential;
- (b) have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);

- (c) not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or, if relevant, other owner or except as expressly set out in this Agreement;
- (d) not transfer any of the Confidential Information outside the United Kingdom;
- (e) not use or exploit any of the Confidential Information for any purpose whatsoever other than the Permitted Purpose;
- (f) immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- (g) once the Permitted Purpose has been fulfilled:
  - (i) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
  - (ii) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Benchmarker) from any computer, word processor, voicemail system or any other device; and
  - (iii) make no further use of any Confidential Information.

### **3. Permitted Disclosures**

- 3.1 The Benchmarker may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
  - (a) reasonably need to receive the Confidential Information in connection with the Permitted Purpose; and
  - (b) have been informed by the Benchmarker of the confidential nature of the Confidential Information; and
  - (c) have agreed to terms similar to those in this Agreement.
- 3.2 The Benchmarker shall be entitled to disclose Confidential Information to the Authority for the Permitted Purpose and to any Expert appointed in relation to a Dispute as referred to in paragraph 5.7 of schedule 7.3 (*Benchmarking*) to the Agreement.
- 3.3 The Benchmarker shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Benchmarker.
- 3.4 Before making a disclosure pursuant to clause 3.3, the Benchmarker shall, if the circumstances permit:
  - (a) notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and

- (b) ask the court or other public body to treat the Confidential Information as confidential.

#### **4. General**

- 4.1 The Benchmarker acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
  - (a) to grant the Benchmarker any licence or rights other than as may be expressly stated in this Agreement;
  - (b) to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
  - (c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of this Agreement.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Benchmarker acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Benchmarker of any of the provisions of this Agreement. Accordingly, the Benchmarker acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Benchmarker to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

#### **5. Notices**

- 5.1 Any notice to be given under this Agreement (each a "**Notice**") shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of

delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in clause 5.2.

5.2 Any Notice:

(a) if to be given to the Supplier shall be sent to:

[Address]

Attention: [*Contact name and/or position, eg "The Finance Director"*]

(b) if to be given to the Benchmarker shall be sent to:

[*Name of Organisation*]

[Address]

Attention: [            ]

**6. Governing law**

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

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

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

**For and on behalf of [*name of Supplier*]**

Signature: \_\_\_\_\_

Date:

Name:

Position:

**For and on behalf of [*name of Benchmarker*]**

Signature: \_\_\_\_\_

Date:

Name:

Position:

OFFICIAL - SENSITIVE - COMMERCIAL

**SCHEDULE 7.4: FINANCIAL DISTRESS**

**1. DEFINITIONS**

In this schedule, the following definitions shall apply:

"**Credit Rating Level**" means a credit rating level as specified in annex 2;

"**Credit Rating Threshold**" means the minimum Credit Rating Level for the Supplier as set out in annex 3 and for each Key Sub-contractor as set out in schedule 4.3 (*Notified Key Sub-contractors*); and

"**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 Effective Date the long term credit ratings issued for the Supplier 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 the Supplier (and in any event within five Working Days of the occurrence of the downgrade).

2.3 If there is any downgrade credit rating issued by any Rating Agency for the Supplier, the Supplier shall ensure that the Supplier's 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 four in any Contract Year) with written calculations of the quick ratio for the Supplier 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;

B is the value of all marketable securities held by the Supplier 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; and

D is the value at the relevant date of the current liabilities of the Supplier.

2.4 The Supplier shall:

(a) regularly monitor the credit ratings of the Supplier and each Key Sub-contractor with the Rating Agencies; and

(b) 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(a), the credit rating of the Supplier 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 or relevant Key Sub-contractor (as the case may be) at or below the applicable Credit Rating Level.

### **3. CONSEQUENCES OF A FINANCIAL DISTRESS EVENT**

- 3.1 In the event of:

- (a) the credit rating of the Supplier or any Key Sub-contractor dropping below the applicable Credit Rating Threshold;
- (b) the Supplier or any Key Sub-contractor issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier or any Key Sub-contractor;
- (d) the Supplier or any Key Sub-contractor committing a material breach of covenant to its lenders;
- (e) a Key Sub-contractor notifying the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; or
- (f) any of the following:
  - (i) commencement of any litigation against the Supplier or any Key Sub-contractor with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m;
  - (ii) non-payment by the Supplier or any Key Sub-contractor of any financial indebtedness;
  - (iii) any financial indebtedness of the Supplier or any Key Sub-contractor becoming due as a result of an event of default; or
  - (iv) the cancellation or suspension of any financial indebtedness in respect of the Supplier or any Key Sub-contractor,

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 Services in accordance with this 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(e), the Authority shall not exercise any of its rights or remedies under paragraph 3.3 without first giving the Supplier 10 Working Days to:

- (a) rectify such late or non-payment; or
- (b) 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 any relevant Key Sub-contractor shall):

- (a) at the request of the Authority, meet the Authority as soon as reasonably practicable (and in any event within three 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 Services in accordance with this Agreement; and
- (b) where the Authority reasonably believes (taking into account the discussions and any representations made under paragraph 3.3(a)) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement:
  - (i) submit to the Authority for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within 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
  - (ii) provide such financial information relating to the Supplier 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 Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by the Authority or referred to the Dispute Resolution Procedure under 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 ensure the continued performance of the Supplier's obligations in accordance with the Agreement, 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:
- (a) 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 Services in accordance with this Agreement;
  - (b) where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with paragraph 3.6(a), submit an updated Financial Distress Service Continuity Plan to the Authority for its approval, and the provisions of paragraphs 3.4 and 3.5 shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and
  - (c) 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 the Parties may agree that the Supplier shall be relieved of its obligations under paragraph 3.6.

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

The Authority shall be entitled to terminate this Agreement under clause 33.1(b) (*Termination by the Authority*) if:

- (a) the Supplier fails to notify the Authority of a Financial Distress Event in accordance with paragraph 2.4(b);
- (b) 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
- (c) 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(c).

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

Without prejudice to the Supplier's obligations and the Authority's rights and remedies under paragraph 2, if, following the occurrence of a Financial Distress Event pursuant to any of paragraphs 3.1(b) to 3.1(f), the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

- (a) the Supplier shall be relieved automatically of its obligations under paragraphs 3.3 to 3.6; and
- (b) the Authority shall not be entitled to require the Supplier to provide financial information in accordance with paragraph 3.3(b)(ii).

**ANNEX 1: RATING AGENCIES**

REDACTED

**ANNEX 2: CREDIT RATING LEVELS**

Credit Rating Level

REDACTED

**ANNEX 3: CREDIT RATINGS AND CREDIT RATING THRESHOLDS**

REDACTED

**SCHEDULE 7.5: FINANCIAL REPORTS AND AUDIT RIGHTS**

## FINANCIAL REPORTS AND AUDIT RIGHTS

### 1. DEFINITIONS

In this clause, the following definitions shall apply:

**"Annual Contract Report"** means the annual contract report to be provided by the Supplier to the Authority pursuant to paragraph 1 of part B;

**"Audit Agents"** means:

- (a) the Authority's internal and external auditors;
- (b) the Authority's statutory or regulatory auditors;
- (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (d) HM Treasury or the Cabinet Office;
- (e) any Party formally appointed by the Authority to carry out audit or similar review functions; and
- (f) successors or assigns of any of the above;

**"Contract Amendment Report"** means the contract amendment report to be provided by the Supplier to the Authority pursuant to paragraph 1 of part B;

**"Final Reconciliation Report"** means the final reconciliation report to be provided by the Supplier to the Authority pursuant to paragraph 1 of part B;

**"Financial Model"** means the Contract Inception Report, the latest Annual Contract Report or the latest Contract Amendment Report, whichever has been most recently approved by the Authority in accordance with paragraph 2 of part B;

**"Financial Reports"** means the Contract Inception Report and the reports listed in the table in paragraph 1 of part B;

**"Financial Representative"** means a reasonably skilled and experienced member of the Supplier's staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports;

**"Financial Transparency Objectives"** has the meaning given in paragraph 1 of part A;

**"Material Change"** means a Change which:

- (a) materially changes the profile of the Charges; or
- (b) varies the total Charges payable during the Term (as forecast in the latest Financial Model) by:
  - (i) 5% or more; or
  - (ii) £1m or more;

**"Open Book Data"** 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 remainder of the Term, including details and all assumptions relating to:

- (a) the Supplier's total Costs broken down against each Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual Costs of all hardware and software;
- (b) operating expenditure relating to the provision of the Services including an analysis showing:
  - (i) the unit costs and quantity of consumables and bought-in services;
  - (ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) in accordance with the rate card for Supplier Personnel set out in table 1 of annex 1 (*Pricing Mechanism*) to schedule 7.1 (*Charges and Invoicing*) and as may be supplemented from time to time; and
  - (iii) Reimbursable Expenses;
- (c) Overheads;
- (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- (e) the Supplier Profit achieved over the Term and on an annual basis;
- (f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
- (g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
- (h) the actual Costs profile for each contract year.

## **PART A: FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA**

### **1. FINANCIAL TRANSPARENCY OBJECTIVES**

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

#### **Understanding the Charges**

- (a) for the Authority to understand any payment sought from it by the Supplier including an analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Personnel in providing the Services and the Supplier Profit Margin;
- (b) for both Parties to be able to understand the Financial Model and Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;

#### **Agreeing the impact of Change**

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

#### **Continuous improvement**

- (e) for the Parties to challenge each other with ideas for efficiency and improvements; and
- (f) to enable the Authority to demonstrate that it is achieving value for money for the tax payer relative to current market prices,

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

### **2. OPEN BOOK DATA**

- 2.1 The Supplier acknowledges the importance to the Authority of the Financial Transparency Objectives and the Authority's need for complete transparency in the way in which the Charges are calculated.
- 2.2 During the Term, and for a period of seven years following the end of the Term, the Supplier shall:
  - (a) maintain and retain the Open Book Data; and
  - (b) disclose and allow the Authority and/or the Audit Agents access to the Open Book Data.

**PART B: FINANCIAL REPORTS****1. PROVISION OF THE FINANCIAL REPORTS**

1.1 The Supplier shall provide

- (a) the Contract Inception Report on or before the Effective Date; and
- (b) during the Term the following financial reports to the Authority, in the frequency specified below:

<b>Financial Report</b>	<b>When to be provided</b>
<b>Contract Amendment Report</b>	Within one month of a Material Change being agreed between the Supplier and the Authority
<b>Quarterly Contract Report</b>	Within one month of the end of each Quarter
<b>Annual Contract Report</b>	Within one month of the end of the Contract Year to which that report relates
<b>Final Reconciliation Report</b>	Within six months after the end of the Term

1.2 The Supplier shall provide to the Authority the Financial Reports in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Authority to the Supplier on or before the Effective Date for the purposes of this Agreement. The Authority shall be entitled to modify the template for any Financial Report by giving written notice to the Supplier, including a copy of the updated template.

1.3 A copy of each Financial Report shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.

1.4 Each Financial Report shall:

- (a) be completed by the Supplier using reasonable skill and care;
- (b) incorporate and use the same defined terms as are used in this Agreement;
- (c) quote all monetary values in pounds sterling;
- (d) quote all Costs as exclusive of any VAT; and
- (e) quote all Costs and Charges based on current prices.

1.5 Each Annual Contract Report and the Final Reconciliation Report shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Financial Report), acting with express authority, as:

- (a) being accurate and not misleading;

- (b) having been prepared in conformity with generally accepted accounting principles within the United Kingdom;
- (c) being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and
- (d) compliant with the requirements of paragraph 1.7.

1.6 The Supplier shall:

- (a) prepare each Financial Report using the same methodology as that used for the Contract Inception Report;
- (b) ensure that each Annual Contract Report and each Contract Amendment Report (if any) is a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;
- (c) the Final Reconciliation Report is a true and fair reflection of the Costs; and
- (d) not have any other internal financial model in relation to the Services inconsistent with the Financial Model.

1.7 During the Term, and for a period of 18 months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Authority may have on any of the Financial Reports and/or Open Book Data.

1.8 If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:

- (a) the Costs incurred (or those forecast to be incurred) by the Supplier; and/or
- (b) the forecast Charges for the remainder of the Term,

the Supplier shall, as soon as practicable, notify the Authority in writing of the event in question detailing the actual or anticipated effect. For the avoidance of doubt, notifications provided in accordance with this paragraph 1.8 shall not have the effect of amending any provisions of this Agreement.

## **2. FINANCIAL MODEL**

2.1 Following the delivery by the Supplier of each Annual Contract Report and any Contract Amendment Report:

- (a) the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;
- (b) the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant Financial Report and the Contract Inception Report or immediately preceding Annual Contract Report or Contract Amendment Report (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of the Authority; and
- (c) the Authority shall either within 10 Working Days of the meeting referred to in paragraph 2.1(a) notify the Supplier that:

- (i) the relevant Financial Report contains errors or omissions or that further explanations or supporting information is required, in which event the Supplier shall make any necessary modifications to the Financial Report and/or supply the Authority with such supporting evidence as is required to address the Authority's concerns within 10 Working Days of such notification and the Authority shall following receipt of such amended Financial Report and/or supporting information, approve or reject such Financial Report; or
  - (ii) the Authority has approved the relevant Financial Report.
- 2.2 Following approval by the Authority of the relevant Financial Report in accordance with paragraph 2.1(c), that version shall become, with effect from the date of such approval, the current approved version of the Financial Model for the purposes of this Agreement, a version of which shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.
- 2.3 If the Parties are unable to reach agreement on any Financial Report within 30 Working Days of its receipt by the Authority, the matter shall be referred for determination in accordance with clause 8.3 (*Dispute Resolution Procedure*).

### **3. DISCUSSION OF QUARTERLY CONTRACT REPORTS AND FINAL RECONCILIATION REPORT**

- 3.1 Following the delivery by the Supplier of each Quarterly Contract Report, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.
- 3.2 Following the delivery by the Supplier of the Final Reconciliation Report, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

### **4. KEY SUB-CONTRACTORS**

- 4.1 The Supplier shall, if requested by the Authority, provide (or procure the provision of) a report or reports including the level of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Key Sub-contractors.
- 4.2 Without prejudice to paragraph 1.1 of part C, the Supplier shall:
  - (a) be responsible for auditing the financial models/reports of its Key Sub-contractors and for any associated costs and expenses incurred or forecast to be incurred; and
  - (b) on written request by the Authority, provide the Authority or procure that the Authority is provided with:
    - (i) full copies of audit reports for the Key Sub-contractors. The Authority shall be entitled to rely on such audit reports; and
    - (ii) further explanation of, and supporting information in relation to, any audit reports provided.

## PART C: AUDIT RIGHTS

### 1. AUDIT RIGHTS

- 1.1 The Authority, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of 18 months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Agreement, including for the following purposes:
- (a) to verify the integrity and content of any Financial Report;
  - (b) to verify the accuracy of the Charges and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges and payments);
  - (c) to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
  - (d) to verify the Certificate of Costs and/or the Open Book Data;
  - (e) to verify the Supplier's and each Key Sub-contractor's compliance with this Agreement and applicable Law;
  - (f) to identify or investigate actual or suspected fraud, 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;
  - (g) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Key Sub-contractors or their ability to perform the Services;
  - (h) to 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;
  - (i) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;
  - (j) to 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;
  - (k) to 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;
  - (l) to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
  - (m) to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
  - (n) to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);

- (o) to review the accuracy and completeness of the Registers;
  - (p) to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
  - (q) to review the Supplier's quality management systems (including all relevant quality plans and any quality manuals and procedures);
  - (r) to review the Supplier's compliance with the Standards;
  - (s) to inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or
  - (t) to review the integrity, confidentiality and security of the Authority Data.
- 1.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Agreement, the Authority may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.
- 1.3 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.
- 2. CONDUCT OF AUDITS**
- 2.1 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 2.2 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:
- (a) all information requested by the Authority within the permitted scope of the audit;
  - (b) reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
  - (c) access to the Supplier System; and
  - (d) access to Supplier Personnel.
- 2.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.
- 2.4 The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an audit.

- 2.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this paragraph 2, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

### **3. USE OF SUPPLIER'S INTERNAL AUDIT TEAM**

- 3.1 As an alternative to the Authority's right pursuant to paragraph 1.1 to exercise an audit either itself or through its Audit Agents, the Authority may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in paragraph 1.1.
- 3.2 Following the receipt of a request from the Authority under paragraph 3.1 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:
- (a) the resultant audit reports; and
  - (b) all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

### **4. RESPONSE TO AUDITS**

- 4.1 If an audit undertaken pursuant to paragraphs 1 or 3 identifies that:
- (a) the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
  - (b) there is an error in a Financial Report, the Supplier shall promptly rectify the error;
  - (c) the Authority has overpaid any Charges, the Supplier shall pay to the Authority:
    - (i) the amount overpaid;
    - (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and
    - (iii) the reasonable costs incurred by the Authority in undertaking the audit,the Authority may exercise its right to deduct such amount from the Charges if it prefers; and
  - (d) the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority.

**SCHEDULE 8.1: GOVERNANCE**

## 1. Definitions

In this schedule, the following definitions shall apply:

**"Board Member"** means the initial persons appointed by the Authority and Supplier to the Boards as set out in annex 1 and any replacements from time to time agreed by the Parties in accordance with paragraph 3.3;

**"Innovations Board"** means the body described in paragraph 6;

**"Joint Boards"** means the Security Operations Board, the SOM Progress Board, the Pilot Progress Board and the Senior Management Team and **"Joint Board"** shall mean any of them;

**"Pilot Progress Board"** means the body described in paragraph 8;

**"Project Managers"** means the individuals appointed as such by the Authority and the Supplier in accordance with paragraph 2;

**"Senior Management Team"** means the body described in paragraph 5;

**"Security Operations Board"** means the body described in paragraph 4;

**"Service Managers"** means the individuals appointed as such by the Authority and the Supplier in accordance with paragraph 2; and

**"SOM Progress Board"** means the body described in paragraph 7.

## 2. Delivery and Management of the Services

- 2.1 The Supplier and the Authority shall each appoint a project manager for the purposes of this Agreement through whom the delivery of new Services and Additional Services shall be managed.
- 2.2 The Supplier and the Authority shall each appoint a service manager for the purposes of this Agreement through whom the operation of existing Services shall be managed at a day-to-day.
- 2.3 Both Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Agreement can be fully realised.

## 3. Joint Boards

### Establishment and structure of the Joint Boards

- 3.1 The Joint Boards shall be established by the Authority for the purposes of this Agreement on which both the Supplier and the Authority shall be represented.
- 3.2 In relation to each Joint Board, the:
  - (a) Authority Board Members;
  - (b) Supplier Board Members;

- (c) frequency that the Joint Board shall meet (unless otherwise agreed between the Parties);
- (d) location of the Joint Board's meetings; and
- (e) planned start date by which the Joint Board shall be established,

shall be as set out in annex 1.

- 3.3 In the event that either Party wishes to replace any of its appointed Board Members, that Party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority Board Member has at all times a counterpart Supplier Board Member of equivalent seniority and expertise.

#### **Joint Board meetings**

- 3.4 Each Party shall ensure that its Board Members shall make all reasonable efforts to attend Board meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Joint Board meeting, that person shall use all reasonable endeavours to ensure that:

- (a) a delegate attends the relevant Joint Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and
- (b) that he/she is debriefed by such delegate after the Board Meeting.

- 3.5 A chairperson shall be appointed by the Authority for each Joint Board as identified in annex 1. The chairperson shall be responsible for:

- (a) scheduling Joint Board meetings;
- (b) setting the agenda for Joint Board meetings and circulating to all attendees in advance of such meeting;
- (c) chairing the Joint Board meetings;
- (d) monitoring the progress of any follow up tasks and activities agreed to be carried out following Joint Board meetings;
- (e) ensuring that minutes for Joint Board meetings are recorded and disseminated electronically to the appropriate persons and to all Joint Board meeting participants within seven Working Days after the Joint Board meeting; and
- (f) facilitating the process or procedure by which any decision agreed at any Joint Board meeting is given effect in the appropriate manner.

- 3.6 Joint Board meetings shall be quorate as long as at least two representatives from each Party are present.

- 3.7 The Parties shall ensure, as far as reasonably practicable, that all Joint Boards shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

#### 4. Role of the Security Operations Board

The Security Operations Board shall be responsible for the ongoing management of the Services and shall:

- (a) be accountable to the Senior Management Team for comprehensive oversight of the Services and for the senior management of the operational relationship between the Parties;
- (b) report to the Senior Management Team on significant issues requiring decision and resolution by the Senior Management Team and on progress against the high level Implementation Plan;
- (c) receive reports from the Service Managers on matters such as issues relating to delivery of existing Services and performance against Performance Indicators and possible future developments;
- (d) receive reports from the Project Managers on matters such as issues relating to delivery of new Services and Additional Services and progress against the Implementation Plan and Additional Services Work Package and possible future developments;
- (e) review and report to the Senior Management Team on service management, co-ordination of individual projects and any integration issues;
- (f) deal with the prioritisation of resources and the appointment of Project Managers and Project Managers on behalf of the Parties;
- (g) consider and resolve Disputes (including Disputes as to the cause of a Delay or the performance of the Services) in the first instance and if necessary escalate the Dispute to the Senior Management Team;
- (h) develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same;
- (i) monitor and manage risks and issues, ensuring mitigating actions are in place and communicated as necessary across the teams;
- (j) provide a forum to ensure Security matters relating to the Authority are discussed and dealt with in an efficient manner;
- (k) ensure effective delivery of operational day to day activities and compliance with all operational processes and procedures in place from time to time
- (l) ensure that the operational delivery of the Services is in accordance with the requirements set out in schedule 2.1 (*Services Description*) and to a high standard expected from a publicly funded body;
- (m) ensure that operational processes and procedures are fit for purpose and are reviewed and updated as necessary in order to remain fit for purpose;
- (n) review operational performance against available data for Services to ensure high levels of quality are achieved and maintained;

- (o) review monthly threat intelligence reports and trends to determine if there are any opportunities to strengthen communications of controls and mitigations with the health and social community;
- (p) grant dispensations for variations from such compliance where appropriate;
- (q) assure the coherence and consistency of the systems architecture for the Supplier Solution;
- (r) monitor developments in new technology and reporting on their potential benefit to the Services;
- (s) provide advice, guidance and information on technical issues;
- (t) assure that the technical architecture of the Supplier Solution is aligned to the Service Requirements and has sufficient flexibility to cope with future requirements of the Authority; and
- (u) ensure opportunities for Services improvements and Additional Services are identified and progressed in a timely manner.

## **5. Role of the Senior Management Team**

### 5.1 The Senior Management Team shall:

- (a) provide senior level guidance, leadership and strategy for the overall delivery of the Services;
- (b) be the point of escalation from the Security Operations Board; and
- (c) carry out the specific obligations attributed to it in paragraph 5.2.

### 5.2 The Senior Management Team shall:

- (a) ensure that this Agreement is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by the Authority and the commercial benefit derived by the Supplier;
- (b) receive and review reports from the Security Operations Board and review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving, in particular value for money; and
- (c) determine business strategy and provide guidance on policy matters which may impact on the implementation of the Services or on any Optional Services.

## **6. Role of the Innovations Board**

6.1 The Innovations Board shall be established by the Authority for the purposes of this Agreement on which only the Authority shall be represented. Innovations Board meetings shall be quorate as long as at least two representatives from the Authority are present.

6.2 Upon notice from the Authority, the Supplier will be required to send individual(s) to the Innovations Board in an advisory capacity. Such individuals will be properly briefed and prepared and have a good knowledge of the proposed Additional Services and the Additional Services Work Package.

6.3 The Innovations Board shall:

- (a) consider the details of the Additional Services set out by the Supplier in the Additional Services Work Package, including:
  - (i) the impact the proposed Additional Services would have on other areas or aspects of this Agreement and/or the Services;
  - (ii) the time scales, implementation and testing plan set out in the Additional Services Work Package;
  - (iii) any risks or issues relating to the proposed Additional Services; and
  - (iv) whether the proposed Additional Services will provide value for money in consideration of any changes to the Financial Model, future Charges and/or Performance Indicators and Target Performance Levels;
  - (v) evidence of user need for the Additional Services.
- (b) consider any additional guidance or information which is provided by the individual(s) sent by the Supplier in accordance with paragraph 6.2; and
- (c) approve or reject (close) all Additional Services Work Packages.

**7. Role of the SOM Progress Board**

7.1 The SOM Progress Board shall be responsible for the project management of the SOM (ID: 2) and shall:

- (a) discuss the status of the SOM (ID: 2) development;
- (b) review project risks and agree planned strategy to mitigate the risks;
- (c) identify areas for improvement;
- (d) identify alternative solutions to resolve any actual or potential issues;
- (e) review the RAID (Risks, Assumptions, Issues and Dependencies) for the SOM (ID: 2) prepared by the Supplier's Project Manager for the SOM (ID: 2); and
- (f) report to the Security Operations Board on issues requiring decision and resolution by the Security Operations Board and on progress against the SOM (ID: 2) project plan.

**8. Role of the Pilot Progress Board**

8.1 The Pilot Progress Board shall be responsible for the project management of the Local Monitoring Pilots and shall:

- (a) discuss the status of the Local Monitoring Pilots;
- (b) review project risks and agree planned strategy to mitigate the risks;
- (c) identify areas for improvement;

- (d) identify alternative solutions to resolve any actual or potential issues;
- (e) review the RAID (Risks, Assumptions, Issues and Dependencies) for the Local Monitoring Pilots prepared by the Supplier's Project Manager for the Local Monitoring Pilots; and
- (f) report to the Security Operations Board on issues requiring decision and resolution by the Security Operations Board and on progress against the Local Monitoring Pilots project plan.

**9. Contract Management Mechanisms**

- 9.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Agreement.
- 9.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Authority, processes for:
  - (a) the identification and management of risks;
  - (b) the identification and management of issues; and
  - (c) monitoring and controlling project plans.
- 9.3 The Risk Register shall be updated by the Supplier and submitted for review by the Senior Management Team.

**10. Annual Review**

- 10.1 An annual review meeting shall be held throughout the Term on a date to be agreed between the Parties.
- 10.2 The meetings shall be attended by the Director of UKI IBM Security of the Supplier and the Senior Management Team of the Authority and any other persons considered by the Authority necessary for the review.

**ANNEX 1: BOARDS****Security Operations Board Representation and Structure**

Authority Members of Security Operations Board	REDACTED
Supplier Members of Security Operations Board	REDACTED
Start Date for Security Operations Board meetings	Effective Date
Frequency of Security Operations Board meetings	Monthly
Location of Security Operations Board meetings	TBC

**Senior Management Team Representation and Structure**

Authority members of Senior Management Team	REDACTED
Supplier members of Senior Management Team	REDACTED
Start date for Senior Management Team meetings	Any time from the Effective Date
Frequency of Senior Management Team meetings	As and when required
Location of Senior Management Team meetings	TBC

**SOM Progress Board Representation and Structure**

Authority Members of SOM Progress Board	Authority Project Manager Authority Programme Manager
Supplier Members of SOM Progress Board	Supplier Project Manager
Start Date for SOM Progress Board meetings	Effective Date
Frequency of SOM Progress Board meetings	Fortnightly during development of the SOM (ID: 2)
Location of SOM Progress Board meetings	Face to face meetings in the location of delivery of the SOM (ID: 2), or as otherwise agreed

**Pilot Progress Board Representation and Structure**

OFFICIAL - SENSITIVE - COMMERCIAL

Authority Members of Pilot Progress Board	Authority Project Manager Authority Programme Manager
Supplier Members of Pilot Progress Board	Supplier Project Manager
Start Date for Pilot Progress Board meetings	Effective Date
Frequency of Pilot Progress Board meetings	Fortnightly during implementation of the Local Monitoring (intended to be the first two to three months following the Effective Date) and monthly thereafter
Location of Pilot Progress Board meetings	Face to face meetings in the location of delivery of the Local Monitoring Pilot, or as otherwise agreed

**SCHEDULE 8.2: CHANGE CONTROL PROCEDURE**

## 1. Definitions

In this schedule, the following definitions shall apply:

**"Authority Change Manager"** means the person appointed to that position by the Authority from time to time and notified in writing to the Supplier or, if no person is notified, the Authority Representative;

**"Change Request"** means a written request for a Contract Change which shall be substantially in the form of annex 1;

**"Change Communication"** means any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this schedule;

**"Fast-track Change"** means any Contract Change which the Parties agree to expedite in accordance with paragraph 8;

**"Impact Assessment"** means an assessment of a Change Request in accordance with paragraph 5;

**"Impact Assessment Estimate"** means has the meaning given in paragraph 4.3;

**"Receiving Party"** means the Party which receives a proposed Contract Change; and

**"Supplier Change Manager"** means the person appointed to that position by the Supplier from time to time and notified in writing to the Authority or, if no person is notified, the Supplier Representative.

## 2. General Principles of Change Control Procedure

2.1 This schedule sets out the procedure for dealing with Changes.

2.2 Operational Changes shall be processed in accordance with paragraph 9. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.

2.3 The Parties shall deal with Contract Change as follows :

- (a) either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with paragraph 4;
- (b) unless this Agreement otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with paragraph 5 before the Contract Change can be either approved or implemented;
- (c) the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in paragraph 6;
- (d) the Supplier shall have the right to reject a Change Request solely in the manner set out in paragraph 7;
- (e) save as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with paragraph (d); and

- (f) a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with paragraph 8.
- 2.4 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in schedule 6.2 (*Testing Procedures*), and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify Milestones and/or a Key Milestone and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.
- 2.5 Until a Change Authorisation Note has been signed and issued by the Authority in accordance with paragraph 6.1(a), then:
- (a) unless the Authority expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and
- (b) any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Agreement.
- 2.6 The Supplier shall:
- (a) within 10 Working Days of the Authority's signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
- (b) thereafter provide to the Authority such further copies of the updated Agreement as the Authority may from time to time request.
- 3. Costs**
- 3.1 Subject to paragraph 3.3, the costs of preparing each Change Request shall be borne by the Supplier.
- 3.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in schedule 7.1 (*Charges and Invoicing*). The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.
- 3.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.
- 4. Change Request**
- 4.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of annex 1 and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.

- 4.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within 10 Working Days of the date of issuing the Change Request.
- 4.3 If the Authority issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within 10 working days of the date of receiving the Change Request an estimate ("**Impact Assessment Estimate**") of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Authority within 10 working days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Authority.
- 4.4 If the Authority accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Authority as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Authority and provided that sufficient information is received by the Authority to fully understand:
- (a) The nature of the request for clarification; and
  - (b) The reasonable justification for the request;

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

## 5. **Impact Assessment**

- 5.1 Each Impact Assessment shall be completed in good faith and shall include:
- (a) details of the proposed Contract Change including the reason for the Contract Change; and
  - (b) details of the impact of the proposed Contract Change on the Services, the optional services (if any) and the Supplier's ability to meet its other obligations under this Agreement;
  - (c) any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:
    - (i) the Services Description, the Performance Indicators and/or the Target Performance Levels;
    - (ii) the format of Authority Data, as set out in the Services Description;
    - (iii) the Milestones, Implementation Plan and any other timetable previously agreed by the Parties;
    - (iv) other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority's IT infrastructure;
  - (d) details of the cost of implementing the proposed Contract Change;

- (e) details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
  - (f) a timetable for the implementation, together with any proposals for the testing of the Contract Change;
  - (g) details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
  - (h) such other information as the Authority may reasonably request in (or in response to) the Change Request.
- 5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to clause 23 (*Protection of Personal Data*).
- 5.3 Subject to the provisions of paragraph 5.4, the Authority shall review the Impact Assessment and respond to the Supplier in accordance with paragraph 6 within 15 Working Days of receiving the Impact Assessment, it.
- 5.4 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within five Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Authority within 10 Working Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this paragraph 5.4 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.
- 5.5 The calculation of costs for the purposes of paragraphs 5.1(d) and (e) shall:
- (a) be based on the Financial Model;
  - (b) facilitate the Financial Transparency Objectives;
  - (c) include estimated volumes of each type of resource to be employed and the applicable rate card;
  - (d) include full disclosure of any assumptions underlying such Impact Assessment;
  - (e) include evidence of the cost of any assets required for the Change; and
  - (f) include details of any new Sub-contracts necessary to accomplish the Change.
- 6. Authority's Right of Approval**
- 6.1 Within 15 Working Days of receiving the Impact Assessment from the Supplier or within 10 Working Days of receiving the further information that it may request pursuant to paragraph 5.4, the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:
- (a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in paragraph 6.1(a);

- (b) in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
- (c) in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within five Working Days of such request. Subject to paragraph 5.4, on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract Change within 10 Working Days.
- (d) If the Authority approves the proposed Contract Change pursuant to paragraph 6.1 and it has not been rejected by the Supplier in accordance with paragraph 7, then it shall inform the Supplier and the Supplier shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Authority's signature the Change Authorisation Note shall constitute (or, where the Authority has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Agreement.

6.2 If the Authority does not sign the Change Authorisation Note within 10 Working Days, then the Supplier shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within five Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

## **7. Supplier's Right of Approval**

7.1 Following an Impact Assessment, if:

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

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

## 8. Fast-Track Changes

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

8.2 If:

- (a) the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed eight in any 12 month period; and
- (b) both Parties agree the value of the proposed Contract Change over the remaining Term and any period for which Termination Services may be required does not exceed £200,000 and the proposed Contract Change is not significant (as determined by the Authority acting reasonably),

then the Parties shall confirm to each other in writing that they shall use the process set out in paragraphs 4, 5, 6 and 7 but with reduced timescales, such that any period of 15 Working Days is reduced to five Working Days, any period of 10 Working Days is reduced to two Working Days and any period of five Working Days is reduced to one Working Day.

8.3 The Parties may agree in writing to revise the parameters set out in paragraph 8.2 from time to time or that the Fast-track Change procedure shall be used in relation to a particular Contract Change notwithstanding that the total number of Contract Changes to which such procedure is applied will then exceed eight in a 12 month period.

8.4 Where an Additional Services Work Package has been agreed by the Authority, the Fast-track Change procedure will be used, modified to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Additional Services have already been agreed.

## 9. Operational Change Procedure

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

- (a) have an impact on the business of the Authority;
- (b) require a change to this Agreement;
- (c) have a direct impact on use of the Services; or
- (d) involve the Authority in paying any additional Charges or other costs.

9.2 The Authority may request an Operational Change by submitting a written request for Operational Change ("**RFOC**") to the Supplier Representative.

9.3 The RFOC shall include the following details:

- (a) the proposed Operational Change; and
- (b) the time-scale for completion of the Operational Change.

9.4 The Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.

- 9.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Authority when the Operational Change is completed.

**10. Communications**

For any Change Communication to be valid under this schedule, it must be sent to either the Authority Change Manager or the Supplier Change Manager, as applicable. The provisions of clause 44 (*Notices*) shall apply to a Change Communication as if it were a notice.

**ANNEX 1: CHANGE REQUEST FORM**

CR NO.:	TITLE:	TYPE OF CHANGE:
CONTRACT:		REQUIRED BY DATE:
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED ( <i>OPTIONAL FIELD</i> ):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
SUPPLIER REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT):		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

**ANNEX 2: CHANGE AUTHORISATION NOTE**

CR NO.:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF CHANGE:	REQUIRED BY DATE:
[KEY MILESTONE DATE: <i>[if any]</i> ]		
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE BASIS):		
SIGNED ON BEHALF OF THE AUTHORITY:		SIGNED ON BEHALF OF THE SUPPLIER:
Signature: _____		Signature: _____
Name: _____		Name: _____
Position: _____		Position: _____
Date: _____		Date: _____

**SCHEDULE 8.3: DISPUTE RESOLUTION PROCEDURE**

## 1. Definitions

In this schedule, the following definitions shall apply:

**"CEDR"** means the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London EC4Y 1EU;

**"Counter Notice"** has the meaning given in paragraph 7.2;

**"Expert"** means in relation to a Dispute, a person appointed in accordance with paragraph 6.2 to act as an expert in relation to that Dispute;

**"Expert Determination"** means determination by an Expert in accordance with paragraph 6;

**"Mediation Notice"** has the meaning given in paragraph 4.2;

**"Mediator"** means the independent third party appointed in accordance with paragraph 5.2 to mediate a Dispute;

**"Multi-Party Dispute"** means a Dispute which involves the Parties and one or more Related Third Parties;

**"Multi-Party Dispute Representatives"** has the meaning given in paragraph 9.6;

**"Multi-Party Dispute Resolution Board"** has the meaning given in paragraph 9.6;

**"Related Third Party"** means a party to:

- (a) another contract with the Authority or the Supplier which is relevant to this Agreement; or
- (b) a sub contract; and

**"Supplier Request"** means a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi Dispute Resolution Procedure in respect of that Dispute.

## 2. Dispute Notices

2.1 If a Dispute arises then:

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

2.2 A Dispute Notice:

- (a) shall set out:
  - (i) the material particulars of the Dispute;
  - (ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and

- (iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and
  - (b) may specify in accordance with the requirements of paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority) or considers (in the case of the Supplier) that the Dispute is a Multi-Party Dispute, in which case paragraph 2.3 shall apply.
- 2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to paragraph 2.2(b), then:
  - (a) if it is served by the Authority it shall be treated as a Multi-Party Procedure Initiation Notice; and
  - (b) if it is served by the Supplier it shall be treated as a Supplier Request,and in each case the provisions of paragraph 9 shall apply.
- 2.4 Subject to paragraphs 2.5 and 3.2 and so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:
  - (a) first by commercial negotiation (as prescribed in paragraph 4);
  - (b) then, if either Party serves a Mediation Notice, by mediation (as prescribed in paragraph 5); and
  - (c) lastly by recourse to arbitration (as prescribed in paragraph 7) or litigation (in accordance with clause 46 (*Governing Law and Jurisdiction*)).
- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 6) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 6.1.
- 2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under paragraph 8.
- 3. Expedited Dispute Timetable**
- 3.1 In exceptional circumstances where the use of the times in this schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within five Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of paragraph 3.1 or is otherwise specified under the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:
  - (a) in paragraph 4.2(c), 10 Working Days;
  - (b) in paragraph 5.2, 10 Working Days;

- (c) in paragraph 6.2, five Working Days; and
- (d) in paragraph 7.2, 10 Working Days.

3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within two Working Days after the deadline has passed, the Authority may set a revised deadline provided that it is no less than five Working Days before the end of the period of time specified in the applicable paragraphs (or two Working Days in the case of paragraph 6.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If 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.

#### **4. Commercial Negotiation**

4.1 Following the service of a Dispute Notice, then, so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Authority and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Authority Representative and the Supplier Representative.

4.2 If:

- (a) either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;
- (b) the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this paragraph 4; or
- (c) the Parties have not settled the Dispute in accordance with paragraph 4.1 within 30 Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation in accordance with paragraph 5 (a "**Mediation Notice**").

#### **5. Mediation**

5.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with the version of CEDR's Model Mediation Procedure which is current at the time the Mediation Notice is served (or such other version as the Parties may agree).

5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within 20 Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.

5.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.

5.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Change Control Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

## **6. Expert Determination**

6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an IT, accounting or financing nature and the Dispute has not been resolved by commercial negotiation in accordance with paragraph 4 or, if applicable, mediation in accordance with paragraph 5, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.

6.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 10 Working Days of the relevant request made pursuant to paragraph 6.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:

- (a) if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);
- (b) if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
- (c) if the Dispute relates to a matter of a technical nature not falling within paragraphs 6.2(a) or (b), on the instructions of the president (or equivalent) of:
  - (i) an appropriate body agreed between the Parties; or
  - (ii) if the Parties do not reach agreement on the relevant body within 15 Working Days of the relevant request made pursuant to paragraph 6.1, such body as may be specified by the President of the Law Society on application by either Party.

6.3 The Expert shall act on the following basis:

- (a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- (b) the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- (c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 30 Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- (d) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within 20 Working Days of the Expert's determination being notified to the Parties;

- (e) the process shall be conducted in private and shall be confidential; and
- (f) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

## 7. Arbitration

- 7.1 Subject to compliance with its obligations under paragraph 4.1 and to the provisions of paragraph 6, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 7.5.
- 7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have 15 Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such 15 Working Day period.
- 7.3 If the Authority serves a Counter Notice, then:
  - (a) if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 7.5 shall apply; or
  - (b) if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.
- 7.4 If the Authority does not serve a Counter Notice within the 15 Working Day period referred to in paragraph 7.2, the Supplier may either commence arbitration proceedings in accordance with paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.
- 7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to paragraphs 7.1 to 7.4:
  - (a) the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("**LCIA**") (subject to paragraphs 7.5(e), (f) and (g));
  - (b) the arbitration shall be administered by the LCIA;
  - (c) 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 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;
  - (d) if the Parties fail to agree the appointment of the arbitrator within 10 Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
  - (e) the chair of the arbitral tribunal shall be British;

- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the seat of the arbitration shall be London.

## 8. Urgent Relief

Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

- (a) for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or
- (b) where compliance with paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

## 9. Multi-Party Disputes

- 9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this paragraph 9 (the "**Multi-Party Dispute Resolution Procedure**").
- 9.2 If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Supplier which sets out the Authority's determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice a "**Multi-Party Procedure Initiation Notice**".
- 9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with paragraph 7, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority.
- 9.4 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within five Working Days whether the Dispute is:
  - (a) a Multi-Party Dispute, in which case the Authority shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
  - (b) not a Multi-Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with paragraphs 3 to 8.
- 9.5 If the Authority has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.
- 9.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the "**Multi-Party Dispute Resolution Board**") comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:

- (a) the Authority;
  - (b) the Supplier;
  - (c) each Related Third Party involved in the Multi-Party Dispute; and
  - (d) any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,
- (together "**Multi-Party Dispute Representatives**").

9.7 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:

- (a) the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
- (b) the Multi-Party Dispute Resolution Board shall first meet within 10 Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within five Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
- (c) in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.

9.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within 25 Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:

- (a) either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case paragraph 5 shall apply;
- (b) either Party may request that the Multi-Party Dispute is referred to an expert in which case paragraph 6 shall apply; and/or
- (c) subject to paragraph 9.9, paragraph 7 shall apply to the Multi-Party Dispute,

and in each case references to the "Supplier" or the "Parties" in such provisions shall include a reference to all Related Third Parties.

9.9 If a Multi-Party Dispute is referred to arbitration in accordance with paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne

by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub-Contractor, by the Supplier.

**SCHEDULE 8.4: REPORTS AND RECORDS PROVISIONS**

## **Reports and Records Provisions**

### **1. Transparency Reports**

- 1.1 Within three (3) months of the Effective Date the Supplier shall provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) draft reports in accordance with annex 1 (once approved, the "**Transparency Reports**").
- 1.2 If the Authority rejects any draft Transparency Report, 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. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.
- 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.
- 1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Agreement.

### **2. Other Reports**

- 2.1 The Authority may require any or all of the following reports:
  - (a) delay reports;
  - (b) reports relating to Testing and tests carried out under schedule 2.4 (*Security Management*) and schedule 8.6 (*Business Continuity and Disaster Recovery*);
  - (c) reports which the Supplier is required to supply as part of the Management Information;
  - (d) annual reports on the Insurances;
  - (e) security reports; and
  - (f) Force Majeure Event reports.

### **3. Records**

- 3.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in paragraph 1 and annex 2 (together "**Records**"):
  - (a) in accordance with the requirements of The National Archives and Good Industry Practice;
  - (b) in chronological order with an up-to-date inventory stating which Records are created, received, stored, processed or destroyed by the Supplier;
  - (c) in a form that is capable of audit; and
  - (d) at its own expense.

- 3.2 The Supplier shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.
- 3.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.
- 3.4 The Supplier shall, during the Term and a period of at least seven years following the expiry or termination of this Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.
- 3.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least seven years after the expiry or termination of this Agreement.
- 3.6 Without prejudice to the foregoing, the Supplier shall provide the Authority:
- (a) as soon as they are available, and in any event within 60 Working Days after the end of the first six months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such six month period; and
  - (b) as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than 130 Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.
- 3.7 The Supplier will develop, implement and maintain a records policy containing mandatory requirements to ensure all Records are managed in accordance with this schedule by the Supplier and its Sub-contractors ("**Records Policy**"). The Records Policy shall be periodically updated (every twelve (12) months as a minimum) and can be audited by the Authority at its request. The Supplier and its Sub-contractors will ensure that they have sufficient processes, plans and procedures in place to carry out control testing and ongoing monitoring to ensure compliance with their Records Policy.
- 3.8 The Supplier will provide adequate Records management training, at least annually, for the Supplier Personnel and its Sub-contractors, with evidence of completion.
- 3.9 The Supplier and its Sub-contractors will not transfer, store or access any Records (whether or not containing Personal Data) outside the European Economic Area (EEA), either through direct transfer or via remote access (e.g. via outsourcing, as part of business continuity arrangements, via cloud arrangements, via offshore service models, etc.) without the prior written consent of the Authority. Where such consent is given, and to the extent such Records contain Personal Data it will be conditional upon the Supplier complying with any controls on the transfer of Personal Data set out in clause 23.
- 3.10 The Supplier and its Sub-contractors will agree an authorisation process with the Authority for the secure destruction of the Records. The Supplier and its Sub-contractors will retain documented evidence of the authorisation and secure destruction. The Supplier and its Sub-

contractors must ensure they can apply legal holds to prevent destruction of the Records upon notification from the Authority.

## ANNEX 1: TRANSPARENCY REPORTS

TITLE	CONTENT	FORMAT	FREQUENCY
<i>Threat Intelligence Report</i>	A summary of threat intelligence.	Microsoft Office	Weekly
<i>Service/ Performance Report</i>	<p>The report will contain at a minimum:</p> <ul style="list-style-type: none"> <li>• Summary of activities complete during this reporting period</li> <li>• Challenges encountered and how they were overcome</li> <li>• Issues requiring Authority support to resolve</li> <li>• Planned activities in the coming month</li> <li>• Risks and Issue register</li> <li>• Service review and recommendations for improvement</li> <li>• Adherence to Performance Measures</li> <li>• Trend Data Graph - Provide a rolling view of certain key metrics</li> <li>• Monthly KPI performance (again rolling period)</li> <li>• Changes - what's been done what's planned since last review</li> <li>• Risks and Issue register - with Owners (IBM and Client)</li> <li>• Known Error Database - opportunity to share know issues</li> <li>• CSI - continual service improvement including recommendations</li> <li>• SW and Patch levels (if available)</li> <li>• Knowledge transfer progress</li> <li>• Innovation recommendations and output from sessions.</li> </ul>	Microsoft Office	Monthly

TITLE	CONTENT	FORMAT	FREQUENCY
<i>Service Review Report</i>	The Service Review Report should include: <ul style="list-style-type: none"> <li>• Achievements</li> <li>• Efficiencies and savings realised</li> <li>• Benefits realised</li> <li>• Challenges</li> <li>• Risks</li> <li>• Case studies</li> <li>• A 12 month forward view</li> </ul>	Microsoft Office	Annual

**ANNEX 2: RECORDS TO BE KEPT BY THE SUPPLIER**

The records to be kept by the Supplier are:

1. This Agreement, its schedules and all amendments to such documents.
2. All other documents which this Agreement expressly requires to be prepared.
3. Records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel.
4. Notices, reports and other documentation submitted by any Expert.
5. All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and the underlying IT Environment and Supplier Equipment.
6. Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
7. All formal notices, reports or submissions made by the Supplier to the Authority Representative in connection with the provision of the Services.
8. All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.
9. Documents prepared by the Supplier in support of claims for the Charges.
10. Documents submitted by the Supplier pursuant to the Change Control Procedure.
11. Documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure.
12. Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and/or the Guarantor, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.
13. Invoices and records related to VAT sought to be recovered by the Supplier.
14. Financial records, including audited and un-audited accounts of the Guarantor and the Supplier.
15. Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
16. All documents relating to the insurances to be maintained under this Agreement and any claims made in respect of them.
17. All journals and audit trail data referred to in schedule 2.4 (*Security Management Plan*).
18. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement.
19. All Authority Information.

20. Personalised training profiles for Authority personnel, setting out which training sessions each individual has attended.
21. Financial Model (live) to include at a minimum: run rates, approved funding, Service Charges by Services Description ID /Services Description ID group (as appropriate) broken down by month and Service Charges profile.
22. Asset register for each of the Transferrable Assets to include at a minimum: description of Asset, type of Asset (i.e. hardware, software or knowledge articles), Asset description, Asset cost, delivery date of Asset, purchase date & price (if relevant), location held, accumulated depreciation and estimated salvage value.
23. Issued Property Register.

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**SCHEDULE 8.5: EXIT MANAGEMENT**

## 1. Definitions

In this schedule, the following definitions shall apply:

**"Emergency Exit"** means any termination of this Agreement which is a:

- (a) termination of the whole or part of this Agreement in accordance with clause 33 (*Termination Rights*), except where the period of notice given under that clause is greater than or equal to six months;
- (b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to clause 33 (*Termination Rights*); or
- (c) wrongful termination or repudiation of this Agreement by either Party;

**"Exclusive Assets"** means those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;

**"Exit Information"** has the meaning given in paragraph 3.1;

**"Exit Manager"** means the person appointed by each Party pursuant to paragraph 2.3 for managing the Parties' respective obligations under this schedule;

**"Net Book Value"** means the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Authority of the same date as this Agreement;

**"Non-Exclusive Assets"** means those Assets (if any) which are used by the Supplier or a Key Sub contractor in connection with the Services but which are also used by the Supplier or Key Sub contractor for other purposes of material value;

**"Ordinary Exit"** means any termination of this Agreement which occurs:

- (a) pursuant to clause 33 (*Termination Rights*) where the period of notice given by the Party serving notice to terminate pursuant to such clause is greater than or equal to six months; or
- (b) as a result of the expiry of the Initial Term or any extension period;

**"Registers"** means the register and configuration database referred to in paragraphs 2.1(a) and 2.1(b);

**"Transferable Assets"** means those of the Exclusive Assets which are capable of legal transfer to the Authority;

**"Transferable Contracts"** means the Sub-contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Authority or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation; and

**"Transferring Contracts"** has the meaning given in paragraph 6.2(b).

## **2. Obligations During the Term to Facilitate Exit**

### **2.1 During the Term, the Supplier shall:**

- (a) create and maintain a register of all:
  - (i) Assets, detailing their:
    - (a) make, model and asset number;
    - (b) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
    - (c) Net Book Value;
    - (d) condition and physical location; and
    - (e) use (including technical specifications); and
  - (ii) Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;
- (b) create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;
- (c) agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and
- (d) at all times keep the Registers up to date, in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.

2.2 The Supplier shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement.

2.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this schedule and provide written notification of such appointment to the other Party within three months of the Effective Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this schedule and each Party's compliance with it.

## **3. Obligations to Assist on Re-Tendering Of Services**

3.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers

entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:

- (a) details of the Service(s);
  - (b) a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
  - (c) an inventory of Authority Data in the Supplier's possession or control;
  - (d) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
  - (e) a list of on-going and/or threatened disputes in relation to the provision of the Services;
  - (f) to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Agreement; and
  - (g) such other material and information as the Authority shall reasonably require,
- (together, the "**Exit Information**").

3.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this paragraph 3.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).

3.3 The Supplier shall:

- (a) notify the Authority within five Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and
- (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Authority.

3.4 The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than four updates in any six month period.

3.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

- (a) prepare an informed offer for those Services; and
- (b) not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

#### **4. Exit Plan**

- 4.1 The Supplier shall, within three months after the Effective Date, deliver to the Authority an Exit Plan which:
- (a) sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Authority and/or its Replacement Supplier on the expiry or termination of this Agreement;
  - (b) complies with the requirements set out in paragraph 4.2; and
  - (c) is otherwise reasonably satisfactory to the Authority.
- 4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.3 The Exit Plan shall set out, as a minimum:
- (a) how the Exit Information is obtained;
  - (b) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;
  - (c) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
  - (d) the management structure to be employed during the Termination Assistance Period;
  - (e) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
  - (f) how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
  - (g) the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in annex 1 as are applicable);
  - (h) a timetable and critical issues for providing the Termination Services;
  - (i) any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
  - (j) how the Termination Services would be provided (if required) during the Termination Assistance Period;

- (k) procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to schedule 9.1 (*Staff Transfer*); and
  - (l) how each of the issues set out in this schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.
- 4.4 The Parties acknowledge that the migration of the Services from the Supplier to the Authority and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.
- 4.5 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this schedule in the first month of each Contract Year (commencing with the second Contract Year) to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Supplier shall submit the revised Exit Plan to the Authority for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

#### **Finalisation of the Exit Plan**

- 4.6 Within 20 Working Days after service of a Termination Notice by either Party or six months prior to the expiry of this Agreement, the Supplier will submit for the Authority's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- 4.7 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days following its delivery to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Termination Services in accordance with the principles set out in this schedule and the last approved version of the Exit Plan (insofar as relevant).

### **5. Termination Services**

#### **Notification of Requirements for Termination Services**

- 5.1 The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four months prior to the date of termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than one month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- (a) the date from which Termination Services are required;
  - (b) the nature of the Termination Services required; and

- (c) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the date that the Supplier ceases to provide the Services.

5.2 The Authority shall have an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire. The Authority shall have the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Supplier to such effect.

#### **Termination Assistance Period**

5.3 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:

- (a) continue to provide the Services (as applicable) and, if required by the Authority pursuant to paragraph 5.1, provide the Termination Services;
- (b) in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
- (c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 5.3(b) without additional costs to the Authority;
- (d) provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the Parties agree otherwise in accordance with paragraph 5.5; and
- (e) at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.

5.4 Without prejudice to the Supplier's obligations under paragraph 5.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in paragraph 5.3(b) without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.

5.5 If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) and/or the applicable Service Credits to take account of such adverse effect.

#### **Termination Obligations**

5.6 The Supplier shall comply with all of its obligations contained in the Exit Plan.

5.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services

and the Termination Services and its compliance with the other provisions of this schedule), the Supplier shall:

- (a) cease to use the Authority Data;
- (b) provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
- (c) erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
- (d) return to the Authority such of the following as is in the Supplier's possession or control:
  - (i) all copies of the Authority Software and any other software licensed by the Authority to the Supplier under this Agreement;
  - (ii) all materials created by the Supplier under this Agreement in which the IPRs are owned by the Authority;
  - (iii) any parts of the IT Environment and any other equipment which belongs to the Authority; and
  - (iv) any items that have been on-charged to the Authority, such as consumables;
- (e) vacate any Authority Premises;
- (f) provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after expiry or termination to:
  - (i) such information relating to the Services as remains in the possession or control of the Supplier; and
  - (ii) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this paragraph 5.7(f)(ii).

5.8 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.

5.9 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

## 6. Assets, Sub-Contracts and Software

6.1 Following notice of termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, without the Authority's prior written consent:

- (a) terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;
- (b) (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
- (c) terminate, enter into or vary any licence for software in connection with the Services.

6.2 Within 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to paragraph 5.3(e), the Authority shall provide written notice to the Supplier setting out:

- (a) which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier ("**Transferring Assets**");
  - (i) which, if any, of:
  - (ii) the Exclusive Assets that are not Transferable Assets; and
  - (iii) the Non-Exclusive Assets,

the Authority and/or the Replacement Supplier requires the continued use of; and

- (b) which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the "**Transferring Contracts**"),

in order for the Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Services or Replacement Services.

6.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:

- (a) a Termination Payment is payable by the Authority to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or
- (b) the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Agreement, in which case the Authority shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.

- 6.4 Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same.
- 6.5 Where the Supplier is notified in accordance with paragraph 6.2(b) that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
- (a) procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
  - (b) procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 6.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 6.7 The Authority shall:
- (a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
  - (b) once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 6.8 The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.
- 6.9 The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to paragraph 6.6 in relation to any matters arising prior to the date of assignment or novation of such Sub-contract.
- 7. Supplier Personnel**
- 7.1 The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, schedule 9.1 (*Staff Transfer*) shall apply.
- 7.2 The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier.

- 7.3 During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Authority and/or the Replacement Supplier.
- 7.4 The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 7.5 The Supplier shall not for a period of 12 months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Authority and/or the Replacement Supplier, except that this paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

## **8. Charges**

- 8.1 During the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services), the Authority shall pay the Charges to the Supplier in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.
- 8.2 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
- 8.3 Except as otherwise expressly specified in this Agreement, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

## **9. Apportionments**

- 9.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
- (a) the amounts shall be annualised and divided by 365 to reach a daily rate;
  - (b) the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
  - (c) the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 9.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under paragraph 9.1 as soon as reasonably practicable.

**ANNEX 1: SCOPE OF THE TERMINATION SERVICES**

1. The Termination Services to be provided by the Supplier shall include such of the following services as the Authority may specify:
  - (a) ceasing all non-critical Software changes (except where agreed in writing with the Authority);
  - (b) notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
  - (c) providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority and/or the Replacement Supplier after the end of the Termination Assistance Period;
  - (d) delivering to the Authority the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the 12 month period immediately prior to the commencement of the Termination Services);
  - (e) providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
  - (f) with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
  - (g) providing the Authority with any problem logs which have not previously been provided to the Authority;
  - (h) providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of 12 months after the Termination Assistance Period;
  - (i) providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
  - (j) reviewing all Software libraries used in connection with the Services and providing details of these to the Authority and/or the Replacement Supplier;
  - (k) making available to the Authority and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Authority (acting reasonably) at the time of termination or expiry;
  - (l) assisting in establishing naming conventions for any new production site;

- (m) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- (n) generating a computer listing of the Source Code of any Software in a form and on media reasonably requested by the Authority;
- (o) agreeing with the Authority a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
- (p) delivering copies of the production databases (with content listings) to the Authority's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by the Authority;
- (q) assisting with the loading, testing and implementation of the production databases;
- (r) assisting in the execution of a parallel operation until the effective date of expiry or termination of this Agreement;
- (s) in respect of the maintenance and support of the Supplier System, providing historical performance data for the previous six months;
- (t) assisting in the execution of a parallel operation of the maintenance and support of the Supplier System until the end of the Termination Assistance Period or as otherwise specified by the Authority (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);
- (u) providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;
- (v) answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;
- (w) agreeing with the Authority and/or the Replacement Supplier a plan for the migration of the Authority Data to the Authority and/or the Replacement Supplier;
- (x) providing access to the Authority and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding six months afterwards for the purpose of the smooth transfer of the Services to the Authority and/or the Replacement Supplier:
  - (i) to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its Sub-contractors (and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
  - (ii) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and

- (y) knowledge transfer services, including:
  - (i) transferring all training material and providing appropriate training to those Authority and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;
  - (ii) providing for transfer to the Authority and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
  - (iii) providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors.
- 2. The Supplier shall:
  - (a) provide a documented plan relating to the training matters referred to in paragraph 1(k) for agreement by the Authority at the time of termination or expiry of this Agreement;
  - (b) co-operate fully in the execution of the handover plan agreed pursuant to paragraph 1(o), providing skills and expertise of a suitable standard; and
  - (c) fully co-operate in the execution of the Authority Database migration plan agreed pursuant to paragraph 1(w), providing skills and expertise of a reasonably acceptable standard.
- 3. To facilitate the transfer of knowledge from the Supplier to the Authority and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Authority and/or the Replacement Supplier.
- 4. The information which the Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to paragraph 1(y) shall include:
  - (a) copies of up-to-date procedures and operations manuals;
  - (b) product information;
  - (c) agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier;
  - (d) key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this schedule;
  - (e) information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
  - (f) details of physical and logical security processes and tools which will be available to the Authority; and
  - (g) any relevant interface information.

5. During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Supplier and/or the Authority access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:
- (a) any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this paragraph 5 shall:
    - (i) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
    - (ii) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Authority deems reasonable; and
  - (b) the Authority and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

**SCHEDULE 8.6: BUSINESS CONTINUITY AND DISASTER RECOVERY**

## 1. Definitions

In this schedule, the following definitions shall apply:

**"Business Continuity Plan"** has the meaning given in paragraph 2.2(a)(ii);

**"Business Continuity Services"** has the meaning given in paragraph 4.2(b);

**"Disaster"** means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for period of six hours or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;

**"Disaster Recovery Plan"** has the meaning given in paragraph 2.2(a)(iii);

**"Disaster Recovery Services"** means the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;

**"Disaster Recovery System"** means the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;

**"Related Service Provider"** means any person who provides services to the Authority in relation to this Agreement from time to time.

## 2. BCDR Plan

2.1 Within 40 Working Days from the Effective Date the Supplier shall prepare and deliver to the Authority for the Authority's written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

- (a) ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and
- (b) the recovery of the Services in the event of a Disaster.

2.2 The BCDR Plan shall:

- (a) be divided into three parts:
  - (i) Part A which shall set out general principles applicable to the BCDR Plan;
  - (ii) Part B which shall relate to business continuity ("**Business Continuity Plan**"); and
  - (iii) Part C which shall relate to disaster recovery ("**Disaster Recovery Plan**"); and
- (b) unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of paragraphs 3, 4 and 5.

2.3 Following receipt of the draft BCDR Plan from the Supplier, the Authority shall:

- (a) review and comment on the draft BCDR Plan as soon as reasonably practicable; and
- (b) notify the Supplier in writing that it approves or rejects the draft BCDR Plan no later than 20 Working Days after the date on which the draft BCDR Plan is first delivered to the Authority.

2.4 If the Authority rejects the draft BCDR Plan:

- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall then revise the draft BCDR Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft BCDR Plan to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of paragraph 2.3 and this paragraph 2.4 shall apply again to any resubmitted draft BCDR Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

**3. Part A of the BCDR Plan and General Principles and Requirements**

3.1 Part A of the BCDR Plan shall:

- (a) set out how the business continuity and disaster recovery elements of the Plan link to each other;
- (b) provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the Services and any services provided to the Authority by a Related Service Provider;
- (c) contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Service Provider with respect to issues concerning business continuity and disaster recovery where applicable;
- (d) detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Authority and any of its other Related Service Providers in each case as notified to the Supplier by the Authority from time to time;
- (e) contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;
- (f) contain a risk analysis, including:
  - (i) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
  - (ii) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;

- (iii) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider; and
- (iv) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- (g) provide for documentation of processes, including business processes, and procedures;
- (h) set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Authority;
- (i) identify the procedures for reverting to “normal service”;
- (j) set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
- (k) identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the BCDR Plan; and
- (l) provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority's business continuity plans.

3.2 The BCDR Plan shall be designed so as to ensure that:

- (a) the Services are provided in accordance with this Agreement at all times during and after the invocation of the BCDR Plan;
- (b) the adverse impact of any Disaster, service failure, or disruption on the operations of the Authority is minimal as far as reasonably possible;
- (c) it complies with the relevant provisions of ISO/IEC 27002 and all other industry standards from time to time in force; and
- (d) there is a process for the management of disaster recovery testing detailed in the BCDR Plan.

3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.

3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Agreement.

#### **4. Business Continuity Plan - Principles and Contents**

4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Authority expressly states otherwise in writing:

- (a) the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
- (b) the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

4.2 The Business Continuity Plan shall:

- (a) address the various possible levels of failures of or disruptions to the Services;
- (b) set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the "**Business Continuity Services**");
- (c) specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Business Continuity Plan; and
- (d) clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

**5. Disaster Recovery Plan - Principles and Contents**

5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.

5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.

5.3 The Disaster Recovery Plan shall include the following:

- (a) the technical design and build specification of the Disaster Recovery System;
- (b) details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
  - (i) data centre and disaster recovery site audits;
  - (ii) backup methodology and details of the Supplier's approach to data back-up and data verification;
  - (iii) identification of all potential disaster scenarios;
  - (iv) risk analysis;
  - (v) documentation of processes and procedures;
  - (vi) hardware configuration details;

- (vii) network planning including details of all relevant data networks and communication links;
  - (viii) invocation rules;
  - (ix) Service recovery procedures; and
  - (x) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
- (c) any applicable Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Disaster Recovery Plan;
  - (d) details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
  - (e) access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this schedule; and
  - (f) testing and management arrangements.

## 6. Review and Amendment of the BCDR Plan

6.1 The Supplier shall review the BCDR Plan (and the risk analysis on which it is based):

- (a) on a regular basis and as a minimum once every six months;
- (b) within three calendar months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 8; and
- (c) where the Authority requests any additional reviews (over and above those provided for in paragraphs 6.1(a) and 6.1(b)) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.

6.2 Each review of the BCDR Plan pursuant to paragraph 6.1 shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within the period required by the BCDR Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within 20 Working Days of the conclusion of each such review of the BCDR Plan, provide to the Authority a report (a "**Review Report**") setting out:

- (a) the findings of the review;
- (b) any changes in the risk profile associated with the Services; and
- (c) the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

6.3 Following receipt of the Review Report and the Supplier's Proposals, the Authority shall:

- (a) review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
- (b) notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than 20 Working Days after the date on which they are first delivered to the Authority.

6.4 If the Authority rejects the Review Report and/or the Supplier's Proposals:

- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of paragraph 6.3 and this paragraph 6.4 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

6.5 The Supplier shall as soon as is reasonably practicable after receiving the Authority's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

## **7. Testing of the BCDR Plan**

7.1 The Supplier shall test the BCDR Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to paragraph 7.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.

7.2 If the Authority requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall

be borne by the Authority unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.

- 7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.
- 7.4 The Supplier shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
- 7.5 The Supplier shall, within 20 Working Days of the conclusion of each test, provide to the Authority a report setting out:
- (a) the outcome of the test;
  - (b) any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
  - (c) the Supplier's proposals for remedying any such failures.
- 7.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.
- 7.7 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Supplier of any of its obligations under this Agreement.
- 7.8 The Supplier shall also perform a test of the BCDR Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

## **8. Invocation of the BCDR Plan**

In the event of a complete loss of service or in the event of a Disaster, the Supplier shall immediately invoke the BCDR Plan (and shall inform the Authority promptly of such invocation). In all other instances the Supplier shall invoke or test the BCDR Plan only with the prior consent of the Authority.

OFFICIAL - SENSITIVE - COMMERCIAL

**SCHEDULE 8.7: 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 Agreement ("**Indemnifier**"), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity ("**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 Agreement (a "**Claim**"), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.
- 1.3 Subject to paragraph 2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with 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, subject to paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to paragraph 1.3:
- (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
  - (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute;
  - (c) 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
  - (d) 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 Agreement if:
- (a) the Indemnifier is not entitled to take conduct of the Claim in accordance with paragraph 1.3;
  - (b) 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
  - (c) the Indemnifier fails to comply in any material respect with the provisions of paragraph 1.4.

## 2. Sensitive Claims

- 2.1 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a "**Sensitive Claim**"), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

## 3. Recovery of Sums

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

## 4. Mitigation

Each of the 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.

**SCHEDULE 9.1: STAFF TRANSFER**

## 1. Definitions

In this schedule, the following definitions shall apply:

**"Admission Agreement"** means an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into by the Supplier where it agrees to participate in the Schemes in respect of the Services;

**"Eligible Employee"** means any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;

**"Fair Deal Employees"** means those Transferring Authority Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal (and, in the event that part B of this schedule 9.1 applies, any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal);

**"Former Supplier"** means a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);

**"New Fair Deal"** means the revised Fair Deal position set out in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date;

**"Notified Sub-contractor"** means a Sub-contractor identified in the annex to this schedule to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;

**"Replacement Sub-contractor"** means a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);

**"Relevant Transfer"** means a transfer of employment to which the Employment Regulations applies;

**"Relevant Transfer Date"** means in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

**"Schemes"** means the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the Designated Stakeholder Pension Scheme and "Alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014;

**"Service Transfer"** means any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;

**"Service Transfer Date"** means the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;

**"Staffing Information"** means in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement, gender and place of work;
- (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

**"Supplier's Final Supplier Personnel List"** means a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;

**"Supplier's Provisional Supplier Personnel List"** means a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

**"Transferring Authority Employees"** means those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;

**"Transferring Former Supplier Employees"** means in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and

**"Transferring Supplier Employees"** means those employees of the Supplier and/or the Supplier's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

**2. Interpretation**

- 2.1 Where a provision in this schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

**PART A: TRANSFERRING AUTHORITY EMPLOYEES AT COMMENCEMENT OF SERVICES**

**1. Relevant Transfers**

1.1 The Authority and the Supplier agree that:

- (a) the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Authority Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between the Authority and the Transferring Authority Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-contractor and each such Transferring Authority Employee.

1.2 The Authority shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Authority Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Authority; and (ii) the Supplier and/or any Notified Sub-contractor (as appropriate).

**2. Authority Indemnities**

2.1 Subject to paragraph 2.2, the Authority shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Authority in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee occurring before the Relevant Transfer Date;
- (b) the breach or non-observance by the Authority before the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Authority Employees; and/or
  - (ii) any custom or practice in respect of any Transferring Authority Employees which the Authority is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing the Transferring Authority Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions;

- (i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Authority Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
- (e) a failure of the Authority to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees arising before the Relevant Transfer Date;
- (f) any claim made by or in respect of any person employed or formerly employed by the Authority other than a Transferring Authority Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Authority in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- (a) arising out of the resignation of any Transferring Authority Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
  - (b) arising from the failure by the Supplier or any Sub-contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Authority as a Transferring Authority Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Authority Employee, that his/her contract of employment has been transferred from the Authority to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- (a) the Supplier shall, or shall procure that the Notified Sub-contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Authority; and

- (b) the Authority may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Supplier and/or any Notified Sub-contractor, or take such other reasonable steps as the Authority considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.4 If an offer referred to in paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in paragraph 2.3(b):
- (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-contractor may within five Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Authority shall indemnify the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in paragraph 2.6:
- (a) shall not apply to:
    - (i) any claim for:
      - (a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
      - (b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
    - (ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and
  - (b) shall apply only where the notification referred to in paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority within 6 months of the Effective Date.
- 2.8 If any such person as is referred to in paragraph 2.3 is neither re-employed by the Authority nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set

out in paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

### **3. Supplier Indemnities and Obligations**

3.1 Subject to paragraph 3.2, the Supplier shall indemnify the Authority against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Authority Employees; and/or
  - (ii) any custom or practice in respect of any Transferring Authority Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Authority Employees arising from or connected with any failure by the Supplier or any Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Supplier or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Authority Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Authority Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Supplier or any Sub-contractor to, or in respect of, any Transferring Authority Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and

- (ii) in relation to any employee who is not a Transferring Authority Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
  - (g) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees in respect of the period from (and including) the Relevant Transfer Date;
  - (h) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Authority's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
  - (i) a failure by the Supplier or any Sub-contractor to comply with its obligations under paragraph 2.8 above.
- 3.2 The indemnities in paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Authority whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Authority's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Authority Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Authority and the Supplier.

#### **4. Information**

The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority in writing such information as is necessary to enable the Authority to carry out its duties under regulation 13 of the Employment Regulations. The Authority shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

**5. Principles of Good Employment Practice**

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Authority Employee as set down in:
- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
  - (c) HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
  - (d) the New Fair Deal.
- 5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in paragraphs 5.1 or 5.2 shall be agreed in accordance with the Change Control Procedure.

**6. Pensions**

- 6.1 The Supplier shall, and shall procure that each of its Sub-contractors shall, comply with the pensions provisions in the following annex.

**ANNEX TO PART A: PENSIONS**

**1. Participation**

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and the Authority
- (a) undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
  - (b) agree that the arrangements under paragraph 1.1 of this Annex include the body responsible for the Schemes notifying the Authority if the Supplier breaches any obligation it has under the Admission Agreement; and
  - (c) agree that notwithstanding sub-paragraph (b), the Supplier shall notify the Authority in the event that it breaches any obligation it has under the Admission Agreement and when it intends to remedy such breach.
- 1.3 The Supplier shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes including without limitation current Civil Service Pensions administrator on-boarding costs.

**2. Future Service Benefits**

- 2.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.
- 2.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

**3. Funding**

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to

the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

#### **4. Provision Of Information**

The Supplier and the Authority respectively undertake to each other:

- (a) to provide all information which the other Party may reasonably request concerning matters (i) referred to in this annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- (b) not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

#### **5. Indemnity**

The Supplier undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

#### **6. Employer Obligation**

The Supplier shall comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005.

#### **7. Subsequent Transfers**

The Supplier shall:

- (a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the Service Transfer Date;
- (b) provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Authority may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
- (c) for the applicable period either
  - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or
  - (ii) after the date which is two (2) years prior to the date of expiry of this Agreement,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the

prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

## 8. BULK TRANSFER

Where the Supplier has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 of this Annex, the Supplier agrees to:

- (a) fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;
- (b) instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Supplier and/or the customer may reasonably require, to enable the Replacement Supplier to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
- (c) allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service ("**the Shortfall**"), the Supplier agrees to pay the Shortfall to the Schemes; and
- (d) indemnify the customer on demand for any failure to pay the Shortfall as required under sub-paragraph (c) above.

**PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES**

**1. Relevant Transfers**

1.1 The Authority and the Supplier agree that:

- (a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-contractor and each such Transferring Former Supplier Employee.

1.2 The Authority shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Authority shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

**2. Former Supplier Indemnities**

2.1 Subject to paragraph 2.2, the Authority shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
- (b) the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
  - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
- (c) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions;

- (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- (d) a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- (e) any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (f) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- (a) arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
  - (b) arising from the failure by the Supplier and/or any Sub-contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Authority as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- (a) the Supplier shall, or shall procure that the Notified Sub-contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Supplier; and
- (b) the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

2.4 If an offer referred to in paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the 15 Working Day period specified in paragraph 2.3(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within five Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in paragraph 2.6:

- (a) shall not apply to:
  - (i) any claim for:
    - (a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
    - (b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
  - (ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and

- (b) shall apply only where the notification referred to in paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority and, if applicable, the Former Supplier, within six months of the Effective Date.

2.8 If any such person as is described in paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

### **3. Supplier Indemnities and Obligations**

3.1 Subject to paragraph 3.2, the Supplier shall indemnify the Authority and/or the Former Supplier against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
  - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Supplier or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Supplier or a Sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Supplier in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions;

- (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- (g) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
- (h) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- (i) a failure by the Supplier or any Sub-Contractor to comply with its obligations under paragraph 2.8 above.
- 3.2 The indemnities in paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

#### **4. Information**

The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and/or at the Authority's direction, the Former Supplier, in writing such information as is necessary to enable the Authority and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority

shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

## **5. Principles of Good Employment Practice**

5.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in:

- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
- (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
- (c) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
- (d) the New Fair Deal.

5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

## **6. Procurement Obligations**

Notwithstanding any other provisions of this Part B, where in this Part B the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

## **7. Pensions**

The Supplier shall, and shall procure that each Sub-contractor shall, comply with the pensions provisions in the following annex.

**ANNEX TO PART B: PENSIONS**

**1. Participation**

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and the Authority:
- (a) undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
  - (b) agree that the arrangements under paragraph 1.1 of this Annex include the body responsible for the Schemes notifying the Authority if the Supplier breaches any obligations it has under the Admission Agreement; and
  - (c) agree that notwithstanding sub-paragraph (b) the Supplier shall notify the Authority in the event that it breaches any obligation it has under the Admission Agreement and when it intends to remedy such breach.
- 1.3 The Supplier shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes including without limitation current Civil Service pensions administrator on-boarding costs.

**2. Future Service Benefits**

- 2.1 If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.3 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.
- 2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

### **3. Funding**

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

### **4. Provision of Information**

The Supplier and the Authority respectively undertake to each other:

- (a) to provide all information which the other Party may reasonably request concerning matters (i) referred to in this annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- (b) not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

### **5. Indemnity**

The Supplier undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

### **6. Employer Obligation**

The Supplier shall comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

### **7. Subsequent Transfers**

The Supplier shall:

- (a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the Service Transfer Date;
- (b) provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Authority may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
- (c) for the applicable period either
  - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or

- (ii) after the date which is two (2) years prior to the date of expiry of this Agreement,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

## 8. Bulk Transfer

Where the Supplier has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 of this Annex, the Supplier agrees to:

- (a) fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;
- (b) instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Supplier and/or the customer may reasonably require, to enable the Replacement Supplier to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
- (c) allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service ("**the Shortfall**"), the Supplier agrees to pay the Shortfall to the Schemes; and
- (d) indemnify the customer on demand for any failure to pay the Shortfall as required under sub-paragraph (c) above.

## **PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES**

### **1. Procedure in the Event of Transfer**

- 1.1 The Authority and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.
- 1.2 If any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- (a) the Supplier shall, and shall procure that the relevant Sub-contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier; and
  - (b) the Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in paragraph 1.2(b) is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the 15 Working Day period specified in paragraph 1.2(b):
- (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved,
- the Supplier and/or the Sub-contractor may within five Working Days give notice to terminate the employment or alleged employment of such person.

### **2. Indemnities**

- 2.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to paragraph 2.4, the Authority shall:
- (a) indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in paragraph 1.2 made pursuant to the provisions of paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

- (b) procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in paragraph 1.2 made pursuant to the provisions of paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in paragraph 1.2 is neither re-employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the 15 Working Day period referred to in paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Authority and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.
- 2.4 The indemnities in paragraph 2.1:
- (a) shall not apply to:
    - (i) any claim for:
      - (a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
      - (b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
    - (ii) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and
  - (b) shall apply only where the notification referred to in paragraph 1.2(a) is made by the Supplier and/or any Sub-contractor to the Authority and, if applicable, Former Supplier within six months of the Effective Date.

### **3. Procurement Obligations**

Where in this part C the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

**PART D: EMPLOYMENT EXIT PROVISIONS**

**1. Pre-Service Transfer Obligations**

- 1.1 The Supplier agrees that within 20 Working Days of the earliest of:
- (a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
  - (b) receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
  - (c) the date which is 12 months before the end of the Term; and
  - (d) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any six month period),

it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.

- 1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:
- (a) the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
  - (b) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Authority shall be permitted to use and disclose information provided by the Supplier under paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.
- 1.4 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in paragraph 1.1(a), 1.1(b) and 1.1(c), the Supplier agrees, that it shall not, and agrees to procure that each Sub contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):
- (a) replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

- (b) make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

1.6 During the Term, the Supplier shall provide, and shall procure that each Sub contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services;
- (c) the extent to which each employee qualifies for membership of any of the Schemes or any broadly comparable scheme set up pursuant to the provisions of paragraph 2.2 of the annex to part A of this schedule 9.1 or paragraph 2.3 of the annex to part B of this schedule 9.10 (as appropriate); and
- (d) a description of the nature of the work undertaken by each employee by location.

1.7 The Supplier shall provide, and shall procure that each Sub contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

- (a) the most recent month's copy pay slip data;

- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

## **2. Employment Regulations Exit Provisions**

- 2.1 The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.
- 2.3 Subject to paragraph 2.4, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:
- (a) any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
  - (b) the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:
    - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or

- (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
  - (ii) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel list, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- (f) any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel list for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

2.4 The indemnities in paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her

working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or

- (b) arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

2.5 If any person who is not identified in the Supplier's Final Supplier Personnel list claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel list, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- (a) the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
- (b) the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

2.7 If after the 15 Working Day period specified in paragraph 2.5(b) has elapsed:

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved

the Authority shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within five Working Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in paragraph 2.8:

- (a) shall not apply to:
  - (i) any claim for:

- (a) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
    - (b) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,  
  
in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or
  - (ii) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
  - (b) shall apply only where the notification referred to in paragraph 2.5(a) is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within six months of the Service Transfer Date .
- 2.10 If any such person as is described in paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.
- 2.11 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel list before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- (a) the Supplier and/or any Sub-contractor; and
  - (b) the Replacement Supplier and/or the Replacement Sub-contractor.
- 2.12 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to paragraph 2.14, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:

- (a) any act or omission of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
- (b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
  - (ii) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- (d) any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the

Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

- (g) a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and
  - (h) any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.14 The indemnities in paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

**ANNEX 1: LIST OF NOTIFIED SUB-CONTRACTORS**

Intentionally left blank

**SCHEDULE 9.2: KEY PERSONNEL**

REDACTED.



**SCHEDULE 10: GUARANTEE**

NOT USED

**SCHEDULE 11: CYBER SECURITY**

REDACTED



**SCHEDULE 12: ADDITIONAL SERVICES WORK PACKAGE**

"ASWP" means Additional Services Work Package.

<b><u>PART A: SUPPLIER PROPOSAL</u></b>			
<u>The Supplier will complete section A of the ASWP with sufficient detail to enable the Authority to assess the suitability and viability of the Additional Services proposed.</u>			
<b>Authority</b>	Health and Social Care Information Centre		
<b>Supplier</b>			
<b>Agreement Reference</b>	Agreement relating to the provision of the NHS Digital Security Operations Centre dated [XXX]; HCON01333 (" <b>Agreement</b> ")		
<b>Date instructions received from Authority</b> (for Authority generated ASWP only)			
<b>Date and version of ASWP</b>			
<b>ASWP Reference</b>	ASWP - XXX		
<b>Category</b> (Authority generated/Supplier generated)			
<b>Start date of the Additional Services</b>			
<b>End date (if any) of the Additional Services</b>			
<b>Additional Services Description</b> (provide a detailed description of the Additional Services that will be provided)			
<b>Key Outcomes</b> (describe all key outcomes which will be provided)			
<b>Milestones</b>	<b>Milestone Ref.</b>	<b>Milestone Description</b>	<b>Target Milestone Date</b>
<b>Implementation Plan</b> (include details of Testing and acceptance criteria)			
<b>Target Performance Level</b> (if any)			
<b>Key Personnel</b>			

<b>Location of Additional Services</b>	
<b>Charges</b> (any charges for Additional Services must be Firm Price and calculated in accordance with paragraph 2 of part A of schedule 7.1 ( <i>Charges and Invoicing</i> ))	
<b>Benefits and Impact Assessment</b> (what benefits will be provided by the Additional Services; what will the impact of the Additional Services have on the existing Services)	
<b>Risks, Assumptions and Dependencies</b>	
<b>Options Appraisal</b> (are any alternative solutions available, if so, please explain with justification)	
<b>List of Attachments</b> (if any)	
<b>Supplier Approval</b>	<p>The Supplier agrees to provide the Additional Services described in this ASWP in accordance with this ASWP and the Agreement. The Supplier will provide the Additional Services at the Charges set out in this ASWP upon receipt of the signed Authority Response at part B.</p> <p>Print name:</p> <p>Signature:</p> <p>Date:</p>

<b>PART B: AUTHORITY RESPONSE</b>	
<b>Date received from Supplier</b>	
<b>Additional Services required</b> (set out which of the Additional Services described in the submitted ASWP have been selected)	
<b>Authority Approval</b>	<p>PROJECT TEAM SIGN OFF</p> <p>Print name:</p> <p>Signature:</p> <p>Date:</p>

	<p>COMMERCIAL SIGN OFF</p> <p>Print name:</p> <p>Signature:</p> <p>Date:</p> <p>FINANCE SIGN OFF</p> <p>Print name:</p> <p>Signature:</p> <p>Date:</p>
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**PART C: CHANGE AUTHORISATION**

The Parties acknowledge that to ensure operational efficiency, the Parties shall document the inclusion of the approved Additional Services within the Services in accordance with the Change Control Procedure using the Fast-track Change procedure set out in paragraph 8 of schedule 8.2 (*Change Control Procedure*), modified to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Additional Services have already been agreed in this ASWP.

*Words and phrases used in this ASWP shall have the meaning given to them in the Agreement unless otherwise defined.*

*The contents of this ASWP comprise all the additional terms to be associated with the Additional Services.*

*The Agreement, including any previous Change Authorisation Notice and ASWP, shall remain effective and unaltered.*

*The Supplier shall not be entitled to any additional payment in respect of the Additional Services except for the sum approved by the Authority set out in this ASWP.*