



Ministry  
of Justice

2016

Agreement  
relating to  
the Provision of Language Services - Translation and Transcription  
Services

(Lot 2)

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THIS CONTRACT IS DATED ..... 2016

**PARTIES**

- (1) THE SECRETARY OF STATE FOR JUSTICE, acting on behalf of the Crown, of 102 Petty France, London, SW1H 9AJ (the **Authority**); and
- (2) THE BIGWORD GROUP LIMITED, whose registered number is 5551907 and whose registered office is at Link Up House, Ring Road, Lower Wortley, Leeds, LS12 6AB (the **Supplier**).

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Contract the following words have the following meanings unless otherwise provided or the context otherwise requires:

<b>Acceptance Criteria</b>	the criteria set out in Annex 2 of Schedule 4.
<b>Account Management Team</b>	the team appointed by the Supplier from time to time to fulfil the role set out in Paragraph 2.1 of Schedule 8.
<b>Acquired Rights Directive</b>	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>Adjustment Factor</b>	the adjustment to the Base Unit Price calculated in accordance with Paragraph 2.3 of Schedule 7.
<b>Affected Party</b>	the Party seeking to claim relief in respect of a Force Majeure Event.
<b>Affiliate</b>	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>Approval</b>	the prior written approval of the party required to give such approval.
<b>Assignment</b>	an assignment for translation or transcription services.
<b>Arbitration Notice</b>	shall have the meaning set out in Clause 67.7.2.
<b>Assignee</b>	shall have the meaning set out in Clause 58.2.
<b>Auditors</b>	shall have the meaning set out in Clause 17.1.
<b>Authority Board Lead</b>	the individual appointed by the Authority from time to time to fulfil the role set out in Paragraph 3.4 of Schedule 8.
<b>Authority Code of Conduct</b>	the Interpreters and Translators Authority Code of Conduct set out in Annex 5 to Schedule 2 and as may be amended from time to time.
<b>Authority Commissioning Bodies</b>	means the Commissioning Bodies confirmed by the Authority to the Supplier from time to time.
<b>Base Unit Price</b>	the price per word payable for the provision of the Services for each Assignment, calculated in accordance with Paragraph 2.2 of Schedule 7.

<b>BCDR Plan</b>	shall have the meaning set out in Paragraph 2.1 of Schedule 21.
<b>Board Meeting</b>	a meeting of the Board Members of each Governance Board.
<b>Board Members</b>	the Authority Board Lead, Supplier Board Lead and any other members of each respective Governance Board as further detailed in Annex 1 to Schedule 8, or as otherwise appointed from time to time.
<b>Board Leads</b>	the Supplier Board Lead and the Authority Board Lead except in the case of the Quality Assurance Board where it shall also include the Quality Assurance Supplier Board Lead.
<b>Booked End Time</b>	the time that the Language Professional was due to complete an Assignment, as recorded by the Commissioning Body in the Booking.
<b>Booking</b>	a booking for an Assignment made by a Commissioning Body in accordance with Schedule 2.
<b>Booking Service</b>	the website and repository (including any extensions, enhancements or additions thereof) as further detailed in the Service Specification which shall be developed, hosted and maintained by the Supplier in accordance with the Contract, including its source code and executable code.
<b>Booking Service Contingency Plan</b>	the plan to be implemented by the Supplier if the Booking Service is not available by the Booking Service Longstop Date, as set out in the Transition Plan.
<b>Booking Service Longstop Date</b>	19 October 2016.
<b>Booking Service Milestone Dates</b>	the milestone dates relating to the development of the Booking Service, as set out in the Transition Plan
<b>Business Continuity Plan</b>	shall have the meaning set out in Paragraph 2.2.2 of Schedule 21.
<b>Business Continuity Services</b>	shall have the meaning set out in Paragraph 4.2.2 of Schedule 21.
<b>Change Authorisation Note</b>	a form setting out an agreed Contract Change which shall be substantially in the form set out in Annex 2 of Schedule 10.
<b>Change Control Procedure</b>	the procedure for changing the Contract as set out in Schedule 10.
<b>Change Request</b>	a written request for a Contract Change which shall be substantially in the form of Annex 1 to Schedule 10.
<b>Cloud Security Principles</b>	shall have the meaning set out in Paragraph 3.1 of Schedule 14.
<b>Commencement Date</b>	is the date of this Contract.
<b>Commercial and Contract Management Review Board</b>	the body described in Annex 1 to Schedule 8.

<b>Commercially Sensitive Information</b>	<p>the information (i) listed in Schedule 15; or (ii) notified to the Authority in writing and which has been clearly marked as Commercially Sensitive Information and comprises of information:</p> <ul style="list-style-type: none"> <li>(a) which is provided by the Supplier to the Authority in confidence for the period set out in that Schedule or notification; or</li> <li>(b) that constitutes a trade secret.</li> </ul>
<b>Commissioning Body</b>	<p>the Authority and each of those entities listed in Schedule 1, which together shall be referred to as the "<b>Commissioning Bodies</b>".</p>
<b>Commissioning Body Background IPR</b>	<ul style="list-style-type: none"> <li>(a) Intellectual Property Rights owned or licensed by any Commissioning Body before the Commencement Date; and/or</li> <li>(b) Intellectual Property Rights created, acquired or licensed by any Commissioning Body independently of this Contract.</li> </ul>
<b>Commissioning Body Data</b>	<ul style="list-style-type: none"> <li>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any written, electronic, magnetic, optical or tangible media, and which: <ul style="list-style-type: none"> <li>(i) are supplied to the Supplier by or on behalf of any Commissioning Body; and/or</li> <li>(ii) the Supplier is required to process, store or transmit pursuant to the Contract; or</li> </ul> </li> <li>(b) any Personal Data for which a Commissioning Body is the Data Controller and the Supplier processes in the performance of its obligations under this Contract.</li> </ul>
<b>Commissioning Body Materials</b>	<ul style="list-style-type: none"> <li>(a) the Commissioning Body Data;</li> <li>(b) the Register;</li> <li>(c) any other assets, rights, materials, documentation, information, programs, codes, hardware, software, telecoms devices and equipment which a Commissioning Body owns or has the right to use; and</li> <li>(d) any Intellectual Property Rights vesting in any of the items set out in sub-paragraphs (a), (b) and/or (c) above,</li> </ul> <p>but excluding Supplier Assets and Supplier Background IPR.</p>
<b>Commissioning Body Premises</b>	<p>the real property of each Commissioning Body, whether owned, licensed or leased.</p>
<b>Complexity Levels</b>	<p>as defined in table 4 in Annex 1 of Schedule 2.</p>
<b>Comptroller and Auditor General</b>	<p>the comptroller and auditor general of the National Audit Office.</p>
<b>Confidential Information</b>	<p>all Personal Data, Commercially Sensitive Information, the content of Translations and information acquired in the preparation of Translations and any information, however it is conveyed, that relates to the business affairs, public functions, developments, trade secrets, Know-How, personnel, and suppliers of either Party and/or</p>

another Commissioning Body, including all Intellectual Property Rights therein, together with all information derived from any of the above, and any other information clearly designated as being confidential and:

- (a) in relation to information provided by a Commissioning Body, any other information which the Authority reasonably considers confidential (whether or not it is marked "confidential"); and
- (b) in relation to information provided by the Supplier, any information which the Supplier reasonably considers to be confidential (whether or not it is marked "confidential") and, in respect of which, the Supplier has obtained the Authority's Approval is confidential.

<b>Consumer Prices Index</b>	<p>the consumer prices index published by the Office of National Statistics from time to time.</p> <p><a href="http://www.ons.gov.uk/ons/taxonomy/search/index.html?newquery=&amp;nscl=Consumer+Price+Indices&amp;nscl-orig=Consumer+Price+Indices&amp;content-type=publicationContentTypes&amp;sortDirection=DESCENDING&amp;sortBy=pubdate">http://www.ons.gov.uk/ons/taxonomy/search/index.html?newquery=&amp;nscl=Consumer+Price+Indices&amp;nscl-orig=Consumer+Price+Indices&amp;content-type=publicationContentTypes&amp;sortDirection=DESCENDING&amp;sortBy=pubdate</a></p>
<b>Continuous Improvement Report</b>	shall have the meaning set out in Clause 9.5.
<b>Contract</b>	this written agreement between the Authority and the Supplier consisting of these terms and conditions and the Schedules and their Annexes.
<b>Contract Breakage Costs</b>	the amounts payable by the Supplier to its Sub-contractors for terminating its Sub-contracts as a direct result of the early termination of this Contract.
<b>Contract Change</b>	a change to this Contract.
<b>Contract Period</b>	the period of time the Contract is in force, as more particularly defined in Clause 46.
<b>Contract Year</b>	a period of twelve (12) Months commencing on the Services Commencement Date and, thereafter, each anniversary of the Services Commencement Date provided that the final Contract year shall end on the expiry or termination of the Contract Period.
<b>Contracting Body</b>	any contracting authority as defined in Regulation 3 of the PCR.
<b>Control</b>	that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of another person (whether through the ownership of voting shares, by contract or otherwise) and " <b>Controls</b> " and " <b>Controlled</b> " shall be interpreted accordingly.
<b>Critical Service Failure</b>	a Service Failure where the level of service performance is below the Service Threshold set out in the column titled "Critical Service Failure" in the table in Annex 1 of Schedule 6.

<b>Crown</b>	the government of the United Kingdom (including the Northern Ireland Executive Committee and the Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including government ministers, government departments, government and particular bodies and government agencies.
<b>CRTPA</b>	shall have the meaning set out in Clause 66.1.
<b>Cyber Essentials</b>	a level of assurance as further detailed in the Cyber Essentials Scheme.
<b>Cyber Essentials Scheme</b>	the scheme developed by UK Government setting out technical controls for organisations to use in respect of cyber security, which is further described at <a href="https://www.gov.uk/government/publications/cyber-essentials-scheme-overview">https://www.gov.uk/government/publications/cyber-essentials-scheme-overview</a>
<b>Data Controller</b>	shall have the same meaning set out in the Data Protection Act 1998.
<b>Data Processor</b>	shall have the same meaning set out in the Data Protection Act 1998.
<b>Data Protection Legislation</b>	collectively, the Data Protection Act 1998, the EU General Data Protection Regulation at such time as that regulation shall come into force, and all other applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.
<b>Data Subject</b>	shall have the same meaning set out in the Data Protection Act 1998.
<b>Default</b>	any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or their Personnel in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.
<b>Deliverable</b>	<ul style="list-style-type: none"> <li>(a) Translations;</li> <li>(b) the assessments and reports produced by the Supplier or its Personnel during the provision of the Services;</li> <li>(c) any updates, amendments, modifications or improvements the Supplier or its Personnel make to the Register;</li> <li>(d) any data acquired, generated or developed by the Supplier or its Personnel to enable the Authority and/or any other third party to populate the Register;</li> <li>(e) template documents and forms produced by the Supplier or its Personnel for use in preparing and delivering the Translations;</li> <li>(f) any other materials, item or feature to be delivered by the Supplier or its Personnel during the Contract Period, including those set out in the Service Specification, Transition Plan and any Exit Plan, and</li> </ul>



(g) any Intellectual Property Rights vesting in any of the items set out in sub-paragraphs (a), (b), (c), (d) (e) and/or (f) above, but shall not include Supplier Assets and Supplier Background IPR.

<b>Directive</b>	Directive 2010/64 of the European Parliament and the Council on the right to interpretation and translation in criminal proceedings.
<b>Disaster</b>	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 four (4) hours or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period.
<b>Disaster Recovery Plan</b>	shall have the meaning set out in Paragraph 2.2.3 of Schedule 21.
<b>Disaster Recovery Services</b>	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster.
<b>Disaster Recovery System</b>	the system identified by the Supplier in the Service Solution which shall be used for the purpose of delivering the Disaster Recovery Services.
<b>Dispute Resolution Procedure</b>	is the procedure more particularly set out in Clause 67.
<b>Disputed Invoice</b>	shall have the meaning set out in Paragraph 6.1.2 of Schedule 7.
<b>DOTAS</b>	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs 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 s.132A Social Security Administration Act 1992.
<b>Employee Liability</b>	<p>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:</p> <ul style="list-style-type: none"><li>(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</li><li>(b) unfair, wrongful or constructive dismissal compensation;</li><li>(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;</li></ul>

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

<b>Employment Regulations</b>	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.
<b>Environmental Information Regulations</b>	the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
<b>Equalities Provisions</b>	shall have the meaning set out in Clause 27.1.
<b>Exit Milestone</b>	an event or task set out in an Exit Plan.
<b>Exit Milestone Date</b>	the date set out against the relevant Exit Milestone by which the Exit Milestone must be achieved.
<b>Exit Period</b>	<p>either:</p> <ul style="list-style-type: none"> <li>(a) the period of twelve (12) Months prior to the date on which the Contract is due to expire;</li> <li>(b) if the Contract is terminated early, the longer of the period from the date of notification of termination to: <ul style="list-style-type: none"> <li>(i) the effective date of termination; or</li> <li>(ii) twelve (12) Months following the date of notification of termination, or</li> </ul> </li> <li>(c) such other period of time agreed between the Parties in the Exit Plan.</li> </ul>
<b>Exit Plan</b>	the plan produced and updated by the Supplier during the Contract Period in accordance with Schedule 13.
<b>Exit Services</b>	the services and activities to be provided by the Supplier in accordance with the Exit Plan.
<b>Fast-track Change</b>	any Contract Change which the Parties agree to expedite in accordance with Paragraph 7 of Schedule 10.
<b>FOIA</b>	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

<b>Force Majeure Event</b>	<p>any of the following: fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, to the extent that such event has affected the ability of the Affected Party from performing its obligations in accordance with the terms of this Contract and where such event is not attributable to any act or failure to take preventative action by the Affected Party, but excluding:</p> <p>(a) any industrial action occurring within the Supplier's or any Sub-contractor's organisation, including any industrial action taken by Language Professionals; and</p> <p>(b) the failure by any Sub-contractor of the Supplier to perform its obligations under any Sub-contract.</p>
<b>Former Supplier</b>	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).
<b>Fraud</b>	any offence under the Law creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.
<b>General Anti-Abuse Rule</b>	the legislation in Part 5 of the Finance Act 2013 and any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.
<b>Good Industry Practice</b>	standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.
<b>Governance Boards</b>	shall have the meaning set out in Paragraph 3.1 of Schedule 8.
<b>Halifax Abuse Principle</b>	the principle explained in the CJEU Case C-255/02 Halifax and others.
<b>Impact Assessment</b>	an assessment of a Change Request in accordance with Paragraph 4 of Schedule 10.
<b>Indemnified Person</b>	each and every person to whom a Commissioning Body (or any direct or indirect sub-licensee of a Commissioning Body) sub-licenses, assigns or novates any Intellectual Property Rights used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to a Commissioning Body or a third party in the fulfilment of the Supplier's obligations under this Contract, including the Supplier Assets, Supplier Background IPR and Deliverables.
<b>Identified Bodies</b>	are:

- (a) the Ministry of Justice HQ being a division of the Ministry of Justice; and
- (b) National Probation Service, being a division of the National Offender Management Service,

with each being an "**Identified Body**".

**Indexed** indexed in accordance with the calculation set out in Paragraph 3 of Schedule 7.

**Information** has the meaning given under section 84 of FOIA.

**Initial Contract Period** a period of four (4) years from and including the Services Commencement Date.

**In Person Assessment** a type of assessment which may be undertaken by the Quality Assurance Supplier where the Quality Assurance Supplier meets with Language Professionals in person to ascertain whether the Services are being performed in accordance with the Contract.

- Insolvency Event**
- (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 within the meaning of section 123 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 fourteen (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 fourteen (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 solvent reconstruction of that other Party;

- (ii) (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
  - (iii) 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,
- (g) (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;
- (h) (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
- (i) 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.

**Insurances**

shall have the meaning set out in Paragraph 2.1 of Schedule 11.

**Intellectual Property Rights or IPRs**

patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights, know-how and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

**ITI Code of Conduct**

the Professional Code of Conduct of the Institution of Translation & Interpreting as set out at:

<http://www.iti.org.uk/attachments/article/154/Code%20of%20Conduct%20-%20individual.pdf>

as may be amended from time to time.

**ISMS**

shall have the meaning set out in Paragraph 5.1.1(a) of Schedule 14.

**Key Performance Indicator(s) or KPI(s)**

a key performance indicator as set out in Annex 1 of Schedule 6.

**Key Personnel**

those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 17 against each Key Role as at the Commencement Date or as amended in accordance with Clause 19.

**Key Roles**

a role described as a Key Role in Schedule 17 and any additional roles added from time to time in accordance with Clause 19.

**Know-How**

all ideas, concepts, schemes, information, knowledge, techniques, methodology and anything else in the nature of the know-how relating to the Services or any part thereof but excluding know-how

already in the Supplier's or the Authority's possession before the Commencement Date.

<b>Language Professional</b>	an individual who translates the meaning of what is written or otherwise recorded in one language into a second language in written form or into an accessible format (including but not limited to braille and large type), including the transcription of recorded material into written form in English and other formats (including but not limited to large print, audio, video and pictorial English).
<b>Language Professional Data</b>	shall have the meaning set out in Clause 35.1.
<b>Law</b>	any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the Supplier is bound to comply.
<b>Legal Body</b>	a body established by law to undertake administrative or judicial functions and shall include but is not limited to tribunals and courts.
<b>Service Credits</b>	any service credits payable by the Supplier for failure to meet its obligations under this Contract, as set out and calculated in accordance with Schedule 6.
<b>Service Credits Cap</b>	in each Contract Year, an amount equal to <b>REDACTED</b>
<b>Losses</b>	losses, liabilities, damages, costs and expenses (including professional fees) and disbursements and costs of investigation, litigation, settlement, judgement, interest and penalties whether arising in contract, tort (including negligence) breach of statutory duty or otherwise and " <b>Loss</b> " shall be construed accordingly.
<b>Management Information</b>	the information specified in Annex 1 to Schedule 9, as amended from time to time in accordance with Paragraph 2.2 of Schedule 9.
<b>Mediator</b>	shall have the meaning set out in Clause 67.5.1.
<b>Minor Service Failure</b>	a Service Failure where the level of service performance is below the Service Threshold set out in the column titled "Minor Service Failure" in the table in Annex 1 of Schedule 6.
<b>Moderate Service Failure</b>	a Service Failure where the level of service performance is below the Service Threshold set out in the column titled "Moderate Service Failure" in the table in Annex 1 of Schedule 6.
<b>Month</b>	a calendar month.
<b>Monthly Payment</b>	the sum payable in each Month before Service Credits and other deductions, calculated in accordance with Schedule 7.
<b>Mystery Shopping Assessment</b>	a type of assessment which may be undertaken by the Quality Assurance Supplier to assess whether the Services are being

performed by a Language Professional in accordance with the Contract, including reviewing:

- (a) the quality and accuracy of the Translations;
- (b) the appropriateness of the engagement, body language and demeanour of the Language Professional;
- (c) the Language Professional's adherence to the Authority Code of Conduct; and
- (d) whether the Language Professional's qualifications, security level and right to work evidence are sufficient.

**New Fair Deal**

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.

**Non-Fulfilled or Non-Fulfilment**

where an Assignment has not been completed, including where:

- (a) a Language Professional has not been assigned to the Booking;
- (b) the Supplier assigns a Language Professional to fulfil a Assignment but that individual does not have the Security Level and/or Qualification Level required by the Assignment and the Commissioning Body has not given its consent pursuant to Paragraph 13.2 or 24.1 of the Service Specification; and
- (c) the assigned Language Professional does not complete the Assignment by the Booked End Time.

**Normal Working Hours**

07:00 to 19:00 Monday to Friday (excluding bank holidays) and any other times and dates notified in writing by a Commissioning Body to the Supplier.

**Notifiable Default**

shall have the meaning set out in Clause 50.1.

**Number of Minutes**

the number of minutes of audio transcribed from the source language.

**Number of Words**

the number of words translated from the source language.

**Occasion of Tax Non-Compliance**

any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of the:

- (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;
- (b) failure of an avoidance scheme which the Supplier was involve 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
- (c) Supplier's tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences

which is not spent at the Commencement Date or to a penalty for civil fraud or evasion.

**Onboarding Process**

except for Pre-Registered Language Professionals, the process undertaken by each Language Professional before commencing the provision of the Services, as more particularly described in the Service Solution.

**Open Book Data**

complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the payments already paid or payable and payments forecast to be paid under this Contract during the remainder of the Contract Period (whether by the Authority or another Commissioning Body), including details and all assumptions relating to:

- (a) the Supplier's costs broken down against each Service 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 the Supplier's Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;
  - (iii) a list of costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's profit margin; and
  - (iv) expenses reimbursable under this Contract;
- (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's profit achieved over the Contract Period 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; and
- (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.

**Operational Performance Board**

the body described in Annex 1 to Schedule 8.

**Other Supplier**

any supplier to a Commissioning Body, other than the Supplier.



<b>Partial Termination</b>	the partial termination of this Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 51.3 or Clause 52.1.
<b>Party</b>	the Supplier and the Authority each being a " <b>Party</b> " and together the " <b>Parties</b> ".
<b>PCR</b>	the Public Contracts Regulations 2015.
<b>Performance Points</b>	points which accrue for Service Failures as set out in Annex 1 of Schedule 6.
<b>Personal Data</b>	shall have the meaning set out in the Data Protection Act 1998.
<b>Personnel</b>	all directors, officers, employees, agents, consultants and sub-contractors of either Party (as the context requires) including, in respect of the Supplier, the Language Professionals.
<b>Pre-Meeting Report</b>	the report the Supplier is required to prepare in advance of each Board Meeting as further detailed in Annex 1 to Schedule 8.
<b>Pre-Registered Language Professional</b>	a Language Professional who is on the Register as at the Services Commencement Date.
<b>Primary Language</b>	a first language, native language or mother tongue, being the language learnt from birth or that which is spoken best by the person and, for the avoidance of doubt, a person can have more than one primary language.
<b>Process</b>	has the meaning given to it under the Data Protection Act 1998 and, for the purposes of the Contract, it shall include both manual and automatic processing.
<b>Prohibited Act</b>	<p>(a) to directly or indirectly offer, promise or give any person working for or engaged by any Commissioning Body a financial or other advantage to:</p> <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> <p>(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 Contract;</p> <p>(c) an offence:</p> <ul style="list-style-type: none"> <li>(i) under the Bribery Act 2010;</li> <li>(ii) under legislation or common law concerning fraudulent acts;</li> <li>(iii) defrauding, attempting to defraud or conspiring to defraud any Commissioning Body; and/or</li> <li>(iv) any activity, practice or conduct which would constitute one of the offences listed under (c)(i) to (c)(iii) above if</li> </ul>

such activity, practice or conduct has been carried out in the UK.

<b>Priority Key Performance Indicators</b>	the Key Performance Indicators 1, 2 and 3.
<b>Quality Assurance Board</b>	the body described in Annex 1 to Schedule 8.
<b>Quality Assurance Supplier</b>	The London Borough of Newham a local authority whose address is Newham Dockside, 1000 Dockside Road, London E16 2QU, or such Other Supplier which the Authority notifies the Supplier from time to time.
<b>Quality Assurance Supplier Board Lead</b>	means the individual appointed by the Quality Assurance Supplier to be its board lead.
<b>Qualification Level</b>	the qualification requirements of the Language Professionals as set out in Annex 2 of Schedule 2 and as may be amended by the Authority from time to time.
<b>Quality Standards</b>	the quality standards published by the British Standards Institute, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with together with any quality standards further detailed in the Service Specification.
<b>Receipt</b>	the physical or electronic arrival of an invoice at the address of the Commissioning Body for which the invoice is intended, as confirmed to the Supplier in accordance with Schedule 7.
<b>Rectification Plan Failure</b>	<ul style="list-style-type: none"><li>(a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clause 50.3;</li><li>(b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 50.3.6;</li><li>(c) the Supplier failing to rectify a Notifiable Default within the later of:<ul style="list-style-type: none"><li>(i) thirty (30) Working Days of a notification submitted by the Supplier pursuant to Clause 48.1 or by the Authority pursuant to Clause 50.2; and</li><li>(ii) where the Parties have agreed a Rectification Plan in respect of that Notifiable 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 Notifiable Default; and/or</li></ul></li><li>(d) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of six (6) Months for the same (or substantially the same) root cause as that of the original Notifiable Default.</li></ul>

<b>Rectification Plan Process</b>	is the process as more particularly set out in Clause 50.3.
<b>Redundancy Costs</b>	<p>the total sum of any of the following sums paid to the applicable Supplier's Personnel, each amount apportioned between the Supplier and the Authority based on the time spent by such employee on the Services as a proportion of the total Service duration:</p> <p>(a) any statutory redundancy payment; and</p> <p>(b) in respect of an employee who was a Transferring Former Supplier Employee, any contractual redundancy payment (or where such a contractual benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the Supplier as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to his or her transfer to the Supplier under the Employment Regulations.</p>
<b>Register</b>	the Authority's register of Language Professionals created by the Authority as required by the Directive, including both the structure and content of such register together with any updates and/or changes made to that register from time to time and as set out in indicative template form in Schedule 16.
<b>Regulatory Bodies</b>	those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority and " <b>Regulatory Body</b> " shall be construed accordingly.
<b>Relevant Conviction</b>	other than for minor road traffic offences, any previous conviction (excluding any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023)) that is relevant to the nature of the Services and/or relevant to the work of the Authority including conviction for dishonesty, deception, fraud, money laundering, violence, assault or harassment.
<b>Relevant Requirements</b>	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.
<b>Relevant Tax Authority</b>	HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established.
<b>Relevant Transfer</b>	a transfer of employment to which the Employment Regulations apply.
<b>Relevant Transfer Date</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place.
<b>Replacement Services</b>	any services which are the same as or substantially similar to any of the Services and which any Commissioning Body receives in substitution of any of the Services following the expiry or termination of the Contract or Partial Termination as applicable, whether those

services are provided by a Commissioning Body internally and/or by any third party.

<b>Retention Period</b>	the period of time the Supplier is required to retain the data, documents and information of the Commissioning Bodies, as set out in Annex 4 to Schedule 9, or as otherwise amended by the Authority from time to time.
<b>Replacement Supplier</b>	any third party service provider appointed by a Commissioning Body to supply the Replacement Services.
<b>Requests for Information</b>	shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply).
<b>Review Report</b>	shall have the meaning set out in Paragraph 6.2 of Schedule 21.
<b>Security Adjustment Factor</b>	the element of the Adjustment Factor relating to Security Level calculated in accordance with Paragraph 2.3.2 of Schedule 7.
<b>Security Levels</b>	as defined in table 3 in Annex 1 of Schedule 2.
<b>Service Failure</b>	in respect of a Key Performance Indicator, where the level of service performance is below the Service Threshold in a Month.
<b>Service Payment</b>	the payment for the Services calculated in accordance with Schedule 7.
<b>Service Solution</b>	the document set out in Schedule 3 describing the way in which the Supplier intends to provide the Services which was delivered in response to the Authority's invitation to suppliers for formal offers to supply it with services.
<b>Service Specification</b>	the description of the Services to be supplied under the Contract as set out in Schedule 2.
<b>Service Threshold</b>	in respect of each Key Performance Indicator, the minimum level of performance stated in the "Service Threshold" column of the table set out in Annex 1 of Schedule 6.
<b>Service Transfer</b>	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 sub-contractor of a Replacement Supplier.
<b>Service Transfer Date</b>	the date of a Service Transfer.
<b>Services</b>	the services to be supplied by the Supplier to the Commissioning Bodies, subject to the terms of the Contract, as detailed in the Service Specification, together with the Transition Services and Exit Services.
<b>Services Commencement Date</b>	31 October 2016.
<b>Schedule</b>	a schedule attached to, and forming part of, the Contract.

<b>Source Language</b>	the language in which the original document or recording which is to be translated or transcribed is expressed.
<b>SPF</b>	shall have the meaning set out in Paragraph 4.2 of Schedule 14.
<b>Spot Check Assessment</b>	<p>a type of ad hoc assessment which may be undertaken by the Quality Assurance Supplier to assess whether the Services are being performed in accordance with the Contract, including reviewing:</p> <ul style="list-style-type: none"> <li>(a) the quality and accuracy of the Translations;</li> <li>(b) the appropriateness of the engagement, body language and demeanour of the Language Professional;</li> <li>(c) the Language Professional's adherence to the Authority Code of Conduct; and</li> <li>(d) whether the Language Professional's qualifications, security level and right to work evidence are sufficient.</li> </ul>
<b>Staffing Information</b>	<p>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 Data Protection Legislation), but including in an anonymised format:</p> <ul style="list-style-type: none"> <li>(c) their ages, dates of commencement of employment or engagement and gender;</li> <li>(d) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;</li> <li>(e) the identity of the employer or relevant contracting party;</li> <li>(f) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;</li> <li>(g) their wages, salaries and profit sharing arrangements as applicable;</li> <li>(h) 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;</li> <li>(i) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);</li> <li>(j) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;</li> <li>(k) 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</li> </ul>

	(l) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations.
<b>Standard Key Performance Indicators</b>	the Key Performance Indicators 4A, 4B, 5, 6, 7 and 8.
<b>Strategic Board</b>	the body described in Annex 1 to Schedule 8.
<b>Sub-contract</b>	a contract between two or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.
<b>Sub-contractor</b>	a third party with whom: <ul style="list-style-type: none"> <li>(a) the Supplier enters into a Sub-contract; or</li> <li>(b) a third party under (a) above enters into a Sub-contract,</li> </ul> and all directors, officers, employees, agents and consultants of that third party but shall not include Language Professionals.
<b>Supplier Assets</b>	all assets and rights used by the Supplier to provide the Services including hardware, software, telecoms devices and equipment (and including the Booking Service, Website and any user manuals and other documentation relating to the Booking Service and Website) and all Intellectual Property Rights vesting in such assets and rights but excluding Commissioning Body Premises, Commissioning Body Materials and the Deliverables.
<b>Supplier Background IPR</b>	(a) Intellectual Property Rights owned or licensed by the Supplier before the date of this Contract; and/or <ul style="list-style-type: none"> <li>(b) Intellectual Property Rights created or acquired by the Supplier independently of this Contract.</li> </ul>
<b>Supplier Board Lead</b>	the individual appointed by the Supplier from time to time to act as its board lead.
<b>Supplier Premises</b>	any real property of the Supplier, whether owned, licensed or leased (other than the Commissioning Body Premises).
<b>Supplier Termination Event</b>	(a) where, from and including 1 February 2017, five (5) Critical Service Failures of Priority Key Performance Indicators occur in any Month; <ul style="list-style-type: none"> <li>(b) where, from and including 1 February 2017, a Critical Service Failure in relation to the same Priority Key Performance Indicator occurs in five (5) consecutive Months;</li> <li>(c) where, from and including 1 February 2017, the number of Non-Fulfilled Bookings as a percentage of all Bookings in three (3) consecutive Months is 6% or higher;</li> <li>(d) the Supplier committing a material Default which, in the opinion of the Authority, is incapable of remedy;</li> <li>(e) an audit reveals Fraud or suspected Fraud;</li> </ul>

- (f) a Rectification Plan Failure;
- (g) where a right of termination is expressly reserved by the Authority in this Contract;
- (h) the Supplier and Quality Assurance Supplier becoming Affiliates of each other;
- (i) the representation and warranty given by the Supplier pursuant to Clause 42.1.7 being materially untrue or misleading;
- (j) the Supplier committing a Default under any of the following:
  - (i) Clause 23;
  - (ii) Clause 27;
  - (iii) Clause 33;
  - (iv) Clause 34;
  - (v) Clause 35;
  - (vi) Clause 36;
  - (vii) Clause 37;
  - (viii) Clause 38;
  - (ix) Clause 40; and/or
  - (x) Schedule 5;
- (k) an Insolvency Event occurring in respect of the Supplier ;
- (l) a change of Control of the Supplier unless:
  - (i) the Authority has given its Approval to the particular change of Control, which subsequently takes place as proposed; or
  - (ii) the Authority has not served its notice of objection within six (6) Months of the later of the date on which the change of Control took place or the date on which the Authority was given notice of the change of Control; or
- (m) the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the PCR from the procurement procedure leading to the award of this Contract.

**Supplier's Final Supplier Personnel List**

a list provided by the Supplier of all the Supplier's Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date.

**Supplier's Provisional Supplier Personnel List**

a list prepared and updated by the Supplier of all of the Supplier's Personnel who are engaged in or wholly or mainly 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.
<b>Supplier's Risk Profile Proposals</b>	has the meaning set out in Paragraph 6.2.3 of Schedule 21.
<b>Target Language</b>	the language into which the document or recording is being translated or transcribed.
<b>Tender Process</b>	shall have the meaning set out in Paragraph 10.2 of Schedule 13.
<b>Termination Payment</b>	the payment determined in accordance with Schedule 12.
<b>Third Party Beneficiary</b>	shall have the meaning set out in Clause 66.4.
<b>Third Party Claim</b>	any claim which is made or threatened by any third party against the Authority or any other Commissioning Body, and for which it appears that the Authority or Commissioning Body is, or may become, a defendant.
<b>Transferring Former Supplier Employees</b>	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply of the Relevant Transfer Date.
<b>Transferring Supplier Employees</b>	those employees of the Supplier and/or the Supplier's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.
<b>Transferee</b>	shall have the meaning set out in Clause 58.4.
<b>Transition</b>	shall have the meaning set out in Paragraph 1.1 of Schedule 4.
<b>Transition Manager</b>	shall be the person named as such in the Transition Plan, who shall fulfil the role set out in Paragraph 2.1.1 of Schedule 4 and as more particularly described in the Transition Plan.
<b>Transition Milestones</b>	the event or tasks relating to Transition, as set out in the Transition Plan and including the Booking Service Milestone Dates.
<b>Transition Period</b>	the period between the Commencement Date and the Services Commencement Date.
<b>Transition Plan</b>	the plan set out in the Annex 1 of Schedule 4, or as amended from time to time by agreement between the Parties in accordance with Schedule 4.
<b>Transition Project Board</b>	the body described in Paragraph 4.3 of Schedule 4.
<b>Transition Services</b>	the services and activities to be provided by the Supplier in accordance with the Transition Plan.
<b>Transition Team</b>	shall be the persons named as such in the Transition Plan, who shall fulfil the role set out in Paragraph 2.1.2 of Schedule 4 and as more particularly described in the Transition Plan.



<b>Transition Working Group</b>	the working group described at Paragraph 4.4 of Schedule 4.
<b>Translations</b>	the translations and interpretations prepared during the provision of the Services whether in written, recorded or digital form and including both the content and the medium in which it is recorded and all drafts of and, variations and modifications to, such works.
<b>Undisputed Invoice</b>	shall have the meaning set out in Paragraph 6.1.2 of Schedule 7.
<b>Urgency Adjustment Factor</b>	the element of the Adjustment Factor relating to Urgency Type calculated in accordance with Paragraph 2.3.1 of Schedule 7.
<b>Urgency Type</b>	as defined in table 2 in Annex 1 of Schedule 2.
<b>VAT</b>	value added tax in accordance with the provisions of the Value Added Tax Act 1994.
<b>Waiver Period</b>	the period of time, from and including the Services Commencement Date, as set out in Annex 1 of Schedule 6.
<b>Website</b>	the publicly accessible website (including any extensions, enhancements or additions thereof), as further detailed in Schedule 2, to be developed, hosted and maintained by the Supplier under this Contract including its source code and executable code.
<b>Working Day</b>	a day (other than a Saturday or Sunday) on which banks are open for general business in the city of London.

1.2 The interpretation and construction of the Contract shall be subject to the following provisions:

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter and vice versa;
- 1.2.3 references in the Contract to any Clause, sub-Clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause of, or schedule to, the Contract so numbered and reference to Paragraphs, Part 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 reference appears;
- 1.2.4 reference to a Clause is a reference to the whole of that Clause unless stated otherwise;
- 1.2.5 references to the Contract are references to the Contract as amended from time to time;
- 1.2.6 reference to any statute, enactment, order, regulation, code, official guidance or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, code, official guidance or instrument as amended or replaced from time to time by any subsequent enactment, modification, order, regulation, code, official guidance or instrument (whether such amendment or replacement occurs before or after the date of the Contract);
- 1.2.7 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted;

- 1.2.8 the words **"include"**, **"includes"**, **"including"**, **"exclude"**, **"excluding"**, **"in particular"**, **"for example"** and other similar words shall not limit the generality of the preceding words and are to be construed as if they were immediately followed by the words "without limitation"; and
- 1.2.9 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.
- 1.3 In the event of, and only to the extent of, any conflict between the Clauses of the Contract, the Schedules and/or any document referred to, the conflict shall be resolved, unless the Parties have agreed in writing to the contrary, in accordance with the following order of precedence:
- 1.3.1 the Clauses;
  - 1.3.2 the Service Specification;
  - 1.3.3 the Schedules, save for the Service Specification and the Service Solution;
  - 1.3.4 the Service Solution; and
  - 1.3.5 any other document referred to in the Contract.

## **2. DUE DILIGENCE**

- 2.1 The Supplier acknowledges that it has:
- 2.1.1 made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of any Commissioning Body;
  - 2.1.2 raised all relevant due diligence questions with the Authority before the Commencement Date;
  - 2.1.3 satisfied itself that it has sufficient information to ensure that it can provide the Services; and
  - 2.1.4 entered into the Contract in reliance on its own due diligence alone.
- 2.2 The Supplier acknowledges that each Commissioning Body has made no warranties or representations in respect of any of the information supplied by it or any other Commissioning Body or on its or the other Commissioning Bodies behalf.
- 2.3 Without prejudice to Clause 2.1, the Supplier shall:
- 2.3.1 use its reasonable endeavours to check and verify that the data, information, plans, drawings, documents, handbooks and codes of practice supplied by each Commissioning Body are accurate; and
  - 2.3.2 notify the relevant Commissioning Body immediately if it discovers errors or discrepancies in the data, information, plans, drawings, documents, handbooks and codes of practice supplied by that Commissioning Body.

## **3. TRANSITION**

- 3.1 The Parties shall comply with the provisions of Schedule 4 in relation to transition of the Services to the Supplier.

#### **4. PROVISION OF SERVICES**

4.1 During the Contract Period the Supplier shall provide the Services to each Commissioning Body provided that it shall not commence the provision of the Services to a Commissioning Body listed in Part B of Schedule 1 without the Approval of the Authority.

4.2 The Parties agree that, save in respect of instruction which is given by the Authority (which may give instruction in respect of any part of this Contract), the Supplier may take day to day instruction from a Commissioning Body in respect of the Services which that Commissioning Body has commissioned, provided that:

4.2.1 it shall immediately cease to follow the instructions of any or all Commissioning Bodies on notice from the Authority;

4.2.2 if a Commissioning Body or their respective Personnel provides instruction to the Supplier that, if actioned, would cause:

(a) a conflict between the instructions given by the Authority or another Commissioning Body;

(b) the Supplier to breach the terms of the Contract; and/or

(c) would result in additional costs being incurred by the Supplier and/or Authority,

the Supplier shall not act on such instruction and shall immediately notify the Authority in writing who shall confirm, in its discretion, how the Supplier is to proceed; and

4.2.3 it shall not take any instruction from any Commissioning Bodies (other than the Authority) in relation to the following matters:

(a) termination of this Contract or any part;

(b) the consequences of Default;

(c) the application of Service Credits; and

(d) any variation to this Contract,

together with any other matters the Authority may notify the Supplier from time to time.

4.3 The Supplier agrees and acknowledges that it has not been given any rights of exclusivity or any volume guarantees whatsoever in relation to the volume of the Services provided under the Contract.

#### **5. QUALITY ASSURANCE AND PERFORMANCE INDICATORS**

5.1 In performing the Services, the Supplier shall, and shall procure its Personnel shall, meet or exceed the:

5.1.1 Key Performance Indicators;

5.1.2 Quality Standards;

5.1.3 Good Industry Practice;

5.1.4 Service Specification;

- 5.1.5 Service Solution; and
  - 5.1.6 Law.
- 5.2 Where there is a conflict between the standards set out in Clause 5.1, such conflict shall be immediately directed by the Supplier to the Authority which shall, subject to Clause 1.3, direct how the conflict will be resolved.
- 5.3 The Supplier shall maintain accreditation with any relevant Quality Standards authorisation body, including such accreditation as set out in Schedule 2.
- 5.4 The Supplier shall co-operate, and shall procure that its Personnel shall co-operate, with all reasonable procedures and processes which may be undertaken by the Authority and any Other Supplier of the Authority in respect of ensuring the quality and the standard of the Services provided by and on behalf of the Supplier, including those services set out in the Service Specification which shall be undertaken by the Quality Assurance Supplier.
- 5.5 In co-operating with the procedures and processes which may be undertaken in accordance with Clause 5.4, the Supplier shall:
- 5.5.1 promptly, and in any event within two (2) Working Days, provide such information and reports which may be reasonably required by the Authority and/or such Other Suppliers; and
  - 5.5.2 provide the Authority and/or such Other Supplier reasonable access to:
    - (a) any Supplier Premises (or such premises which may be used by Sub-contractors to perform in the provision of the Services);
    - (b) the Supplier Assets;
    - (c) any other equipment which may be used in the provision of the Services including that belonging to its Sub-contractors; and
    - (d) the Supplier's Personnel.
- 5.6 In the event the Services being performed by a Language Professional on behalf of the Supplier do not meet the requirements of this Contract, the Supplier shall, and shall procure the Language Professional shall, comply with the procedures set out in the Service Specification in respect of the improvement of such Services and, as required by the Authority or the Quality Assurance Supplier, suspend and/or remove Language Professional from the provision of the Services.
- 5.7 Notwithstanding Clause 5.4, the Supplier shall monitor and ensure that its Personnel are performing the Services on behalf of the Supplier to the standard set out in the Contract and shall notify the Authority and the Quality Assurance Supplier immediately if it suspects or becomes aware the performance or the qualifications of itself and/or its Personnel fall below the standards set out in the Contract.

## **6. PERFORMANCE FAILURES**

- 6.1 Without prejudice to any other rights and remedies the Authority may have, if during the Contract Period:
- 6.1.1 a Non-Fulfilment and/or a Service Failure occurs, Service Credits for Non-Fulfilment shall be deducted from the Monthly Payment and/or a credit note in respect of the Service Failure shall be issued, in accordance with Schedule 7;
  - 6.1.2 a Notifiable Default occurs, the Supplier shall comply with the Rectification Plan Process (in addition to the Service Credits and/or credit notes accruing in accordance with Schedule 7); and/or

- 6.1.3 a Supplier Termination Event occurs, the Authority may exercise its rights to terminate the Contract in whole or in part pursuant to Clause 51.1.
- 6.2 Subject to Clause 6.3, not more than once in each calendar year of the Contract Period the Authority may, on giving the Supplier at least three (3) Months' notice:
  - 6.2.1 change the weighting that applies in respect of one or more specific Key Performance Indicators; and/or
  - 6.2.2 change the classification of one or more specific Key Performance Indicators
- 6.3 Within ten (10) Working Days of the date that notice is served by the Authority under Clause 6.2, the Parties shall meet to discuss the consequences of the proposed changes to the Key Performance Indicators, at which meeting the Supplier shall be entitled to make representations to the Authority regarding the consequences of the proposed changes to the Key Performance Indicators. Where the Parties (each acting reasonably) agree that the proposed changes to the Key Performance Indicators will have a material adverse impact on the risk profile of the Supplier under the Contract, the proposed change shall be agreed by the Parties via the Change Control Procedure. For all other changes to the Key Performance Indicators, the Parties agree that such change shall be incorporated into this Contract without the need to refer the matter to the Change Control Procedure and at no cost to the Authority or any other Commissioning Body.
- 6.4 In the event of the Authority's breach of the terms of this Contract (including payment of any Service Payment properly due), the Supplier shall not suspend the Services (or any part thereof) or terminate any part of this Contract but shall refer the matter to the Dispute Resolution Procedure.

## **7. SUPPLIER OBLIGATIONS**

- 7.1 The Supplier shall:
  - 7.1.1 at all times allocate sufficient resources to supply the Services in accordance with the Contract;
  - 7.1.2 provide and fulfil any ancillary or incidental service, function or responsibility not specified in the Service Specification where such service, function or responsibility is necessary for the proper performance of the relevant Services;
  - 7.1.3 obtain, and maintain throughout the duration of the Contract, 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 or performance of any other obligation under this Contract;
  - 7.1.4 ensure the Supplier Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Authority);
  - 7.1.5 ensure that in the performance of its obligations under the Contract it does not disrupt the operations of each Commissioning Body and their respective Personnel;
  - 7.1.6 ensure that any documentation, information and training provided to each Commissioning Body under this Contract (including in relation to the use of the Booking Service and Website) is comprehensive, accurate and prepared in accordance with Good Industry Practice;
  - 7.1.7 co-operate with the Other Supplier(s) and provide reasonable information (including any documentation), advice and assistance in connection with the Services to the Other Supplier(s) including to enable such Other Supplier(s) to provide services to the respective Commissioning Bodies and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the Services (or any of them) to the respective Commissioning Bodies and/or to any Replacement Supplier;

- 7.1.8 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;
- 7.1.9 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 7.1.8;
- 7.1.10 provide each Commissioning Body with such advice and assistance as that Commissioning Body may reasonably require during the Contract Period in respect of the supply of the Services;
- 7.1.11 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 the Contract;
- 7.1.12 notify the Authority of any circumstances suggesting that a change of Control of the Supplier is planned, in contemplation or has taken place;
- 7.1.13 notify the Authority in writing of any material detrimental change in the financial standing and/or any change in the credit rating of the Supplier;
- 7.1.14 subject to Clause 33.6, notify the Authority in writing within ten (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 the Contract; and
- 7.1.15 ensure that neither it, nor any of its Affiliates or Personnel, bring any Commissioning Body into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in that Commissioning Body, regardless of whether or not such act or omission is related to the Supplier's obligations under this Contract.

## **8. SUPPLIER ASSETS**

- 8.1 The Supplier shall be solely responsible for the cost of carriage of the Supplier Assets to the Commissioning Body Premises. Likewise on termination or expiry of this Contract, the Supplier shall be responsible for the removal and safe disposal of all of the Supplier Assets from the Commissioning Body Premises, including the cost of packing, carriage and making good any damage caused to the Commissioning Body Premises.
- 8.2 The Supplier Assets shall remain at the sole risk and responsibility of the Supplier whilst at the Commissioning Body Premises.
- 8.3 Subject to any express provision of the BCDR Plan to the contrary, the loss or destruction for any reason of the Supplier Assets shall not relieve the Supplier of its obligation to supply the Services in accordance with this Contract.

## **9. SERVICE IMPROVEMENTS**

- 9.1 The Supplier shall continuously consider and identify opportunities to improve the Services including by:
  - 9.1.1 identifying cost savings which can be generated through investment or changes to the Services, how the Supplier shall reinvest those savings in the provision of the Services and improvements in the provision of the Services;

- 9.1.2 considering the emergence of new and evolving relevant technologies which could improve the Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
  - 9.1.3 considering 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;
  - 9.1.4 considering new or potential improvements to the interfaces or integration of the Services with other services provided by third parties which might result in efficiency or productivity gains or in reduction of operational risk; and
  - 9.1.5 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.
- 9.2 Where the Supplier identifies an opportunity to improve the Services pursuant to Clause 9.1, or the Authority identifies an opportunity to improve the Services (which it may do so in its discretion) the relevant Party shall provide a written summary to the other providing (in the case of improvements identified by the Supplier) sufficient information for the Authority to decide whether any improvement should be implemented (and such further information which the Authority may request) and, if the Authority confirms, in principle, that it wishes to proceed to implement the opportunity it shall be processed in accordance with the Change Control Procedure.
- 9.3 Any improvement of the kind referred to in Clause 9.1 which is incorporated in or used in relation to the Services during the Contract Period shall:
- 9.3.1 if, and to the extent that, it comprises an improvement to Intellectual Property Rights belonging to a Commissioning Body, the Intellectual Property Rights in such improvement shall vest absolutely in that Commissioning Body and shall be licensed to the Supplier as a Commissioning Body Material as set out in Clause 31;
  - 9.3.2 if, and to the extent that, it comprises an improvement to Intellectual Property Rights belonging to the Supplier, the Intellectual Property Rights in such improvement shall vest absolutely in the Supplier and shall be licensed to the Commissioning Bodies as a Supplier Asset as set out in Clause 30; or
  - 9.3.3 if, and to the extent that, it comprises an improvement to neither the Intellectual Property Rights of a Commissioning Body or the Supplier, the Intellectual Property Rights in such an improvement shall vest absolutely in the Party which proposed the improvement and shall be licensed to the other (together with the Commissioning Bodies) in accordance with Clause 30 or Clause 31 (as appropriate).
- 9.4 The Parties hereby assign (including by way of present assignment of future rights), and the Authority shall use its reasonable endeavours to procure the relevant Commissioning Body assigns, to each other the Intellectual Property Rights in improvements in accordance with Clause 9.3 and agree to execute such documents and do such acts as may be reasonably required in order to vest the Intellectual Property Rights in accordance with Clause 9.3 and give effect to that Clause.
- 9.5 Without prejudice to Clauses 9.1 and 9.2, the Supplier shall produce a report (**Continuous Improvement Report**) to the Operational Performance Board once every twelve (12) Months on or before each anniversary of the Services Commencement Date which shall identify all activities undertaken by the Supplier to improve the effectiveness of the Services in the previous twelve (12) Months and all further opportunities for improvement of this Contract in the following twelve (12) Months through prospective changes in the Services and/or behaviour or usage changes by either Party which shall include as a minimum:
- 9.5.1 a summary of all proposals made pursuant to Clause 9.2 and progress made against such proposals;

9.5.2 a trend analysis of performance against performance standards including the requirements of Schedule 6 in the previous twelve (12) Months to the date of the Continuous Improvement Report to identify areas of performance that can be improved, steps taken by the Supplier to address performance issues and, where the performance trend analysis identifies a deteriorating trend in performance, repeat failures, or significant failures that impact any Commissioning Body, an action plan to identify how these failures are to be rectified; and

9.5.3 trends and an action plan to address any areas of Authority dissatisfaction.

## **10. CONFLICTS OF INTEREST**

10.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any of the Supplier's Personnel are placed in a position where, in the reasonable opinion of the Authority:

10.1.1 there is or may be an actual conflict or potential conflict, between the pecuniary or personal interests of the Supplier and/or its Personnel and the duties owed to the Commissioning Bodies under the provisions of the Contract; or

10.1.2 the behaviour of the Supplier and/or the Supplier's Personnel is not in the best interest of and/or might adversely affect the reputation of any Commissioning Body.

10.2 Within three (3) Working Days of the date of disclosure pursuant to Clause 10.1, the Supplier shall consult with the Authority to discuss a way to remedy to any conflict or behaviour that, in the Authority's reasonable opinion, falls within Clauses 10.1.1 or 10.1.2.

10.3 If, within five (5) Working Days of the consultation under Clause 10.2, the Supplier fails, in the Authority's reasonable opinion, to remedy the breach then the Authority reserves the right to terminate the Contract by serving on the Supplier notice in writing with effect from the date specified in that notice and/or to take such other steps it deems necessary.

10.4 The actions of the Authority pursuant to this Clause shall not prejudice or affect any right of action or remedy which has accrued or will accrue to the Authority.

## **11. SERVICE PAYMENT**

11.1 In consideration of the proper performance by the Supplier of the Supplier's obligations under this Contract the Service Payment shall be paid to the Supplier in accordance with Schedule 7.

11.2 The Service Payment shall be fixed from the Commencement Date to the second anniversary of the Services Commencement Date. Thereafter, any adjustment to the Service Payment (including during any extension period) shall be calculated in accordance with Paragraph 3 of Schedule 7.

11.3 Except where otherwise provided, the Parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this Contract.

## **12. RECOVERY OF SUMS DUE**

12.1 Whenever under this Contract any sum of money is recoverable from or payable by the Supplier to a Commissioning Body (including any sum which the Supplier is liable to pay to the Authority in respect of any Default), the respective Commissioning Body may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier from the Commissioning Body under this Contract or under any other agreement or contract with the Commissioning Body or the Crown.

12.2 The Supplier shall make any payments due to any Commissioning Body without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Commissioning Body to the Supplier.



### **13. EURO**

- 13.1 Any legislative requirement to account for the Services in Euro € (or to prepare for such accounting), instead of and/or in addition to Pounds Sterling £, shall be implemented by the Supplier at nil charge to the Authority or any other Commissioning Body.
- 13.2 The Authority shall provide all reasonable assistance to facilitate compliance with Clause 13.1 by the Supplier.

### **14. GOVERNANCE**

- 14.1 The Parties agree to manage the Contract through the governance structure detailed in Schedule 8.

### **15. CHANGE CONTROL**

- 15.1 Unless otherwise expressly set out in the Contract, all proposed Contract Changes shall be processed by the Parties in accordance with Schedule 10.

### **16. RECORDS AND REPORTING**

- 16.1 The Supplier shall comply with the provisions of Schedule 9 in relation to:
- 16.1.1 the production and supply of Management Information and other reports; and
  - 16.1.2 the maintenance and retention of records.
- 16.2 The Supplier agrees that, notwithstanding any other term in the Contract, the Authority may provide:
- 16.2.1 the remaining Commissioning Bodies;
  - 16.2.2 Cabinet Office;
  - 16.2.3 the National Audit Office; and
  - 16.2.4 Parliament and Parliamentary Committees,
- with the Management Information, reports and records made available to the Authority under this Contract.
- 16.3 Upon receipt of the information provided by the Supplier to the Authority pursuant to Clause 16.1 or receipt of information provided by the Authority to the bodies named in Clause 16.2, the Supplier consents (without prejudice to its other rights and obligations under this Contract (including Clause 37 and at Law) that the Authority and those named in Clause 16.2 may:
- 16.3.1 store and analyse the information, reports and records and produce statistics; and
  - 16.3.2 share the information, reports and records and/or any statistics produced using them with any of those bodies named in Clause 16.2 to the extent each has not already received such information.

### **17. AUDIT**

- 17.1 Without prejudice to Clause 38.5, the Supplier shall promptly (and in any event within two (2) Working Days of request (unless otherwise agreed by the Authority in writing)), provide and shall procure its Sub-contractors promptly provide within the same timescale, each of the Authority, the National Audit Office, the Audit Commission and their respective representatives (**Auditors**) access to the records which it is required to maintain under this Contract as may be required by

the Authority and/or Auditors from time to time, in order that the Authority and/or Auditors may carry out an audit including for the following purposes:

- 17.1.1 to verify the accuracy of Service Payments (and proposed or actual variations to them in accordance with the Contract) and any other payment made under this Contract;
  - 17.1.2 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;
  - 17.1.3 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 the Auditor General;
  - 17.1.4 to review the integrity, confidentiality and security of Personal Data of which a Commissioning Body is Data Controller;
  - 17.1.5 to review the Supplier's compliance with the Data Protection Legislation in accordance with the Contract and any other Laws;
  - 17.1.6 to review the Supplier's compliance with its security obligations under the Contract;
  - 17.1.7 to review any books of accounts and the internal contract management accounts kept by the Supplier in connection with the provision of the Services;
  - 17.1.8 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;
  - 17.1.9 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;
  - 17.1.10 to verify the accuracy or completeness of any Management Information required to be provided by the Supplier under the Contract;
  - 17.1.11 to review any records relating to the Supplier's performance of the Services; and
  - 17.1.12 to ensure that the Supplier is complying with its obligations under the Contract.
- 17.2 The Authority agrees that it shall not appoint as its Auditor an Other Supplier if that Other Supplier provides the same or similar services to the Services in the ordinary course of its business.
- 17.3 Nothing in the Contract shall prevent or restrict the rights of the Comptroller and Auditor General and/or its representatives from carrying out an audit, examination or investigation of the Supplier and/or any Sub-contractors for the purposes of and pursuant to applicable Law.
- 17.4 The Authority shall give the Supplier reasonable written notice of its requirement to conduct an audit which shall be conducted during normal working hours.
- 17.5 The Supplier shall, and shall procure its Sub-contractors shall, on demand provide the Authority and any Auditors with all reasonable co-operation and assistance in relation to each audit, including by providing:
- 17.5.1 all information within the scope of the audit requested by the Authority and/or Auditors;
  - 17.5.2 reasonable access to:

- (a) any Supplier Premises (and in the event the records and accounts are held by a Sub-contractor or some other third party the Supplier shall procure reasonable access to such party's premises);
- (b) the Supplier Assets;
- (c) any other equipment which may be used in the provision of the Services including that belonging to its Sub-contractors; and
- (d) the Supplier's Personnel.

17.6 If an audit reveals:

17.6.1 a material Default; or

17.6.2 Fraud or suspected Fraud,

the Supplier shall reimburse the Authority and its Auditors' reasonable costs incurred in relation to the audit and the Authority be entitled to exercise its rights to terminate the Contract pursuant to Clause 51.

17.7 If an audit reveals:

17.7.1 a Commissioning Body has overpaid any charges, the Supplier shall pay:

(a) to the relevant Commissioning Body on demand:

(i) the amount overpaid;

(ii) interest on the amount overpaid, accruing on a daily basis at a rate of 3% per annum above the Bank of England's base rate from the date of overpayment by the Commissioning Body up to the date of repayment by the Supplier, whether before or after judgement; and

(b) to the Authority on demand (in addition to any sums which may be due to it under Clause 17.7.1), the reasonable costs incurred by the Authority and any Auditor undertaking the audit; or

17.7.2 a Commissioning Body has underpaid any charges, the Supplier shall not be entitled to increase the Service Payment paid or payable by the relevant Commissioning Body but, where the relevant Commissioning Body is the Authority, the Authority shall or, where the relevant Commissioning Body is not the Authority, the Authority shall use its reasonable endeavours to ensure that the relevant Commissioning Body shall pay to the Supplier the difference between the actual Service Payment paid and the Service Payment which should have been due within such timescale and/or instalments as agreed between those parties in writing.

**18. SUPPLIER PERSONNEL**

18.1 The Supplier shall:

18.1.1 employ or, subject to Clause 21, engage at all times a sufficient number of Personnel to fulfil its obligations under this Contract;

18.1.2 ensure that its Personnel are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;

18.1.3 promptly inform and keep the Authority informed in writing of any industrial relations, problems or other matters relating to its Personnel which may affect the performance of the Contract;

- 18.1.4 not employ or engage any person where the Supplier knows, or by reason of the circumstances might reasonably be expected to know, that the person concerned is involved in any unlawful procurement of social security benefits or tax exemptions in connection with his employment by or engagement with the Supplier;
  - 18.1.5 not make, facilitate or participate in the procurement of any unlawful payments to any of its Personnel, whether in the nature of social security fraud, evasion of tax or otherwise;
  - 18.1.6 at all times comply with all Law relating to income tax, national insurance contributions and any other related taxes;
  - 18.1.7 ensure that those Personnel as set out in the Service Specification, or as otherwise requested by from time to time by a Commissioning Body and/or Quality Assurance Supplier, have undertaken a Disclosure and Barring Service check and such other security clearance requirements as set out in this Contract; and
  - 18.1.8 without limitation to Clause 18.2, and subject to the procedure set out in Paragraph 21 of Annex 7 of Schedule 2 in respect of Language Professionals, where the Authority serves notice in writing, giving its reasons, remove from the provision of the Services any Personnel in the accordance with the period of time so directed by the Authority.
- 18.2 If a member of the Supplier's Personnel discloses that he/she has a Relevant Conviction, or is found to have a Relevant Conviction, the Supplier shall promptly notify each Commissioning Body. Each Commissioning Body reserves the right, at any time following receipt of a notification given under this Clause 18.2, to request the Supplier removes the relevant member of the Supplier's Personnel from the provision of the Services that such Commissioning Body receives under this Contract and the Supplier shall do so immediately.
- 18.3 In respect of Language Professionals:
- 18.3.1 the Supplier may appoint Language Professionals without the prior Approval of the Authority provided it:
    - (a) only engages with such Language Professionals on terms which shall:
      - (i) ensure that the Language Professionals keep confidential all Confidential Information of the Commissioning Bodies;
      - (ii) ensure that the Supplier Assets and the Deliverables can be licensed and assigned (as appropriate) in the manner contemplated in Clauses 30 and 32;
      - (iii) confirm that the Language Professional will not sub-contract the obligations they have to the Supplier in respect of this Contract;
      - (iv) confirm the Language Professional is required to:
        - (A) perform the Services with all reasonable skill and care in a timely, professional and ethical manner, together with any other standards of services which may be set out in this Contract and which are applicable to such grade of Language Professional;
        - (B) comply with the Authority Code of Conduct together with all other policies and procedures which may be in force at any Commissioning Body Premises or other Location which the Language Professional visits; and
        - (C) record all instances where he/she performs translation and interpretation services on behalf of the Supplier under this Contract;

(v) prohibit the Language Professional placing himself in a conflict of interest, as further detailed in Clause 10 of this Contract; and

(b) ensures each Language Professional is qualified to a standard no less than set out in the Service Specification.

18.3.2 the Supplier shall ensure:

(a) except in the case of Pre-Registered Language Professionals, that each Language Professional does not commence the provision of the Services on behalf of the Supplier until he/she has successfully completed the Onboarding Process;

(b) that within two (2) Working Days of commencement of engagement of each Language Professional (and, at all other times, promptly and, in any event, within two (2) Working Days of request) provide to the Quality Assurance Supplier (or, if there is no Quality Assurance Supplier, to the Authority and/or such Other Supplier the Authority may direct) the Language Professional Data and such other information that Quality Assurance Supplier may require in respect of the Language Professionals to enable it to perform services on behalf of the Authority (including those services set out in the Service Specification);

(c) that it promptly and, in any event, within two (2) Working Days, notifies the Quality Assurance Supplier (or, if there is no Quality Assurance Supplier, to the Authority and/or such Other Supplier as the Authority may direct) with details of any changes to the Language Professional Data and other information which has been provided under Clause 18.3.2(b); and

(d) without limitation to Clause 18.3.2(b), promptly, and in any event within two (2) Working Days of request, provide up to date information on the Language Professionals (including Language Professional Data) to any Commissioning Body.

18.4 If requested by the Authority, the Supplier shall promptly, and in any event within two (2) Working Days, provide to the Authority a copy of the contract entered into between the Supplier and a Language Professional (which may be shared with any other Commissioning Body, Quality Assurance Supplier and/or the Auditors).

18.5 The Authority shall use its reasonable endeavours to ensure that the Quality Assurance Supplier does not (except as expressly permitted in this Clause 18.5) disclose to any Other Supplier the Supplier's Confidential Information which the Supplier is required to provide in accordance with Clause 18.3.2(b) and Clause 18.3.2(c) provided always that the Supplier acknowledges and agrees that the Quality Assurance Supplier shall be entitled to disclose the Supplier's Confidential Information to the Authority and any other Commissioning Body in accordance with the terms of the contract between the Quality Assurance Supplier and the Authority.

18.6 The Supplier shall at all times remain responsible for its Personnel (including those of its Sub-contractors) and the acts and omissions of its Personnel (including those of its Sub-contractors). An obligation on the Supplier to do, or refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that its Personnel (and those of its Sub-contractors) also do, or refrain from doing, such act or thing.

## **19. KEY PERSONNEL**

19.1 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Contract Period. Schedule 17 lists the Key Roles and names of the persons whom the Supplier shall appoint to fill those Key Roles at the Commencement Date.

- 19.2 The Authority may identify any further roles as being Key Roles and, following agreement by the Supplier (such agreement not to be unreasonably withheld or delayed), the relevant persons selected to fill those Key Roles shall be included in the list of Key Personnel.
- 19.3 The identity of each member of Key Personnel shall be subject to the Approval of the Authority, such Approval not to be unreasonably withheld or delayed.
- 19.4 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under any Exit Plan) unless:
- 19.4.1 requested to do so by the Authority;
  - 19.4.2 the person concerned resigns, retires, dies or is on maternity or paternity leave or long-term sick leave;
  - 19.4.3 the person's employment or contractual arrangement with the Supplier or Sub-contractor is terminated for material breach of contract by the employee; or
  - 19.4.4 the Supplier obtains the Authority's Approval (such Approval not to be unreasonably withheld or delayed).
- 19.5 The Supplier shall:
- 19.5.1 notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less), in which case the Supplier shall ensure appropriate temporary cover for that Key Role;
  - 19.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
  - 19.5.3 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 one (1) month's notice;
  - 19.5.4 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
  - 19.5.5 ensure that any replacement for a Key Role:
    - (a) has a level of qualifications and experience appropriate to the relevant Key Role; and
    - (b) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

## **20. EMPLOYMENT LIABILITY**

- 20.1 The Supplier shall both during and after the Contract Period on demand indemnify and keep indemnified and hold harmless each Commissioning Body from and against all Losses which each Commissioning Body may suffer or incur as a result of:
- 20.1.1 all Employee Liabilities that may arise as a result of any claims brought against a Commissioning Body by any person where such claim arises from any act or omission of the Supplier or any of its Personnel; and/or
  - 20.1.2 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 employment or engagement by the Supplier of its Personnel in the provision of the Services.

## **21. SUB-CONTRACTING**

- 21.1 Subject to this Clause 21, the Supplier shall not Sub-contract its rights or obligations under the Contract without the Approval of the Authority (such Approval not to be unreasonably withheld or delayed). For these purposes, the Authority may withhold its Approval to the appointment of a Sub-contractor for reasons including if the Authority reasonably considers that:
- 21.1.1 the appointment of the proposed Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of a Commissioning Body;
  - 21.1.2 the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
  - 21.1.3 the proposed Sub-contractor should be excluded in accordance with Clause 21.2.
- 21.2 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the PCR, then:
- 21.2.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor; and
  - 21.2.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not appoint the Sub-contractor and the Supplier shall comply with such a requirement.
- 21.3 The Authority consents to the appointment of the Sub-contractors listed in Schedule 19.
- 21.4 The Supplier shall ensure that each Sub-contract in relation to the provision of the Services shall:
- 21.4.1 reflect the Market Stewardship Principles set out in Schedule 20;
  - 21.4.2 contain a provision to the effect that the Sub-contractor complies with its legal obligations in the fields of environmental, social and labour law;
  - 21.4.3 contain obligations no less onerous on the Sub-contractor than those imposed on the Supplier under this Contract, including those in respect of Clause 10, Clause 17, Clause 26, Clause 34, Clause 36, Clause 37, Clause 38, Clause 39, Clause 40, Clause 45; and
  - 21.4.4 contain a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-contract to the Authority, any other Commissioning Body or any Replacement Supplier without restriction (including any need to consent or approval) or payment by the Authority, any other Commissioning Body or any Replacement Supplier.
- 21.5 If requested by the Authority, within ten (10) Working Days of written notice, the Supplier shall provide to the Authority:
- 21.5.1 a copy of the Sub-contract entered into with its Sub-contractor (which may be shared with any other Commissioning Body and/or the Auditors); and
  - 21.5.2 any other information reasonably requested by the Authority in relation to the Sub-contract or the Sub-contractor.
- 21.6 The Authority may require the Supplier to terminate a Sub-contract where the relevant Sub-contractor fails to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social and/or labour law.

## **22. SUPPLY CHAIN PROTECTION**

- 22.1 Where the Supplier or a Sub-contractor enters into a Sub-contract, it shall include within such Sub-contract provisions:
- 22.1.1 requiring the Supplier or the Sub-contractor receiving goods or services under the Sub-contract to consider and verify invoices under that contract in a timely fashion;
  - 22.1.2 that if the Supplier or the Sub-contractor fails to consider and verify an invoice in accordance with Clause 22.1.1, the invoice shall be regarded as valid and undisputed for the purposes of Clause 22.1.3 after a reasonable time has passed;
  - 22.1.3 requiring the Supplier or Sub-contractor (as the case may be) to pay any undisputed sums which are due from it to their Sub-contractor within a specified period not exceeding thirty (30) days of verifying that invoice is valid and undisputed;
  - 22.1.4 giving the Authority the right to publish both the Supplier's and the Sub-contractor's compliance with its obligation to pay undisputed invoices within the specified payment period; and
  - 22.1.5 requiring the Sub-contractor to include a clause to the same effect as this Clause 22.1 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 Contract.

## **23. STAFF TRANSFER**

- 23.1 The Parties agree that:
- 23.1.1 where the commencement of the provision of the Services or any part of the Services results in a Relevant Transfer of Transferring Former Supplier Employees, Part A of Schedule 18 shall apply; and
  - 23.1.2 on expiry or termination of the Services, Part C of Schedule 18 shall apply.

## **24. OFFERS OF EMPLOYMENT**

- 24.1 For the duration of the Contract and for a period of twelve (12) Months thereafter neither Party shall employ or offer employment to any of the other Party's employees who have been associated with the procurement and/or the contract management of the Services without that Party's Approval unless the employment pertained to an advertised position where appointment was made following fair and open competition.

## **25. BRIBERY AND COMPLIANCE**

- 25.1 The Supplier shall not, and shall procure its Personnel shall not, during the Contract Period:
- 25.1.1 commit a Prohibited Act; or
  - 25.1.2 do or suffer anything to be done which would cause a Commissioning Body or any of their respective Personnel to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 25.2 The Supplier warrants and undertakes to the Authority that neither it, nor to the best of its knowledge any of its Personnel, have at any time prior to the Commencement Date:
- 25.2.1 committed a Prohibited Act or been formally notified that is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or



- 25.2.2 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.
- 25.3 The Supplier shall:
- 25.3.1 in relation to this Clause 25, act in accordance the Relevant Requirements;
- 25.3.2 immediately notify the Authority if it suspects or becomes aware of any breach of this Clause 25; and
- 25.3.3 respond promptly, and in any event within two (2) Working Days, to any of the Authority's enquiries regarding any breach, potential breach or suspect breach of this Clause 25 and the Supplier shall co-operate with any investigation and allow the Authority, or such third party it elects, to audit the Supplier's books, records and any other relevant documentation in connection with the breach.
- 25.4 If the Supplier, the Supplier's Personnel or any person acting on the Supplier's behalf, in all cases whether or not acting with the Supplier's knowledge, is in Default under this Clause 25 and/or 42.1.4 then without prejudice to the Authority's other rights or remedies:
- 25.4.1 the Authority shall be entitled to terminate the Contract by serving on the Supplier notice in writing with effect from the date specified in that notice; and
- 25.4.2 the Supplier shall on demand indemnify and keep indemnified and hold harmless each Commissioning Body from and against all Losses which each Commissioning Body may suffer or incur as a result of or in connection with such Default.

### **Promoting Tax Compliance**

- 25.5 If, at any point during the Contract an Occasion of Tax Non-Compliance occurs the Supplier shall:
- 25.5.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
- 25.5.2 promptly, and in any event within two (2) Working Days of the notification being submitted in accordance with Clause 25.5.1, provide to the Authority:
- (a) 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
- (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

### **26. SAFEGUARD AGAINST FRAUD**

- 26.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by the Supplier and/or its Personnel.
- 26.2 The Supplier shall immediately notify the Authority in writing if it has reason to suspect that any Fraud has occurred, is occurring or is likely to occur, save where complying with this provision would cause the Supplier and/or its Personnel to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.
- 26.3 If the Supplier and/or the Supplier's Personnel commit Fraud, then without prejudice to the Authority's other rights or remedies:

- 26.3.1 the Authority shall be entitled to terminate the Contract by serving on the Supplier notice in writing with effect from the date specified in that notice; and
- 26.3.2 the Supplier shall on demand indemnify and keep indemnified and hold harmless each Commissioning Body from and against all Losses which each Commissioning Body may suffer or incur as a result of or in connection with any breach of Clause 26.

## **27. DISCRIMINATION**

- 27.1 In providing the Services the Supplier shall comply with the Equality Act 2010 and all applicable amendments, regulations and codes of practice or any future or other legislation which concerns discrimination in employment and service delivery (the **Equalities Provisions**).
- 27.2 The Supplier shall take all reasonable steps to procure the observance of the Equalities Provisions by its Personnel engaged in the provision of the Services.
- 27.3 The Supplier shall provide such information as the Authority may reasonably require for the purpose of assessing the Supplier's compliance with Clause 27.1 and Clause 27.2. Without prejudice to the foregoing, the Supplier shall capture and record equality data and information based on the nine protected characteristics under the Equality Act 2010 for all Language Professionals used in connection with the Contract.
- 27.4 The Supplier shall notify the Authority immediately in writing upon becoming aware of any investigation or legal proceedings brought against the Supplier and/or its Personnel under the Equalities Provisions.
- 27.5 In the event of any finding of unlawful discrimination being made against the Supplier and/or its Personnel under the Equalities Provisions, whether such event happened before the Commencement Date or during the Contract Period, the Supplier shall immediately inform the Authority of this finding and shall (but, in the event of an appeal, only after the final and unsuccessful outcome of the appellate process) take appropriate steps to the reasonable satisfaction of the Authority to prevent repetition of the unlawful discrimination.
- 27.6 In the event of repeated findings of unlawful discrimination against the Supplier during the Contract Period (whether arising from the same or different acts or omissions, and regardless of any steps it has taken in accordance with Clause 27.5 above) the Authority shall without prejudice to its other rights and remedies be entitled to terminate the Contract by serving notice in writing on the Supplier with effect from the date specified in that notice.
- 27.7 If requested to do so by the Authority, the Supplier shall, and shall procure its Personnel shall, at its own expense, fully co-operate with any Commissioning Body in connection with any investigation, legal proceedings, ombudsman inquiries or arbitration in which that Commissioning Body may become involved arising from any breach of the that Commissioning Body's duties under the Equalities Provisions due to the alleged acts or omissions of the Supplier and/or its Personnel.

## **28. CHANGE IN LAW**

- 28.1 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the Contract nor be entitled to an increase in the payments due under this Contract as a result of a change in Law.
- 28.2 Subject to Clause 28.1, the Parties shall implement any change to a Party's obligations under the Contract made necessary by a change in Law in accordance with the Change Control Procedure.
- 28.3 Each Party will promptly notify the other in writing upon becoming aware of any change in Law.

## **29. INTELLECTUAL PROPERTY**

- 29.1 Except as expressly set out in the Contract:

29.1.1 no Commissioning Body shall acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:

- (a) Supplier Assets; and
- (b) Supplier Background IPR.

29.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of each Commissioning Body or its licensors, including:

- (a) Commissioning Body Materials; and
- (b) Commissioning Body Background IPR.

### **30. LICENCES GRANTED BY SUPPLIER**

30.1 The Supplier hereby grants to each Commissioning Body, or shall procure the direct grant to each Commissioning Body of, a royalty free, irrevocable and non-exclusive licence to use the:

- 30.1.1 Supplier Assets; and
- 30.1.2 Supplier Background IPR,

for any purpose relating to the Services or the Replacement Services.

30.2 The licence granted in Clause 30.1 includes the right for each Commissioning Body to grant sub-licences to other bodies of the Crown, to the Replacement Supplier(s) and to any Other Supplier, provided in each case that the sub-licence is on terms no broader than the licence granted to the Commissioning Bodies.

30.3 The licence granted in Clause 30.1 shall remain in force for the Contract Period and for one (1) year following the expiry or termination of the Contract provided that:

- 30.3.1 if any Supplier Background IPR is embedded in or an integral part of any of the Deliverables, the licence shall be a royalty free, irrevocable, non-exclusive, perpetual licence for each Commissioning Body and their respective sub-licensees to enjoy the full benefit of the relevant Deliverables; and
- 30.3.2 in respect of the Booking Service, following expiry or termination of this Contract the Supplier may, with the Authority's prior Approval, for so long as the Authority uses the Booking Service charge the Authority reasonable fees (based on the Supplier's then current market rates) for hosting the Booking Service and providing any Booking Service upgrade or maintenance services required by the Authority.

30.4 The Supplier agrees that any Supplier Background IPR comprised or contained in the Register shall be for the purposes of Clause 30.3 be regarded as embedded in or an integral part of the Register and so subject to the to the royalty free, irrevocable, non-exclusive, perpetual licence referred to in Clause 30.3.1, but without prejudice to Clause 29.1.1.

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

31.1 The Authority hereby grants to the Supplier and, where necessary shall use its reasonable endeavours to procure the Commissioning Bodies grant to the Supplier, a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the:

- 31.1.1 Deliverables;
- 31.1.2 Commissioning Body Materials; and
- 31.1.3 Commissioning Body Background IPR,

solely to the extent necessary for performing the Services in accordance with this Contract.

31.2 The licence granted in Clause 31.1 includes the right for the Supplier to grant sub-licences to its Sub-contractors provided that:

31.2.1 any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 37; and

31.2.2 the sub-licence is granted solely to the extent necessary for performing the Services in accordance with the Contract.

31.3 The licence referred to in Clause 31.1 and any sub-licence granted pursuant to Clause 31.2 shall terminate automatically at the end of the Contract Period and the Supplier shall promptly thereupon deliver to the relevant Commissioning Body (or, if the relevant Commissioning Body so elects in relation to some or all of the material destroy and certify that it has done so) in the format and media requested all materials and all copies thereof licensed by the Commissioning Body to the Supplier pursuant to Clause 31.1 in the Supplier's or any Sub-contractor's possession or control.

## **32. ASSIGNMENT OF THE DELIVERABLES**

32.1 Subject to Clause 32.6, the Supplier hereby assigns to the Authority, with full title guarantee, title to and all rights and interests in the Deliverables or shall procure that the first owner of the Deliverables assigns them to the Authority on the same basis.

32.2 The assignment under Clause 32.1 shall take effect on the Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Deliverables, as applicable.

32.3 The Supplier shall waive or procure a waiver of any moral rights in any copyright works assigned to the Authority under this Contract.

32.4 If requested to do so by the Authority, the Supplier shall without charge to the Authority execute all documents and do such further acts as the Authority may require to perfect the assignment under Clause 32.1 or shall procure that the first owner of the Deliverables does so on the same basis.

32.5 Where the Supplier acquires, by operation of law, title to the Deliverables that is inconsistent with the allocation of title set out in Clause 32.1, it shall assign such Deliverables as it has acquired to the Authority in accordance with this Clause 32.5 or, where relevant, shall procure that the first owner of the Deliverables does so on the same basis.

32.6 In the case of Paragraph 3.6 of Schedule 2, the Supplier shall assign the Translations (including any data in the translation memory software used by the Supplier) and all Intellectual Property Rights therein to the relevant Commissioning Body in accordance with Clauses 32.1 to 32.5 (inclusive) as if such Commissioning Body was the Authority.

## **33. IPR INDEMNITY**

33.1 The Supplier shall not infringe any Intellectual Property Rights of any third party in supplying the Services (including any Deliverables and/or other materials licensed or supplied to any Commissioning Body or Indemnified Persons (whether directly or indirectly)) and the Supplier shall on demand indemnify and keep indemnified and hold each Commissioning Body and each other Indemnified Person harmless from and against all Losses which each Commissioning Body and Indemnified Persons may suffer or incur as a result of or in connection with any breach of this Clause 33.1.

33.2 The Authority shall, and shall use its reasonable endeavours to procure the other Commissioning Bodies and Indemnified Persons shall, notify the Supplier in writing of any claim or demand

brought against it for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Supplier.

33.3 Save where the Authority has given written notice in accordance with Clause 44.1 (in which case the provisions of Clause 44 shall apply instead of this Clause 33.3 and Clauses 33.4 and 33.5) the Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Supplier, provided always that the Supplier shall:

33.3.1 consult the Authority and any other relevant Commissioning Body and Indemnified Persons on all substantive issues which arise during the conduct of such litigation and negotiations;

33.3.2 take due and proper account of the interests of each Commissioning Body and Indemnified Persons; and

33.3.3 not settle or compromise any claim without the Authority's Approval (not to be unreasonably withheld or delayed).

33.4 The Authority shall, and shall use its reasonable endeavours to procure the necessary other Commissioning Bodies and Indemnified Persons shall, at the request of the Supplier, afford to the Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority, Supplier or any other Commissioning Body or Indemnified Persons by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Supplier's obligations under the Contract and the Supplier shall on demand indemnify and keep indemnified and hold harmless each Commissioning Body and each other Indemnified Persons from and against all Losses which each Commissioning Body and Indemnified Persons may suffer or incur in doing so.

33.5 The Authority shall not, and shall use its reasonable endeavours to procure the other Commissioning Bodies and Indemnified Persons shall not, make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by a Commissioning Body, Indemnified Persons or the Supplier in materials supplied or licensed by the Supplier under the Contract.

33.6 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Supplier is made in connection with the Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall promptly notify each relevant Commissioning Bodies and Indemnified Persons and, at its own expense and subject to the Approval of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:

33.6.1 modify any or all of the Services (which for the purposes of this Clause 33.6 shall include any Deliverables and/or other materials licensed or supplied to any Commissioning Body or Indemnified Persons (whether directly or indirectly)) without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or

33.6.2 procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority;

and in the event that the Supplier is unable to comply with Clauses 33.6.1 or 33.6.2 within twenty (20) Working Days of receipt of the Supplier's notice the Authority shall, without prejudice to its other rights and remedies, be entitled terminate the Contract by notice in writing to the Supplier with effect from the date specified in that notice.

## **34. COMMISSIONING BODY ASSETS**

- 34.1 In respect of Commissioning Body Premises, the Supplier shall, and shall procure its Personnel shall, comply with the requirements of Schedule 5.
- 34.2 In respect of Information Security, the Supplier shall, and shall procure its Personnel shall, comply with the requirements of Schedule 14.
- 34.3 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Commissioning Body Materials and Deliverables.
- 34.4 To the extent that Commissioning Body Materials and/or Deliverables are held and/or processed by the Supplier or any of its Personnel on its behalf, the Supplier shall:
- 34.4.1 preserve the integrity and maintain in good order and condition the Commissioning Body Materials and Deliverables and shall prevent the corruption, loss or damage of or to Commissioning Body Materials and Deliverables including any copy thereof;
  - 34.4.2 promptly return the Commissioning Body Materials and Deliverables (and all copies thereof) to the relevant Commissioning Body upon its request at no additional cost and in the format and on the media requested by such Commissioning Body from time to time;
  - 34.4.3 destroy, and procure its Sub-contractors destroy, all Commissioning Body Materials and/or Deliverables upon the earlier of:
    - (a) the expiry of the applicable Retention Period; and
    - (b) the written request of the Commissioning Body to whom the Commissioning Body Materials and/or Deliverables belong,  
  
and following the destruction of such Commissioning Body Materials and/or Deliverables, certify that it has done so to the relevant Commissioning Body;
  - 34.4.4 without prejudice to any other rights or remedies the Commissioning Bodies may have, permit the Commissioning Bodies and their respective agents to enter upon the Supplier Premises during normal business hours on reasonable notice to remove the Commissioning Body Materials and/or Deliverables; and
  - 34.4.5 at the request of the Commissioning Body to whom the Commissioning Body Materials and/or Deliverables belong, store such items separately and ensure that they are clearly identifiable as belonging to the respective Commissioning Body.
- 34.5 To the extent the Commissioning Body Materials and Deliverables comprises data, the Supplier shall perform secure back-ups of such data at least twenty four (24) hour intervals and 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 respective Commissioning Bodies (or to such other persons as the respective Commissioning Bodies may direct) at all times upon request.
- 34.6 If at any time the Supplier suspects or has reason to believe that Commissioning Body Materials and/or Deliverables have or may become corrupted, lost, degraded or damaged in any way for any reason as a result of its actions or omissions or that of its Personnel, then the Supplier shall:
- 34.6.1 notify the Authority and any other affected Commissioning Bodies immediately;
  - 34.6.2 inform the Authority and any other affected Commissioning Body of the remedial action the Supplier proposes to take;
  - 34.6.3 use its best endeavours to recover the Commissioning Body Materials and/or Deliverables and otherwise make good an damage caused;

- 34.6.4 without prejudice to Clause 34.6.3, promptly act on the instructions of the Authority and any other affected Commissioning Bodies; and
  - 34.6.5 co-operate with any investigation the Authority and other Commissioning Bodies considers necessary to undertake as a result of breach of suspected breach.
- 34.7 In the event that through any Default of the Supplier and/or its Personnel, Commissioning Body Data is either lost, corrupted, degraded or damaged, the Supplier shall on demand indemnify and keep indemnified and hold harmless each Commissioning Body from and against all Losses which each Commissioning Body may suffer or incur as a result of or in connection with any such Default.

## **35. LANGUAGE PROFESSIONAL DATA**

- 35.1 With respect to the Personal Data relating to each Language Professional which the Supplier is required to collate from the Language Professional under this Contract (and which may contain Sensitive Personal Data) (**Language Professional Data**), the Parties agree that:
- 35.1.1 each Party shall be a Data Controller in its own right in respect of its Processing of that Language Professional Data; and
  - 35.1.2 any other Commissioning Body who receives Language Professional Data pursuant to this Contract shall be a Data Controller in its own right in respect of its Processing of that Language Professional Data.
- 35.2 Prior to providing the Language Professional Data to a Commissioning Body, the Supplier shall ensure each Language Professional about whom the Language Professional Data relates has agreed in writing:
- 35.2.1 that their Personal Data will be transferred to each of the Commissioning Bodies;
  - 35.2.2 that their Personal Data will be held in the Register and will be Processed for the purposes of the Authority meeting its obligations under the Directive;
  - 35.2.3 that their Personal Data, or parts thereof, may be published on the website of the Quality Assurance Supplier and made available to a third party on request (provided that, in each case, the name of the Language Professional shall not be published or made available);
  - 35.2.4 without limitation to Clause 35.2.2, that the Commissioning Bodies may use the Language Professional Data at any time for the purposes of:
    - (i) the receipt of the Services;
    - (ii) communicating with the Language Professionals;
    - (iii) the performance of the Commissioning Bodies' respective businesses or functions; and/or
    - (iv) compliance with Law.
  - 35.2.5 the Commissioning Bodies may transfer the Language Professional Data to Other Suppliers to be Processed in accordance with the instructions of the respective Commissioning Body.
- 35.3 In respect of the Language Professional Data, the Supplier shall:
- 35.3.1 promptly, and in any event within two (2) Working Days, provide evidence of the written consent obtained from a Language Professional in accordance with Clause 35.2 upon request of a Commissioning Body;

- 35.3.2 immediately notify each Commissioning Body in writing if the consent obtained from the Language Professional in accordance with Clause 35.2 (whether in whole or in part) is revoked by the Language Professional;
- 35.3.3 ensure the transfer of Language Professional Data to a Commissioning Body shall at all times comply with Data Protection Legislation and Schedule 14;
- 35.3.4 immediately notify each Commissioning Body of any unlawful or unauthorised Processing of the Language Professional Data or if any of the Language Professional Data is disclosed in breach of this Contract and/or any breach of the security measures to be put in place under this Contract;
- 35.3.5 ensure that it does not knowingly or negligently do or omit to do anything which places any Commissioning Body in breach of its obligations under the Data Protection Legislation in respect of the Language Professional Data;
- 35.3.6 immediately notify each Commissioning Body if it receives a complaint in respect of its Processing of the Language Professional Data (whether from the Language Professional themselves or any other third party); and
- 35.3.7 comply with such other obligations it has under Clause 36 to the extent that the obligations apply to the Language Professional Data.

## **36. PROTECTION OF PERSONAL DATA**

- 36.1 For the purposes of this Clause 36, references to "Commissioning Body" shall be that Commissioning Body which is the Data Controller for the relevant Commissioning Body Data.
- 36.2 Save in respect of Clause 35, with respect to the Parties' rights and obligations under the Contract, the Parties agree that the relevant Commissioning Body is the Data Controller and the Supplier is the Data Processor with respect of the Supplier's Processing of the Commissioning Body Data.
- 36.3 The Supplier shall:
  - 36.3.1 at all times comply with the requirements of the Data Protection Legislation;
  - 36.3.2 ensure that at all times it has in place appropriate technical and organisational measures to:
    - (a) ensure the security of the Commissioning Body Data of each Commissioning Body; and
    - (b) to guard against unauthorised or unlawful Processing of the Commissioning Body Data and against accidental loss or destruction of, or damage to, the Commissioning Body Data;
  - 36.3.3 without prejudice to Clause 36.3.2, comply with the provisions of Schedule 14 and ensure that any technical and organisational measures are to a standard no less than that set out in that Schedule 14;
  - 36.3.4 promptly, and in any event within two (2) Working Days, provide each Commissioning Body such information as that Commissioning Body may reasonably request to satisfy itself that the Supplier is complying with its obligations under the Contract and the Data Protection Legislation;
  - 36.3.5 comply with any notification requirements under the Data Protection Legislation;
  - 36.3.6 in the event of any change in Data Protection Legislation subsequent to the Commencement Date take such steps (including agreeing to additional obligations



and/or executing additional documents) as may be requested by the Commissioning Body to ensure that the Processing by the Supplier of Commissioning Body Data complies with Data Protection Legislation;

- 36.3.7 immediately notify each Commissioning Body of any unlawful or unauthorised Processing of any Commissioning Body Data or if any Commissioning Body Data is disclosed in breach of this Contract and/or any breach of the security measures to be put in place under this Contract;
- 36.3.8 ensure that it does not knowingly or negligently do or omit to do anything which places any Commissioning Body in breach of its obligations under the Data Protection Legislation;
- 36.3.9 Process the Commissioning Body Data only in accordance with instructions from each Commissioning Body (which may be specific instructions or instructions of a general nature as set out in the Contract or as otherwise notified by that Commissioning Body to the Supplier during the Contract Period);
- 36.3.10 Process the Commissioning Body Data only to the extent, and in such manner, as is necessary for the provision of the Services;
- 36.3.11 ensure that access to the Commissioning Body Data is strictly limited to those of its Personnel who reasonably require access to the Commissioning Body Data in order to meet the Supplier's obligations under this Contract;
- 36.3.12 take all reasonable steps to ensure the reliability of any Supplier's Personnel who have access to the Commissioning Body Data and ensure that the Supplier's Personnel:
  - (a) are informed of the confidential nature of the Commissioning Body Data and comply with the Supplier's obligations set out in this Clause 36 and otherwise under this Contract;
  - (b) are aware of the confidential nature of the Commissioning Body Data and do not publish, disclose or divulge any of the Commissioning Body Data to any third party unless directed in writing to do so by the Commissioning Body; and
  - (c) have undergone adequate training in the use, care, protection and handling of Commissioning Body Data;
- 36.3.13 obtain Approval from the relevant Commissioning Body in order to transfer the Commissioning Body Data to any Sub-contractors for the provision of the Services. To the extent such Commissioning Body Data is transferred to any Sub-contractor such party shall be considered a sub-processor to the Supplier;
- 36.3.14 notify each Commissioning Body within five (5) Working Days if it receives:
  - (a) a request from a Data Subject (or a third party on their behalf) to have access to that person's Personal Data;
  - (b) a complaint or request relating to a Commissioning Body's obligations under the Data Protection Legislation; or
  - (c) any communication from the Information Commissioner or any other regulatory authority in connection with the obligations of any Commissioning Body in relation to Data Protection Legislation;
- 36.3.15 provide each Commissioning Body with full co-operation and assistance within reasonable time scales in relation to any complaint made or requests received in

relation to Commissioning Body Data, including by promptly, and in any event within two (2) Working Days, providing:

- (a) the relevant Commissioning Bodies with full details of the complaint or request;
- (b) such assistance and information as is reasonably requested to enable the relevant Commissioning Body to comply with the request or complaint within the relevant timescales set out in the Data Protection Legislation and in accordance with the relevant Commissioning Body's instructions; and
- (c) providing the relevant Commissioning Body with any Commissioning Body Data it holds in relation to a Data Subject;

36.3.16 provide, within a reasonable timescale, a written description of the technical and organisational methods employed by the Supplier for the purpose of compliance with its obligations under this Clause 36 and provide to the relevant Commissioning Body copies of all documentation relevant to such compliance including protocols, procedures, guidance, training and materials; and

36.3.17 not Process Commissioning Body Data outside the European Economic Area without the Approval of the relevant Commissioning Body and if that Commissioning Body approves to a transfer to:

- (a) comply with any reasonable instructions notified to it by that Commissioning Body;
- (b) at the request of the Commissioning Body, enter into or procure the recipient of the Commissioning Body Data enters into such data transfer agreement as may be required by the Commissioning Body which may include any data transfer agreement which is approved or recognised by a data protection regulator; and/or
- (c) take such other steps as are required by the Commissioning Body to enable the processing of Commissioning Body Data outside the European Economic Area to take place in accordance with Data Protection Legislation.

36.4 The Supplier shall at all times on demand indemnify and keep indemnified and hold harmless each Commissioning Body from and against all Losses which each Commissioning Body may suffer or incur as a result of or in connection with any breach of this Clause 36 and/or Clause 35.

36.5 The provisions of this Clause 36 and Clause 35 shall apply during the Contract Period and indefinitely after the termination or expiry of the Contract.

## **37. CONFIDENTIALITY**

37.1 To the extent that the Supplier discloses Confidential Information to either the Authority or a Commissioning Body, the Authority shall comply with and shall use its reasonable endeavours to procure that the other Commissioning Bodies comply with the terms of this Clause 37.

37.2 To extent that a Commissioning Body discloses Confidential Information to the Supplier, the Supplier shall comply with Clause 37 as if the Confidential Information of the Commissioning Body was that of the Authority.

37.3 Except to the extent set out in this Clause 37 or where disclosure is expressly permitted elsewhere in the Contract, the receiving party shall:

37.3.1 treat all Confidential Information belonging to the disclosing party as confidential and safeguard it accordingly; and

37.3.2 not disclose any Confidential Information belonging to the disclosing party to any other person without Approval of the disclosing party.

- 37.4 Subject to Clause 37.5, the Supplier may only disclose the Confidential Information of a Commissioning Body to:
- 37.4.1 its Personnel who are directly involved in the provision of the Services and need to know such Confidential Information for the provision of the Services;
  - 37.4.2 its auditors; and
  - 37.4.3 its professional advisers for the purposes of obtaining advice in relation to this Contract.
- 37.5 Where the Supplier discloses the Confidential Information of a Commissioning Body in accordance with Clause 37.4 it shall:
- 37.5.1 ensure that its Personnel shall not use or exploit any of the Confidential Information received from a Commissioning Body otherwise than to enable the performance of the Supplier's obligations under this Contract;
  - 37.5.2 ensure that its auditors and professional advisers shall not use or exploit any of the Confidential Information received from a Commissioning Body otherwise than in respect of providing advice to the Supplier in respect of this Contract;
  - 37.5.3 ensure that its Personnel, auditors and professional advisers are aware of and comply with the Supplier's confidentiality obligations under this Contract; and
  - 37.5.4 at the written request of the Commissioning Body to whom the Confidential Information belongs, procure that its Personnel, auditors and professional advisers that the Commissioning Body deems necessary sign a confidentiality undertaking on similar terms to this Contract for the benefit of that Commissioning Body prior to commencing any work in accordance with this Contract.
- 37.6 In respect of the Confidential Information of each Commissioning Body, the Supplier undertakes:
- 37.6.1 to maintain adequate security arrangements that meet the requirements of Good Industry Practice, including the security arrangements set out in Schedule 14;
  - 37.6.2 immediately notify the relevant Commissioning Body of any breach of security in relation its Confidential Information obtained in the performance of the Contract and shall:
    - (a) keep a record of such breaches;
    - (b) use its best endeavours to recover the Confidential Information however it may have been recorded, which has been lost or corrupted due to any act or omission of the Supplier or its Personnel;
    - (c) co-operate with the relevant Commissioning Body in any investigation that the Authority and the relevant Commissioning Body considers necessary to undertake as a result of any breach of security in relation to the Confidential Information; and
    - (d) at its own expense, alter any security systems used in connection with the performance of the Contract at any time during the Contract Period at the request of the Authority if the Authority believes (acting reasonably) the Supplier has failed to comply with this Clause 37.
- 37.7 Where the Supplier discloses Confidential Information of a Commissioning Body pursuant to Clause 37.4, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.

- 37.8 Clauses 37.3 shall not apply to any Confidential Information received by one party from another to the extent that:
- 37.8.1 it was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
  - 37.8.2 such information was obtained from a third party who lawfully acquired it and who is under no obligation of restricting its disclosure;
  - 37.8.3 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; and/or
  - 37.8.4 it is independently developed without access to the other party's Confidential Information.
- 37.9 Nothing in the Contract shall prevent the Commissioning Bodies from disclosing the Supplier's Confidential Information:
- 37.9.1 to its Personnel, its professional advisors and Auditors for any purpose relating to or connected with this Contract;
  - 37.9.2 to any Crown body or any other Commissioning Body on the understanding that they shall be entitled to further disclose the Supplier's Confidential Information to other Crown bodies and Commissioning Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not a Commissioning Body or part of the Crown (unless disclosure is required by Law or is permitted under the Contract);
  - 37.9.3 for the purpose of the examination and certification of the accounts of any Commissioning Body;
  - 37.9.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which each Commissioning Body has used its resources;
  - 37.9.5 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - 37.9.6 to the extent that a Commissioning Body (acting reasonably) deems disclosure necessary in the course of carrying out its public functions; and/or
  - 37.9.7 to a proposed transferee, assignee or novatee of, or successor in title to a Commissioning Body.
- 37.10 The receiving party may disclose the Confidential Information of the disclosing party where such Confidential Information must be disclosed pursuant Law (including any requirements for disclosure under FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations) provided that, where a party is seeking to disclose Confidential Information of another under this Clause 37.10. it shall, to the extent permitted by Law, notify the original disclosing party of the full circumstances of the required disclosure and shall co-operate with that disclosing party to limit any such disclosure so far as legally possible.
- 37.11 Nothing in this Clause 37 shall prevent a Party (or the other Commissioning Bodies) from using any techniques, ideas or Know-How gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of such party's Confidential Information or an infringement its Intellectual Property Rights.
- 37.12 This Clause 37 shall operate without prejudice to and be read subject to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

## **38. FREEDOM OF INFORMATION**

- 38.1 The Supplier acknowledges that the Commissioning Bodies are subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations.
- 38.2 The Supplier shall and shall procure that its Personnel shall:
- 38.2.1 assist and co-operate with the Commissioning Bodies to enable each Commissioning Body to comply with its Information disclosure obligations;
  - 38.2.2 transfer to each relevant Commissioning Body all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information; and
  - 38.2.3 promptly provide, and in any event, within two (2) Working Days of request, each relevant Commissioning Body with a copy of all Information that is relevant to a Request for Information and in its possession, or power in the form that the relevant Commissioning Body requires (or such other period as the relevant Commissioning Body may specify).
- 38.3 In no event shall the Supplier respond directly to a Request for Information without prior Approval of the Commissioning Body which is subject to the disclosure obligation.
- 38.4 The Supplier acknowledges that (notwithstanding the provisions of this Clause 38) each respective Commissioning Bodies may be obliged under FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier and/or the Services (including its Confidential Information):
- 38.4.1 in certain circumstances without consulting the Supplier; or
  - 38.4.2 following consultation with the Supplier and having taken their views into account, provided always that where Clause 38.4.1 applies the Authority shall, and shall use its reasonable endeavours to procure that the relevant Commissioning Bodies shall, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 38.5 The Supplier shall ensure that all Information is retained for disclosure and shall permit the Authority and any Auditors to inspect such records as requested from time to time.

## **39. TRANSPARENCY**

- 39.1 Notwithstanding any other term of the Contract, the Supplier hereby gives its consent for the Authority to publish this Contract in its entirety (subject only to redaction of any information that the Authority determines is exempt from disclosure in accordance with the provisions of FOIA) including any agreed Contract Changes.
- 39.2 The Authority may consult with the Supplier to help with its decision regarding any exemptions under Clause 39.1 but the Authority shall have the final decision in its absolute discretion.
- 39.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Contract.

## **40. OFFICIAL SECRETS ACTS 1911 TO 1989, SECTION 182 OF THE FINANCE ACT 1989**

- 40.1 The Supplier shall comply with and shall ensure that its Personnel comply with the provisions of:
- 40.1.1 the Official Secrets Acts 1911 to 1989; and

40.1.2 Section 182 of the Finance Act 1989.

40.2 In the event that the Supplier and its Personnel fail to comply with this Clause, without prejudice to its other rights and remedies, the Authority shall be entitled to terminate the Contract by serving notice in writing with effect from the date specified in that notice.

#### **41. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

41.1 The Supplier shall not make any press announcements or publicise the Contract or any part thereof in any way, except with the prior Approval of the Authority.

41.2 The Supplier shall not have any right to use any of the names, logos or trade marks of any Commissioning Body without Approval of that Commissioning Body.

41.3 The Commissioning Bodies shall not have any right to use any of the Supplier's logos or trade marks on any of their products, services or other literature without the Supplier's Approval.

#### **42. WARRANTIES, UNDERTAKINGS AND REPRESENTATIONS**

42.1 The Supplier warrants, undertakes and represents to the Authority that:

42.1.1 it has full capacity and authority and all necessary consents to enter into and perform its obligations under the Contract;

42.1.2 the Contract is executed by a duly authorised representative of the Supplier;

42.1.3 all information, statements, warranties and representations made in the procurement process, including those contained in the Service Solution and (unless otherwise agreed by the Authority in writing) any other document which resulted in the award to the Supplier of the Contract are true, accurate and not misleading;

42.1.4 neither it, nor to the best of its knowledge, its Personnel, have:

(a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act;

(b) been listed on 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

(c) committed any Fraud.

42.1.5 it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of this Contract;

42.1.6 it has not caused or induced any person to enter any such agreement as is referred to in Clause 42.1.5;

42.1.7 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;

42.1.8 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of Supplier Assets which will or might affect its ability to perform its obligations under the Contract;

- 42.1.9 it is not subject to any contractual obligation, compliance with which will be likely to have an adverse effect on its ability to perform its obligations under the Contract;
- 42.1.10 no proceedings or other steps have been taken and not discharged or dismissed (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 Suppliers Assets or revenue;
- 42.1.11 in the three (3) years prior to the date of the Contract (or, if the Supplier has been in existence for less than three (3) years, in the whole of such shorter period) it has:
- (a) conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts; and
  - (b) it has not performed any act or made any omission with respect to its financial accounting or reporting which could have an adverse effect on the Supplier's position as an on-going business concern or its ability to fulfil its obligations under the Contract;
- 42.1.12 the Services will be performed in accordance with the standards set out in the Contract;
- 42.1.13 use of the Deliverables, Supplier Assets and the Intellectual Property Rights in them (including Supplier Background IPR) shall not infringe the rights of any third parties;
- 42.1.14 the Deliverables, Booking Service and Website will each be free of defects and errors including viruses, bugs, malware, spyware and malicious code;
- 42.1.15 the Deliverables, Booking Service and Website will each conform in all material respects to the Service Specification (and, where applicable, any specification set out in the Transition Plan and/or Exit Plan);
- 42.1.16 the Booking Service and Website will each be compatible with the minimum operating environment specified in the Service Specification;
- 42.1.17 the Booking Service and Website will each be developed so that it is scalable in line with the current and projected (as have been communicated by the Authority to the Supplier) business requirements of the Authority, as set out in the Service Specification, without material reduction in its functionality, performance and/or response times in that the Booking Service and Website will each be capable of handling the volume of visitor traffic specified in the Service Specification;
- 42.1.18 the Booking Service and Website will each be coded so as to minimise (to the extent reasonably practicable and in accordance with Good Industry Practice) vulnerability to web application attacks of a type known to the Supplier (or would have been known about by a reasonably competent practitioner in the field); and
- 42.1.19 it uses all up-to-date versions of firewall and anti-virus protection applications in accordance with Good Industry Practice to prevent the introduction into each of the Booking Service and Website of any viruses, containments or any other disabling attacks of any kind through the Supplier's systems or the provision of the Services.
- 42.2 The Supplier shall promptly notify the Authority in writing if it becomes aware that a warranty, undertaking or representation given by it under the Contract has been breached, is untrue or is misleading or any fact, matter or circumstance of which it may become aware which would render any such information, statement, warranty or representation to be false or misleading if repeated, giving the Authority sufficient detail to enable it to make an accurate assessment of the situation.

42.3 The fact that any provision within the Contract is expressed as a warranty, undertaking or representation shall not preclude any right of termination the Authority may have in respect of breach of that provision by the Supplier.

### **43. LIMITATION OF LIABILITY**

43.1 Neither Party excludes or limits liability to the other Party for:

43.1.1 death or personal injury caused by its negligence, or that of its Personnel;

43.1.2 Fraud or fraudulent misrepresentation by it or its Personnel;

43.1.3 any breach of any obligations imposed by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

43.1.4 any liability to the extent it cannot be limited or excluded by Law.

43.2 Without prejudice to Clause 43.1.2, the Supplier's liability shall be unlimited in respect of the indemnity given under Clause 26.3.2.

43.3 Subject to Clauses 43.1, 43.2 and 43.5:

43.3.1 the Supplier's liability in respect of loss of or damage to the Commissioning Body Premises or other property or assets of any Commissioning Body (including technical infrastructure, assets or equipment but excluding any loss or damage to Commissioning Body Data or any other data) that is caused by Defaults of the Supplier shall in no event exceed ten million pounds (£10,000,000) in each year of the Contract Period;

43.3.2 the Supplier's aggregate liability in respect of all Service Credits incurred in Contract Year in respect of Non-Fulfilment and Service Failures shall be subject to the Service Credits Cap;

43.3.3 the Supplier's liability in relation to each of the indemnities it provides under this Contract shall be limited to fifty million pounds (£50,000,000) per claim; and

43.3.4 the Supplier's aggregate liability in any twelve month period commencing on the date of this Contract or any anniversary of such date in respect of all other Losses incurred by any Commissioning Body under or in connection with this Contract as a result of Defaults by the Supplier (whether occurring during the Contract Period or after the end of the Contract Period) shall in no event exceed two million and one hundred thousand pounds (£2,100,000) provided that where any Losses referred to in this Clause 43.3.4 have been incurred by the Commissioning Body as a result of the Supplier's abandonment of this Contract or the Supplier's wilful default, wilful breach of a fundamental term of this Contract or wilful repudiatory breach of this Contract, the reference to two million and one hundred thousand pounds (£2,100,000) shall be deemed to be reference to two million and eight hundred thousand pounds (£2,800,000).

43.4 Subject to Clause 43.1 and 43.5 and without prejudice to the Authority's obligation to pay the Service Payments and any other amounts properly due from it to the Supplier the Authority's aggregate liability in any twelve month period commencing on the date of this Contract or any anniversary of such date in respect of all Losses incurred by the Supplier under or in connection with this Contract as a result of Defaults of the Authority and/or any Commissioning Body (whether occurring during the Contract Period or after the end of the Contract Period) shall in no event exceed one million four hundred thousand pounds (£1,400,000).

43.5 Subject to Clauses 43.1, 43.2 and 43.6, neither Party shall be liable to the other Party for:

43.5.1 any indirect, special or consequential Loss; or



- 43.5.2 any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 43.6 Notwithstanding Clause 43.5 but subject to Clause 43.3, the Supplier acknowledges and agrees that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by any Commissioning Body to the extent that they arise as a result of a Default by the Supplier:
- 43.6.1 any additional operation and/or administrative costs and expenses incurred by a Commissioning Body, including interim operational services and the costs relating to time spent by or on behalf of a Commissioning Body in dealing with the consequences of the Default;
- 43.6.2 the additional cost of procuring Replacement Services for the remainder of the Contract Period and/or replacement Deliverables, which shall include both the respective Commissioning Bodies' internal cost of undertaking the procurement process and the costs payable to the Replacement Supplier(s) for the particular Replacement Services and/or replacement Deliverables;
- 43.6.3 any wasted expenditure or charges; and
- 43.6.4 any fine or penalty incurred by a Commissioning Body pursuant to Law and any costs incurred by a Commissioning Body in defending any proceedings which result in such fine or penalty.
- 43.7 The Supplier shall use all reasonable endeavours to mitigate any loss or damage suffered or arising out of or in connection with this Contract, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Contract.

#### **44. CONDUCT OF CLAIMS**

- 44.1 The Supplier agrees (and shall procure that its Sub-contractors agree) that the Authority has the sole right, on giving written notice to such effect to the Supplier at any time, to control of any proceedings in relation to any Third Party Claim (including any claim by employees of the Parties), regardless of whether the Supplier (or any Sub-contractor) is also a party to such proceedings.
- 44.2 The Authority agrees that it shall not settle or compromise any Third Party Claim giving rise to losses exceeding £10,000 (ten thousand pounds) for which the Supplier is liable to indemnify or compensate any Commissioning Body under this Contract without prior consultation with the Supplier. The Authority shall keep the Supplier reasonably informed as to the progress and status of any such Third Party Claim until such Third Party Claim is settled or withdrawn.
- 44.3 If, in contesting, settling or compromising any Third Party Claim, the Authority takes or fails to take any action which prejudices any entitlement of the Supplier to recover any portion of the claim from any insurer under any insurance policy maintained by the Supplier in accordance with this Contract, the liability of the Supplier to indemnify or compensate any Commissioning Body in respect of such claim shall be reduced by such portion.
- 44.4 The Supplier undertakes that:
- 44.4.1 it shall not, without the Approval of the Authority, settle or compromise any claim (whether insured or uninsured) to which the Authority or another Commissioning Body is, or is likely to become, a party;
- 44.4.2 where a claim is made against the Supplier and the Authority is not, and is not likely to become, a party to such claim as a defendant, the Supplier shall not settle or compromise any claim exceeding £10,000 (ten thousand pounds) without prior consultation with the Authority;

44.4.3 it shall ensure that its Sub-contractors give undertakings identical to those given by the Supplier to the Authority under this Clause 44; and

44.5 If conduct of a claim is so assumed by the Authority pursuant to this Clause 44, the Authority shall hold the Supplier and its insurers harmless against all or any Losses which either of them may incur by reason of its conduct of the claim and any settlement of the relevant claim or judgment being given if the settlement is made without their consent (such consent not to be unreasonably withheld or delayed).

#### **45. INSURANCE**

45.1 The Supplier shall comply, and shall procure its Language Professionals and Sub-contractors comply with, the provisions of Schedule 11 in relation to obtaining and maintaining insurance.

#### **46. CONTRACT PERIOD**

46.1 The Contract shall take effect on the Commencement Date and shall expire automatically on the later of:

46.1.1 the end of the Initial Contract Period; or

46.1.2 if the Authority elects to extend the Initial Contract Period in accordance with Clause 47, the last day of the latest extension period,

or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

#### **47. EXTENSION OF INITIAL CONTRACT PERIOD**

47.1 The Authority may, by giving written notice to the Supplier not less than six (6) Months prior to the last day of the Initial Contract Period, or if the Contract is already extended six (6) Months prior to the last day of the then current extension period, extend the Contract for up to two (2) further periods each of one (1) year.

47.2 Without prejudice to its right pursuant to Clause 47.1, the Authority may, by giving written notice to the Supplier of not less than three (3) Months at any time during the Contract Period and whether or not it has exercised a right pursuant to Clause 47.1, extend the Contract for such period as is specified in the notice, provided that the Authority shall be entitled to exercise its rights pursuant to this Clause 47.2 more than once provided that the aggregate extensions made pursuant to this Clause 47.2 shall not exceed one (1) year.

47.3 The provisions of the Contract will apply throughout any extension period.

#### **48. OBLIGATION TO NOTIFY**

48.1 In the event of any Default by the Supplier, the Supplier shall notify the Authority of the Default as soon as practicable but in any event within two (2) Working Days of becoming aware of the Default, detailing the actual or anticipated effect of the Default and whether the Default is a Notifiable Default.

#### **49. FIRST FIX**

49.1 Notwithstanding any other provision in the Contract, in the event of a Default by the Supplier (or any anticipated Default by the Supplier) the Supplier shall:

49.1.1 (if the Default occurs) remedy the Default as soon as possible; and

49.1.2 use all reasonable endeavours to eliminate or mitigate the consequences or delay of any such Default or anticipated Default on each of the Commissioning Bodies.

## 50. RECTIFICATION PLAN PROCESS

50.1 In the event that:

- 50.1.1 three (3) Critical Service Failures of Standard Key Performance Indicators occur in any Month;
- 50.1.2 a Critical Service Failure in relation to the same Standard Key Performance Indicator occurs in three (3) consecutive Months;
- 50.1.3 two (2) Critical Service Failures of Priority Key Performance Indicators occur in any Month;
- 50.1.4 a Critical Service Failure in relation to the same Priority Key Performance Indicator occurs in two (2) consecutive Months;
- 50.1.5 where the number of Non-Fulfilled Bookings as a percentage of all Bookings during any Month is 6% or higher; and/or
- 50.1.6 the Supplier commits a material Default that, in the opinion of the Authority, 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 in accordance with Clause 48.1 and unless the Notifiable Default also constitutes a Rectification Plan Failure or other Supplier Termination Event, the Authority may not terminate the Contract in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process.

50.2 When a Notifiable Default occurs (including where the Authority notifies the Supplier (setting out sufficient detail) that, in its reasonable opinion, it considers a Notifiable Default has occurred) then, unless the Notifiable Default also constitutes a Supplier Termination Event and the Authority serves notice to terminate the Contract, the Supplier shall comply with the Rectification Plan Process.

50.3 The Rectification Plan Process shall be as follows:

- 50.3.1 the Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) after the original notification submitted by the Supplier pursuant Clause 48.1 or by the Authority pursuant to Clause 50.2. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default;
- 50.3.2 the draft Rectification Plan shall set out:
  - (a) full details of the Notifiable Default that has occurred, including a root cause analysis;
  - (b) the actual or anticipated effect of the Notifiable Default (including the actual or anticipated effect on the performance of its obligations under the Contract); and
  - (c) 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);

- 50.3.3 the Supplier shall promptly, and in any event within two (2) Working Days, 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 in accordance with the Dispute Resolution Procedure;
- 50.3.4 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 (5) Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft;
- 50.3.5 if the Authority consents to the Rectification Plan:
  - (a) the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
  - (b) the Authority may no longer terminate this Contract in whole or in part on the grounds of the relevant Notifiable Default; and
- 50.3.6 the Authority may reject the draft or revised Rectification Plan submitted to it under Clause 50.3.4 by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for such reasons including:
  - (a) it is insufficiently detailed to be capable of proper evaluation;
  - (b) it will take too long to complete;
  - (c) it will not prevent reoccurrence of the Notifiable Default; and/or
  - (d) it will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.

## **51. TERMINATION BY THE AUTHORITY**

51.1 The Authority may terminate this Contract by written notice to the Supplier:

- 51.1.1 for convenience at any time, including where the Contract 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 of the Functioning of the EU;
- 51.1.2 if a Supplier Termination Event occurs;
- 51.1.3 if a Force Majeure Event endures for a continuous period of more than ninety (90) days; and/or
- 51.1.4 if this Contract has to be substantially amended to the extent that the PCR require a new procurement procedure,

and this Contract shall terminate on the date specified in the notice sent by the Authority to the Supplier.

51.2 Where the Authority is terminating this Contract under Clause 51.1.2 due to the occurrence of either limb (d) and/or (i) of the definition of Supplier Termination Event, it may rely on 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 cured) which taken together constitute a material Default.

51.3 Where the Authority has the right to terminate this Contract, it may prior to or instead of terminating the whole of the Contract, serve notice requiring Partial Termination of this Contract.

## **52. TERMINATION BY SUPPLIER**

52.1 The Supplier may terminate this Contract (or part thereof) by written notice to the Authority to the extent that any Services are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days and this Contract or the relevant Services (as the case may be) shall then terminate on the date specified in the notice from the Supplier to the Authority (which shall not be less than twenty (20) Working Days from the date of the issue of the notice to terminate). If the operation of Clause 52.1 would result in Partial Termination, the provisions of Clause 52.2 shall apply.

52.2 If the Supplier notifies the Authority pursuant to Clause 52.1 that it intends to terminate this Contract 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's requirements under this Contract, then the Authority shall be entitled to terminate the remaining part of this Contract by serving notice to terminate to the Supplier within one (1) Month of receiving the Supplier's notice to terminate. For the purpose of this Clause 52.2, in assessing the significance of any part of the Authority's requirements under this Contract, regard shall be had not only to the proportion of that part of the Authority's requirements as a whole, but also to the importance of the relevant part to the Authority.

52.3 The Parties shall agree the effect of any Contract 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 Service Payment, provided that:

52.3.1 the Supplier shall not be entitled to an increase in the Service Payment in respect of the Services that have not been terminated; and

52.3.2 the Supplier shall not be entitled to reject the Contract Change.

## **53. PAYMENTS ON TERMINATION**

### **Payments by the Authority**

53.1 The Authority shall not be liable to make any payment to the Supplier as compensation for:

53.1.1 termination of this Contract in accordance with Clauses 51.1.2, 51.1.3 or 51.1.4; or

53.1.2 expiry of this Contract

save in respect of any unpaid Service Payment for Services which have been properly performed prior to the date of termination or any other payment properly due (except where such Service Payment or other payment is due from another Commissioning Body, in which event the Authority shall use reasonable endeavours to procure that such Commissioning Body pays the unpaid Service Payment or other payment).

53.2 Where this Contract is terminated by the Authority in accordance with Clause 51.1.1 the Authority shall pay the following (which shall be the Supplier's sole remedy for the termination of this Contract):

53.2.1 any unpaid Service Payment for Services which have been properly performed prior to the date of termination or any other payment properly due (except where such Service Payment or other payment is due from another Commissioning Body, in which event the Authority shall use reasonable endeavours to procure that such Commissioning Body pays the unpaid Service Payment or other payment); and

53.2.2 the Termination Payment.

## **Payments by the Supplier**

53.3 In the event of termination or expiry of this Contract, the Supplier shall repay to each Commissioning Body within thirty (30) days of the date of such termination or expiry all of the Service Payment it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.

## **54. SURVIVAL**

54.1 Termination of the Contract shall not affect the continuing rights, remedies or obligations of the Commissioning Bodies or the Supplier including under Clauses 7, 9, 11, 12, 16, 17, 20, 23, 24, 25, 26, 27, 29, 30, 32, 33, 34, 35, 36, 37, 38, 40, 42, 43, 45, 53, 54, 55, 60, 63, 66, 67 and 68 and without limitation to the foregoing, any other provision of the Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the termination or expiry of the Contract.

## **55. EXIT MANAGEMENT**

55.1 The Parties shall comply with the provisions of Schedule 13 and any current Exit Plan in relation to orderly transition of the Services to the Commissioning Bodies and any Replacement Supplier(s).

## **56. BUSINESS CONTINUITY AND DISASTER RECOVERY**

56.1 The Parties shall comply with the provisions of Schedule 21 and their respective obligations under the BCDR Plan.

## **57. FORCE MAJEURE**

57.1 Subject to Clause 57.2, neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract to the extent that such delay or failure is a result of Force Majeure Event.

57.2 Where the Supplier is the Affected Party, it shall:

57.2.1 take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event; and

57.2.2 not be entitled to claim relief under Clause 57.1 to the extent that the consequences of the relevant Force Majeure Event:

(a) are capable of being mitigated by any of the Services including the BCDR Services but the Supplier has failed to do so; and/or

(b) 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 Contract.

57.3 Notwithstanding Clause 57.1 each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of a Force Majeure Event.

57.4 The Authority and other Commissioning Bodies shall not be obliged to pay any Service Payment or any other payment in respect of any Service(s) which is subject to the Force Majeure Event.

57.5 The Supplier shall promptly resume the Services following the expiry of the Force Majeure Event.

57.6 If either Party becomes aware of Force Majeure Event which gives rise to, or is likely to give rise to, any failure or delay on its part as described in Clause 57.1 it shall immediately notify the other by the most expeditious method then available and at regular intervals thereafter the Parties shall

consult in good faith and use reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of the Contract.

- 57.7 The notice given in accordance with Clause 57.6 shall include details of the Force Majeure Event together with evidence of its effects on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effects.

## **58. ASSIGNMENT AND NOVATION**

- 58.1 Subject to Clause 21 and Clause 58.2, 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 Contract without the Approval of the Authority.

- 58.2 The Supplier may assign to a third party (the **Assignee**) the right to receive payment of the Service Payment or any part thereof due to the Supplier under the Contract (including any interest which a Commissioning Body incurs under Paragraph 4.17 of Schedule 7). Any assignment under this Clause 58.2 shall be subject to:

58.2.1 reduction of any sums in respect of which a Commissioning Body exercises its right of recover under Clause 12;

58.2.2 all related rights of the Commissioning Bodies under the Contract in relation to the recovery of sums due but unpaid; and

58.2.3 each Commissioning Body receiving notification under Clause 58.3.

- 58.3 In the event that the Supplier assigns the right to receive the Service Payment under Clause 58.2, the Supplier or the Assignee shall notify the Authority and each other Commissioning Body in writing of the assignment and the date upon which the assignment becomes effective. The Supplier shall ensure that the Assignee notifies the Authority and each other Commissioning Body of the Assignee's contact information and bank account details to which the Authority and each other Commissioning Body shall make payment and the Authority and each other Commissioning Body shall not be held liable to either the Supplier and/or the Assignee for any delay in making payment as a result of not receiving such information. The provisions of Clause 11 shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Authority.

- 58.4 The Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof (including the licences granted at Clause 30) as it sees fit to a third party (**Transferee**) provided :

58.4.1 that any such assignment, novation or other disposal shall not materially increase the burden of the Supplier's obligations under the Contract;

58.4.2 the Transferee is not a direct competitor of the Supplier in the provision of the same or similar services to the Services; and

58.4.3 the Transferee is, in the reasonable opinion of the Authority, of good financial standing to meet the obligations of the Authority under this Contract.

- 58.5 If the rights and obligations of the Authority under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 58.4 to a Transferee which is not a body of the Crown, or if there is a change in the legal status of the Authority such that it ceases to be a body of the Crown:

58.5.1 the Supplier shall have the right to terminate the Contract if the Transferee is subject to an Insolvency Event; and

58.5.2 the Transferee shall only be able to assign, novate or otherwise dispose its rights and obligations under the Contract or any part thereof with the Approval of the Supplier.

58.6 Any change in the legal status:

58.6.1 of the Authority such that it ceases to be a body of the Crown; and/or

58.6.2 of any other Commissioning Body, including by way of change of Control,

shall not affect the validity of this Contract and any of the rights granted to the Commissioning Bodies and, in such circumstances, the Contract and all rights granted shall bind and inure to the benefit of each successor body.

## 59. NOTICES

59.1 Any notice given under or in relation to the Contract shall be in writing by letter, (signed by or on behalf of the Party giving it) sent by hand, post, or recorded signed for delivery service, or by electronic mail (confirmed by letter) to the address and for the attention of the relevant Party set out in Clause 59.4 or to such other address as that Party may have stipulated in accordance with Clause 59.4.

59.2 A notice shall be deemed to have been received:

59.2.1 if delivered personally, at the time of delivery;

59.2.2 in the case of pre-paid first class post, special or other recorded delivery two (2) Working Days from the date of posting; and

59.2.3 in the case of electronic communication two (2) Working Days after posting of a confirmation letter.

59.3 In proving service, it shall be sufficient to prove that personal delivery was made, or (including for the purposes of electronic mail confirmation letter) that the envelope containing the notice was addressed to the relevant Party set out in Clause 59.4 (or as otherwise notified by that Party) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, recorded signed-for delivery or pre-paid airmail letter.

59.4 For the purposes of Clause 59.1, the postal address and email address of each Party shall be:

59.4.1 for the Authority:

The Ministry of Justice  
Address: Commercial and Contract Management (CCM) Directorate, Harcourt House,  
Chancellor Court, 21 The Calls, Leeds LS2 7EH

For the attention of: **REDACTED**, Senior Commercial Manager

Tel: **REDACTED**

Email: MoJProcurementLang@justice.gsi.gov.uk

59.4.2 for the Supplier:

THEBIGWORD GROUP LIMITED: Link Up House, Ring Road, Lower Wortley, Leeds  
LS12 6AB

For the attention of: **REDACTED**, Global Sales and Client Services Director



Tel: **REDACTED**

Email: **REDACTED**

59.5 Either Party may change its address for service by serving a notice in accordance with this Clause 59.

59.6 For the avoidance of doubt, any notice given under the Contract shall not be validly served if sent by electronic mail (email) and not confirmed by a letter.

## **60. RELATIONSHIP OF THE PARTIES**

60.1 At all times during the Contract Period the Supplier shall be an independent Supplier and nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Authority and the Supplier and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

## **61. WAIVER**

61.1 The rights and remedies provided by the Contract may be waived with written agreement of the Parties in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.

61.2 No failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other 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 such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **62. SEVERABILITY**

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

62.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

## **63. REMEDIES CUMULATIVE**

63.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not exclude the exercise of any other remedy.

## **64. ENTIRE AGREEMENT**

64.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this Clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

## **65. COUNTERPARTS**

65.1 The Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

## **66. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 66.1 Subject to Clauses 66.3 and 66.4, no term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 (**CRTPA**) by a person who is not a Party to the Contract. This Clause 66.1 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.
- 66.2 The Parties agree that the Authority, on its own behalf and as agent for each of the other Commissioning Bodies, shall:
- 66.2.1 have conduct of all claims and disputes that may arise between the Commissioning Bodies and the Supplier;
  - 66.2.2 have the right to enforce the terms, conditions, undertakings, representations, warranties and other provisions of the Contract; and
  - 66.2.3 recover Loss suffered by any of the other Commissioning Bodies as if such Loss were suffered or incurred by the Authority.
- 66.3 If and to the extent that the Authority is not able to recover a Loss incurred by another Commissioning Body under the provisions of Clause 66.2 in any instances where the claim is not, by operation of law or decision of a court, deemed to be enforceable by the Authority itself, that Commissioning Body shall be entitled to enforce the terms of the Contract against the Supplier in its own right in accordance with the provisions of the CRTPA even though the relevant Clause may be silent as to which person is intended to have the benefit of the relevant obligation, refer only to the Authority or not specifically identify another Commissioning Body provided that such claim shall be subject to the limits on liability set out in Clause 43.
- 66.4 The provisions of Clause 33 and Paragraph 3.1 of Part A and Paragraphs 1.4, 2.3 and 2.8 of Part C of Schedule 18 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 Party Beneficiaries by virtue of the CRTPA.
- 66.5 The consent of each Commissioning Body (other than the Authority) or Third Party Beneficiary is not necessary for any variation to the Contract (including by way of Change Control Request) or termination of this Contract.

## **67. DISPUTE RESOLUTION**

- 67.1 All disputes under this Contract shall be handled in accordance with this Clause 67. In seeking to resolve a dispute, the Parties shall act in good faith, including providing such documentation as the respective forum of the dispute may reasonably require.
- 67.2 Either Party may refer any dispute it may have with the other arising out of or in connection with the Contract to the Commercial and Contract Management Review Board for review.
- 67.3 If the dispute cannot be resolved by the Commercial and Contract Management Review Board pursuant to Clause 67.2 within ten (10) Working Days of it being referred to them, the matter shall be referred to the Strategic Board for review.
- 67.4 If the dispute cannot be resolved by the Strategic Board within fifteen (15) Working Days of it being referred to them, the dispute shall be referred to mediation pursuant to the procedure set out in Clause 67.5 unless the Parties agree that the dispute is not suitable for resolution by mediation.
- 67.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 67.5.1 a neutral adviser or mediator (**Mediator**) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or

unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;

- 67.5.2 the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution or other mediation provider to provide guidance on a suitable procedure;
  - 67.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
  - 67.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
  - 67.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the Approval of both Parties; and
  - 67.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts unless the dispute is referred to arbitration pursuant to the procedures set out in Clause 67.6.
- 67.6 Subject to Clause 67.9, the Parties shall not institute court proceedings until the procedure set out in Clauses 67.2 to 67.5 (inclusive) have been completed save that:
- 67.6.1 the Authority may at any time before court proceedings are commenced, serve a notice on the Supplier requiring the dispute to be referred to and resolved by arbitration in accordance with Clause 67.7;
  - 67.6.2 if the Supplier intends to commence court proceedings, it shall serve written notice on the Authority of its intentions and the Authority shall have twenty-one (21) days following receipt of such notice to serve a reply on the Supplier requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of Clause 67.7; and
  - 67.6.3 the Supplier may request by notice in writing to the Authority that any dispute be referred and resolved by arbitration in accordance with the provisions of Clause 67.7, to which the Authority may consent as it sees fit.
- 67.7 In the event that any arbitration proceedings are commenced pursuant to Clause 67.6:
- 67.7.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;
  - 67.7.2 the Authority shall give a written notice of arbitration to the Supplier (**Arbitration Notice**) stating:
    - (a) that the dispute is referred to arbitration; and
    - (b) providing details of the issues to be resolved;

- 67.7.3 the London Court of International Arbitration (**LCIA**) procedural rules in force at the date that the dispute was referred to arbitration in accordance with Clause 67.6 shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
  - 67.7.4 the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
  - 67.7.5 if the Parties fail to agree the appointment of the arbitrator within ten (10) days of the Arbitration Notice being issued by the Authority under Clause 67.6 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
  - 67.7.6 the arbitration proceedings shall take place in London and in the English language; and
  - 67.7.7 the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.
- 67.8 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Supplier and the Supplier's Personnel shall comply fully with the requirements of the Contract at all times.
- 67.9 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 67.10 The Supplier acknowledges that the Authority has procured services from Other Suppliers, including the Quality Assurance Supplier, in respect of the provision of language services. The Supplier agrees that:
- 67.10.1 in the event the Authority is in dispute with one of the Other Suppliers of language services, the Authority may request the Supplier to attend meetings in respect of such dispute from time to time, which the Supplier shall do at its own cost;
  - 67.10.2 following a request from the Authority, acting reasonably, it will use its reasonable endeavours to assist the Authority in resolving any dispute between the Authority and one of the Other Suppliers of language services; and
  - 67.10.3 it will not object to one of the Other Suppliers of language services (including the Quality Assurance Supplier) becoming a party alongside the Authority to a dispute it may have with the Supplier and which may be progressed under this Contract.

## **68. GOVERNING LAW**

- 68.1 Subject to the provisions of Clause 67, the Authority and the Supplier accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

Signed for and on behalf of **The Secretary of State  
for Justice**

.....  
Signature

.....

.....

.....  
Date

Signed for and on behalf of **THEBIGWORD  
GROUP LIMITED**

.....  
Signature

Deputy Chief Executive Officer .....

**REDACTED** .....

.....  
Date

## SCHEDULE 1

### Commissioning Bodies

#### Part A

<b>Body</b>	<b>Type of Body</b>
National Offender Management Service	Executive agency of the Ministry of Justice
HM Courts and Tribunals Service	Executive agency of the Ministry of Justice
Legal Aid Agency	Executive agency of the Ministry of Justice
Criminal Injuries Compensation Authority	Executive agency of the Ministry of Justice
Office of the Public Guardian	Executive agency of the Ministry of Justice
Youth Justice Board	Executive non-departmental public body
Parole Board	Executive non-departmental public body
Judicial Appointments Commission	Executive non-departmental public body
Criminal Cases Review Commission	Executive non-departmental public body
Sentencing Council	Advisory non-departmental public body
Law Commission	Advisory non-departmental public body
Independent Monitoring Boards	Non-departmental public bodies
National Archives	Non-ministerial department and executive agency of the Department for Culture Media and Sport
HM Inspectorate of Probation	Independent inspectorate
HM Inspectorate of Prisons for England and Wales	Independent inspectorate
Prisons and Probation Ombudsman	Independent ombudsman
Victims' Commissioner	Independent statutory office holder
Crown Prosecution Service	Statutory body
The Salvation Army	Charity

#### Part B

<b>Body</b>	<b>Type of Body</b>
Any executive agency sponsored by the Ministry of Justice other than those listed in Part A of this Schedule 1, whether or not it is in existence as at the date of this Contract	Executive agencies
Any non-departmental public body of the Ministry of Justice, other than those listed in Part A of this Schedule 1, whether or not it is in existence as at the date of this Contract	Non-departmental public bodies
All Police and Crime Commissioners of England and Wales and their forces	Police and Crime Commissioners and police forces
All law enforcement agencies of England and Wales	Law enforcement agencies
Legal Ombudsman for England and Wales	Independent ombudsman
Official Solicitor and Public Trustee	Independent statutory office holders
Community Rehabilitation Companies	Private companies
Operators of private prisons	Private companies
Other private organisations which provide services in the justice sector	Private companies, charities, etc

## SCHEDULE 2

### Service Specification

#### 1. GENERAL REQUIREMENTS

- 1.1 The Supplier shall maintain a pool of Language Professionals of sufficient numbers and languages to meet the requirements of this Contract.
- 1.2 The Supplier shall complete each Assignment booked by a Commissioning Body in accordance with the requirements of the Booking, including:
  - 1.2.1 the identity of the Commissioning Body and contact details, including the name of the individual requester;
  - 1.2.2 the mode of translation and transcription and, where relevant, the language (written language or other (large print, audio, video, pictorial English));
  - 1.2.3 the deadline for return of the Assignment;
  - 1.2.4 the return delivery method for the Assignment;
  - 1.2.5 the Urgency Type;
  - 1.2.6 the Security Level; and
  - 1.2.7 any other requirements relating to the Assignment.
- 1.3 The Supplier shall provide Language Professionals to complete Assignments 24 hours a day and 365 days a year.
- 1.4 The Supplier may use Language Professionals to complete translation and transcription Assignments who work remotely from any location in the United Kingdom or outside of the United Kingdom provided that the requirements set out in the technology specification Annex 6 and Schedule 14 are complied with, which includes but is not limited to the Language Professional's home or other premises provided by the Supplier.
- 1.5 Prior to assigning a Language Professional to a Booking, the Supplier shall confirm with the Language Professional that they have not previously provided language services in relation to the same case, either for the police, the Crown Prosecution Service, the defendant's solicitors or any witnesses at any stage prior to the Booking. The Supplier shall not assign to a Booking a Language Professional from whom it has been unable to obtain such a confirmation.
- 1.6 Where the Supplier is unable to provide a Language Professional because of inability to obtain the confirmation referred to in Paragraph 1.5, the Supplier may use a Language Professional who has been used in the same case in the manner described in Paragraph 1.5, provided that the Supplier has obtained the express prior agreement of the Commissioning Body.
- 1.7 The Supplier agrees that, if in relation to the provision of the Services in accordance with this Schedule it is required to obtain the agreement, confirmation, acceptance or approval of the Authority or other Commissioning Body, such agreement, confirmation, acceptance or approval shall be taken to have been obtained only if given by the Authority or other relevant Commissioning Body in writing, including via a secure online portal, and (if given verbally) once it has been confirmed in writing.
- 1.8 The languages which may be required for an Assignment are set out in Annex 4. The Supplier shall have a process to enable it to identify which language is the subject of the Commissioning Body's requirements, where the Commissioning Body has been unable to do so.

- 1.9 The requirements in respect of Urgency Types and Security Levels for each type of Assignment are set out in Table 1 of Annex 1.
- 1.10 The Supplier shall ensure that all Language Professionals comply with the Authority Code of Conduct at Annex 5 and shall deal with any non-compliance through the complaints process in accordance with Paragraph 20.
- 1.11 On receipt of the file to be translated or transcribed from the Commissioning Body, the Supplier shall hold the file securely until the Assignment is completed and returned to the relevant Commissioning Body.
- 1.12 The Supplier shall ensure that all Assignments are completed and returned to the relevant Commissioning Body by the delivery method and within the timescale specified in the Booking.
- 1.13 The Supplier shall only use those Language Professionals who:
  - 1.13.1 have been through the Supplier's Onboarding Processes at the time of their recruitment; or
  - 1.13.2 were listed in the Register at the Services Commencement Date.

## **2. TRANSLATION AND TRANSCRIPTION SERVICES**

- 2.1 The Supplier shall complete Assignments including in respect of the translation and transcription of:
  - 2.1.1 advisory, guidance and instruction documents;
  - 2.1.2 official correspondence and information leaflets;
  - 2.1.3 personal telephone conversations between offenders and third parties; and
  - 2.1.4 personal written correspondence between offenders and third parties.
- 2.2 The Supplier shall ensure that all Assignments are completed and returned in the format specified in the Booking, which may include but shall not be limited to Word, PDF and Excel.
- 2.3 The Supplier shall ensure that each Language Professional assigned to an Assignment has access to and has been provided with appropriate training to use the format specified in the Booking.
- 2.4 The Supplier shall use translation memory software or auto translation to complete or facilitate an Assignment where the output of the translation or transcription is in line with the standards required and provides best value for money.
- 2.5 The Supplier shall notify the Authority in all instances where translation memory software or auto translation has been used.

## **3. COPIES OF TRANSLATIONS AND TRANSCRIPTIONS**

- 3.1 The Supplier shall receive and store in a central storage facility all translations and transcriptions produced as completed Assignments and shall only delete a file from its systems where it has stored and backed up the file in the central storage facility.
- 3.2 The Supplier shall retain a copy of each translation and transcription for the Retention Period.
- 3.3 The Supplier shall procure that each Language Professional removes all records it may have relating to an Assignment at the point the translation and/or transcription is received by the Supplier in accordance with Schedule 14 (Information Security).



- 3.4 Under no circumstances should the Language Professional store, keep or copy any data relating to or arising from Assignments.
- 3.5 Failure to abide by the requirements at Paragraph 3.3 and/or Paragraph 3.4 shall result in the immediate suspension of the Language Professional from the Services.
- 3.6 All Intellectual Property Rights in each translation and transcription, including data in any translation memory software used by the Supplier in providing the Services, shall be owned by the relevant Commissioning Body.
- 3.7 The relevant Commissioning Body may share translations and transcriptions with third parties for any purpose, at its discretion.
- 3.8 On request from a Commissioning Body, the Supplier shall promptly (and in any event within two (2) Working Days) provide that Commissioning Body with copies of translations and transcriptions held by the Supplier relating to Assignments undertaken for that Commissioning Body.

#### **4. TECHNOLOGY AND FURTHER INNOVATION**

- 4.1 The Supplier shall take a proactive approach to using technology to delivering the Services in a way that continues to meet the required standards, whilst improving the quality, efficiency and provision of the Services.
- 4.2 The Supplier shall proactively engage with innovations being developed by the Authority and other Commissioning Bodies and seek new opportunities for innovation that could be used to improve delivery of the Services. This includes identifying a translation on a Booking that has been completed previously and implementing a process to reuse the said translation.
- 4.3 Any technological or other innovations shall be considered and, where appropriate, implemented in accordance with Clause 9.

#### **5. SECURITY REQUIREMENTS**

- 5.1 In providing the Services, the Supplier shall:
  - 5.1.1 ensure that the Services are secure and confidential;
  - 5.1.2 put in place and maintain such safeguards and measures as are appropriate depending on the security classification of the information and documents concerned as set out in:
  - 5.1.3 <https://www.gov.uk/government/publications/government-security-classifications>;
  - 5.1.4 comply with the principles of ISO 27001 on information security;
  - 5.1.5 ensure that the transfer of data uses an appropriate level of encryption to prevent interception in the transfer process; and
  - 5.1.6 comply with the requirements set out in Annex 6.

#### **6. BOOKING SERVICE**

- 6.1 The Supplier shall provide a facility for Commissioning Bodies for the booking, amendment, cancellation, notification and processing of Assignments 24 hours a day and 365 days a year.
- 6.2 The Supplier shall ensure that the Booking Service is available for use by Commissioning Bodies 24 hours a day and 365 days a year.

- 6.3 The Supplier shall provide for the secure hosting and maintenance of the Booking Service on a secure platform in accordance with the requirements in Schedule 14.
- 6.4 The Supplier shall ensure that the Booking Service and the secure platform it is hosted upon comply with the security requirements set out in Annex 6 and Schedule 14.
- 6.5 The Supplier shall ensure that the Booking Service includes such information as is reasonably necessary to ensure compliance with Law and Good Industry Practice, including a privacy policy and user terms and conditions.
- 6.6 The Booking Service shall have the following minimum functionality:
  - 6.6.1 booking Commissioning Body requirements (including method of translation and transcription and the variances of the requirements for Urgency Types and Security Levels and other requirements as set out in Paragraph 1.2);
  - 6.6.2 provision of an accurate record of progress for each Booking including up to date access to the current status of each Assignment including when an Assignment has not been completed;
  - 6.6.3 facilities for the Commissioning Body to amend or cancel the Booking; and
  - 6.6.4 provision of the primary source of Management Information relating to Commissioning Body requirements.
- 6.7 The Supplier shall issue the following notifications to Commissioning Bodies via a secure email to a designated email address:
  - 6.7.1 confirmation to the relevant Commissioning Body that the Booking has been received;
  - 6.7.2 notification to the relevant Commissioning Body that the translation and/or transcription files have been received and are accessible;
  - 6.7.3 timely (and in any event no later than a) one (1) hour after the start time stipulated on the Booking for Assignments to be completed within twenty four (24) hours; or b) no later than twelve (12) hours after the start time stipulated on the Booking for Assignments of more than twenty four (24) hours) notification to the relevant Commissioning Body if the Assignment cannot be completed within the specified timescale; and
  - 6.7.4 notification that the Assignment is completed and when the relevant translation and/or transcription produced as a result of the Assignment has been issued to the requesting Commissioning Body.

## **7. BOOKING SERVICE TRAINING REQUIREMENTS**

- 7.1 The Supplier shall provide training and guidance documents to Commissioning Bodies on how to use the Booking Service during the Transition Period and throughout the Contract Period.
- 7.2 Training and guidance documents must include as a minimum:
  - 7.2.1 practical support and guidance on making a Booking;
  - 7.2.2 guidance, trouble shooting and frequently asked questions documents that can be easily saved and printed; and
  - 7.2.3 guidance on how to:
    - (a) make a Booking;

- (b) amend a Booking;
- (c) cancel a Booking;
- (d) review a Booking;
- (e) make a complaint;
- (f) provide feedback on the service provided following delivery of the Assignment;  
and
- (g) access and understand Management Information.

7.3 In the event of any significant changes to the Booking Service, the Supplier shall provide appropriate training and guidance documents to all Commissioning Bodies.

## **8. BOOKING SERVICE MAINTENANCE**

8.1 In the event of a planned upgrade or maintenance work to the Booking Service, the Supplier shall notify all Commissioning Bodies no later than five (5) Working Days in advance of any work which could affect functionality and/or availability of the Booking Service detailing the intended duration of the work and how the Supplier will maintain the ability to request and manage Bookings and Assignments during that period.

8.2 The Supplier shall use best endeavours to ensure that upgrade or maintenance work that may affect functionality and/or availability of the Booking Service is undertaken outside of Normal Working Hours.

8.3 The Supplier shall maintain an up to date contingency plan for Booking Service unavailability (including planned and unplanned unavailability) agreed in accordance with Paragraph 8.4. Notwithstanding the contingency plan, the Supplier shall remain responsible for meeting the requirements of this Contract in the event of Booking Service unavailability.

8.4 The Supplier shall provide to the Authority during the Transition Period and thereafter a draft of any proposed update of its contingency plan for Booking Service unavailability. The Authority shall notify the Supplier whether or not it approves the proposed update and, where the Authority does not approve it, it shall provide comments on the proposed update. The Supplier shall promptly, and in any event, within two (2) Working Days, address the comments in a further updated draft plan and provide such updated draft plan to the Authority. This process shall be repeated until the proposed updated plan is approved by the Authority. The Supplier shall in any event update the plan annually and this process shall apply to each update of the plan.

8.5 The Supplier shall provide the contingency plan for Booking Service unavailability and any updated versions, in each case once approved in accordance with Paragraph 8.4, to each Commissioning Body within three (3) Working Days of approval.

## **9. WEBSITE**

9.1 The Supplier shall host a publicly accessible Website providing access to key information and resources relating to the Services.

9.2 The Website must be accessible from 19 October 2016 by Language Professionals, all Commissioning Bodies and the general public to view information including:

- 9.2.1 concise summaries of the language services provided by the Authority under this Contract;
- 9.2.2 glossaries of commonly used terminology;
- 9.2.3 lists of recognised languages and dialects;

- 9.2.4 the Authority Code of Conduct;
  - 9.2.5 guidance on the Supplier's complaints process; and
  - 9.2.6 copies of frequently used forms that can be downloaded, including, but not limited to, language cards and Language Professionals' timesheet pro forma.
- 9.3 The Website must provide a link through which Commissioning Bodies and Language Professionals can access and log into the Booking Service.
- 9.4 The Supplier shall ensure that the Website complies with and shall control the Website in accordance with the technology specification set out in Annex 6 and with Schedule 14.
- 9.5 The Supplier shall ensure that the Website includes such information as is reasonably necessary to ensure compliance with Laws and Good Industry Practice, including a privacy policy and user terms and conditions.
- 9.6 In the event of planned Website unavailability and any other functional changes, the Supplier shall notify all Commissioning Bodies no later than five (5) Working Days in advance of any work which could affect functionality and/or availability of the Website detailing the intended duration of the work.
- 9.7 The Supplier shall use best endeavours to ensure that upgrade or maintenance work that may affect functionality and/or availability of the Website is undertaken outside of Normal Working Hours.
- 9.8 In the event of unplanned Website unavailability the Supplier shall, within one hour of becoming aware that it is not available, notify all Commissioning Bodies of the action being taken to restore the Website. Thereafter regular updates (to be agreed with the Authority) should be provided until the Website availability is resumed.

## **10. TELEPHONE HELPDESK**

- 10.1 The Supplier shall provide a single dedicated telephone helpdesk to provide advice and support on all booking, ordering, invoicing, performance issues, general enquiries, Language Professional status and any other enquiries relating to the Services to all Commissioning Bodies.
- 10.2 The Supplier shall ensure that the telephone helpdesk is available 24 hours a day and 365 days a year.
- 10.3 The Supplier shall ensure that calls to the telephone helpdesk are answered by an operator within 20 seconds of the first ring.
- 10.4 The Supplier's telephone helpdesk service shall have a dedicated non premium rate and/or no call connection charge, telephone number. This telephone number must be accessible from UK landlines, mobile telephones and overseas, via a UK dialling code and be able to accept calls from outside the UK.

## **11. ASSIGNMENT AMENDMENT PROCESS**

- 11.1 The Supplier shall provide a dedicated telephone number and email address through which amendments to Bookings can be made by Commissioning Bodies.
- 11.2 A Commissioning Body shall notify the Supplier via the dedicated telephone number or email address if it wishes to amend a Booking and the Supplier shall issue a notification to the relevant Commissioning Body confirming the amendment.
- 11.3 The Supplier shall log the reason for any amendment made to a Booking and shall provide such information to the relevant Commissioning Body on request.

## **12. ASSIGNMENT DELAYS**

- 12.1 The Supplier shall have in place a process to notify the relevant Commissioning Body at the earliest opportunity of any delays to completing an Assignment by the deadline.
- 12.2 Where there is a delay to an Assignment being completed by the deadline, the Supplier shall provide the relevant Commissioning Body with the reasons for the delay and updated timescale for completion.

## **13. QUALIFICATIONS**

- 13.1 The Supplier shall only use a suitably qualified Language Professional for each Assignment.
- 13.2 The minimum Qualification Level of the Language Professional for each Assignment shall be determined by the Complexity Level for that Assignment, as set out in Annex 1. The required minimum Qualification Level of a Language Professional for each Complexity Level is as set out in Annex 2. If the Supplier is unable to fulfil the Assignment with a Language Professional with the required Qualification Level, the Supplier may provide a Language Professional with a lesser Qualification Level only with Approval of the relevant Commissioning Body. Notwithstanding any Approval given by a Commissioning Body, failure to provide a Language Professional with the Qualification Level specified in the Booking shall result in Service Failure performance points accruing in accordance with Schedule 6.
- 13.3 The Authority may, at its discretion and without the need to refer the matter to the Change Control Procedure, change the Qualification Levels from time to time upon written notice to the Supplier save that the matter shall be referred to the Change Control Procedure where the change is material and results in a cost impact on the Supplier (and each Party shall act reasonably in determining whether the proposed change meets the requirements necessitating it being referred to the Change Control Procedure).
- 13.4 The Supplier shall provide to the Authority or to the Quality Assurance Supplier, as directed by the Authority, details of the qualifications and experience of Language Professionals engaged in connection with delivery of the Services and shall provide a copy of any certificate of qualification or competence that is held for any such person.
- 13.5 Except in the case of Pre-Registered Language Professionals, the qualifications and experience of each Language Professional must have been assessed against the Qualification Levels as part of the Supplier's Onboarding Process prior to each Language Professional undertaking any Assignment for the Authority.
- 13.6 The Supplier acknowledges that the Quality Assurance Supplier will undertake periodic reviews of the qualifications and experience of Language Professionals including Pre-Registered Language Professionals. If following such an Assessment a Language Professional is found no longer to meet the required Qualification Levels, the Authority or its Quality Assurance Supplier will notify the Supplier in writing and the Supplier shall not use that Language Professional for Assignments requiring the Qualification Levels which are no longer met.
- 13.7 Where a Language Professional is capable of translating or transcribing in more than one language, the Supplier shall ensure that the Language Professional meets the required Qualification Levels in all relevant languages in respect of which they provide translation or transcription.
- 13.8 No Commissioning Body shall be liable for the costs associated with Language Professionals obtaining the relevant qualifications and/or experience to meet the Qualification Levels.

## **14. QUALITY**

- 14.1 In addition to the qualification requirements set out in Paragraph 13, the Supplier shall ensure that Language Professionals:

- 14.1.1 maintain and develop their command of English and the other language(s) they are qualified to translate;
  - 14.1.2 able to demonstrate that they have an understanding of the area in which they are working and a good understanding of the workings and protocols of the justice system; and
  - 14.1.3 able to develop and maintain the expected quality of translation when working with required digital and technological mediums.
- 14.2 The Supplier shall ensure that all translations are completed in accordance with the translation industry standard BS EN 15038 and/or ISO 17100 Certification.
- 14.3 The Supplier shall either have or obtain during the Contract Period accreditation to BS EN 15038 and ISO 17100 Certification, where the Supplier does not have such accreditation at the Services Commencement Date, it shall seek to obtain and report progress in obtaining such accreditation to the Authority annually on each anniversary of the Services Commencement Date.
- 14.4 For all Language Professionals who have not previously worked in the justice sector, or do not have extensive experience within the last twelve (12) months of working in the justice sector, the Supplier shall ensure that such Language Professionals undertake and pass an induction to working in the justice sector (to be developed and operated by the Supplier) before they are booked to an Assignment.

## **15. RECRUITMENT**

- 15.1 The Supplier shall maintain and seek to increase the supply of Language Professionals to ensure completion of all Assignments at all times including providing cover 24 hours a day and 365 days a year to complete all Assignments proportional to the demand for languages.
- 15.2 The Supplier shall expressly seek the Language Professional's approval for the Supplier to share and store their personal information relevant to the maintenance of the Register held by the Quality Assurance Supplier.

## **16. CONTINUOUS PROFESSIONAL DEVELOPMENT AND TRAINING**

- 16.1 The Supplier shall encourage the continuous professional development and training of the Language Professionals.
- 16.2 The Supplier shall at all times work with the Quality Assurance Supplier to support the ongoing improvement of the quality of the Services.
- 16.3 The Supplier shall provide evidence to the Authority of monitoring and reviewing Language Professionals' continuous professional development and training by reporting as required pursuant to Schedule 9.
- 16.4 No Commissioning Body shall be liable for any costs associated with the continuous professional development and/or training of Language Professionals.
- 16.5 Where there are any technological or other innovations relating to the delivery of the Services, the Supplier shall provide appropriate training and guidance to ensure that all Language Professionals are equipped with the appropriate skills and competencies to work with these innovations.

## **17. PERFORMANCE ISSUES**

- 17.1 The Supplier shall have in place and shall operate a procedure to address Language Professionals' poor performance issues including but not limited to:

- 17.1.1 failure to deliver the level of service expected;
  - 17.1.2 inappropriate behaviour;
  - 17.1.3 failure to adhere to the Authority Code of Conduct; and
  - 17.1.4 contributions to operational inefficiencies (e.g. failure to complete Assignments to the required deadline).
- 17.2 The Authority reserves the right to require that the Supplier should notify the Quality Assurance Supplier to remove the Language Professionals with poor performance records from the Register and, where this occurs, the Supplier shall ensure that the Language Professional is not used for further Bookings.

**18. CO-OPERATION WITH THE QUALITY ASSURANCE SUPPLIER**

- 18.1 The Supplier will at all times co-operate with the Quality Assurance Supplier in order to facilitate the services it provides to Commissioning Bodies, including those described in Annex 3. Such co-operation will include, but not be limited to, updating the Supplier's Onboarding Process (without having to refer the matter to the Change Control Procedure) so as to incorporate and implement (to the reasonable satisfaction of the Quality Assurance Supplier and the Authority) the reasonable recommendations from time to time of the Quality Assurance Supplier.
- 18.2 The Supplier will promptly (and in any event within two (2) Working Days) provide updates regarding Language Professionals who have successfully completed the Supplier's Onboarding Process, including as regards changes to their details, to the Quality Assurance Supplier as required to allow the update of the Register. This will include an annual update of the hours worked by the Language Professional.
- 18.3 In order to facilitate the quality assurance process, the Supplier shall provide the Quality Assurance Supplier with such information as may be required which shall include but not limited to:

Description of information	Purpose of information	Methods of request	Timescales for provision
Assignment details	The Supplier shall provide details of specific translations and transcriptions that have or are due to take place. The events selected shall represent a reasonable cross-section of the types of the Services provided including a range of languages.	<ul style="list-style-type: none"> <li>• Ad hoc audits</li> <li>• Mystery Shopping Assessments</li> <li>• Spot Check Assessments</li> </ul>	Within 24 hours of the request by a Commissioning Body or the Quality Assurance Supplier
Complaints	The Supplier shall provide details of all complaints (categorised as required) related to the quality or standard of translation and transcription relating to all bookings. The Supplier shall co-operate with any investigation undertaken by the Quality Assurance Supplier and shall comply with the recommendations of their review which may include, but not limited to, the removal or suspension from	<ul style="list-style-type: none"> <li>• Mystery Shopping Assessments</li> <li>• Development plans</li> </ul>	Within 24 hours of the complaint being made

	the Register of the Language Professional in question.		
Breach of the Authority Code of Conduct	The Supplier shall provide details of all alleged and actual breaches of the Authority Code of Conduct.		Within 24 hours of the Supplier becoming aware of the alleged or actual breach
Feedback	The Supplier shall provide the feedback captured following completed Assignments.	<ul style="list-style-type: none"> <li>Customer satisfaction</li> </ul>	Quarterly

18.4 The Supplier shall treat all information provided by the Quality Assurance Supplier as confidential and such information shall be treated in the same way as Authority Confidential Information in accordance with Clause 37.

## 19. LAWS

19.1 The Supplier shall comply with all relevant Laws in relation to the Services.

19.2 Without prejudice to Paragraph 19.1, the Supplier shall familiarise itself and comply with the Directive and the obligations within it, including but not limited to:

Article 5(3) – Confidentiality

Member States shall ensure that Language Professionals and translators will be required to observe confidentiality.

## 20. COMPLAINTS PROCESS

20.1 The Supplier shall have in place and operate robust and auditable procedures to record, process and resolve complaints or problems initiated by Commissioning Bodies, or end users, including, but not limited to, suspects, witnesses and accused persons. These procedures will be regularly reviewed by and agreed with the Authority.

20.2 The Supplier shall provide clear guidance to Commissioning Bodies on their complaints process.

20.3 The Supplier shall provide a clear route for complaints to be made by parties other than the Commissioning Body, including written instructions for defendants where required. The Supplier shall provide clear guidance on the complaints process on the Website hosted pursuant to Paragraph 9, which shall include instructions on how to report complaints to a Commissioning Body and/or the Supplier.

20.4 The Supplier shall immediately, and in any event within one (1) Working Day, refer complaints related to the quality or standard of translation or a possible breach of the Authority Code of Conduct by Language Professionals whilst completing Assignments to the Quality Assurance Supplier for review. The Supplier will co-operate with any investigation undertaken by the Quality Assurance Supplier and shall comply with the recommendations of their review which may include, but not be limited to, the removal or suspension from the Register of the Language Professional in question.

20.5 The Supplier shall ensure that the complaints process allows for the identification and tracking of complaints from initiation to resolution. Details of such complaints and proposed and/or completed corrective action will be reviewed at contract management and review meetings.



- 20.6 The Supplier shall maintain a full record of:
- 20.6.1 all complaints raised using the Authority complaint categories which may be updated from time to time;
  - 20.6.2 **General**
    - (a) Failure to complete an Assignment on time
    - (b) contact centre communications issues
    - (c) Booking Service issues (technical)
    - (d) account management issues
  - 20.6.3 **Financial**
    - (a) incorrect times recorded for the Booking
    - (b) financial reports are unavailable
  - 20.6.4 **Quality**
    - (a) any breach of the Authority Code of Conduct
    - (b) translation issues
    - (c) transcription issues
  - 20.6.5 the escalation within its own organisation;
  - 20.6.6 engagement with the Quality Assurance Supplier;
  - 20.6.7 any response provided;
  - 20.6.8 the resolution status of each complaint;
  - 20.6.9 the action taken in response to the complaint; and
  - 20.6.10 timescales for responding to and resolving complaints.
- 20.7 The Supplier shall ensure that all complaints are resolved in a professional and efficient manner.
- 20.8 All complaints made by a Commissioning Body or third party in relation to the Services must be acknowledged by the Supplier within 24 hours of the details of the complaint being received by the Supplier. Thereafter, updates on how the Supplier is proactively working to seek a resolution of the complaint should be made by the Supplier to the relevant Commissioning Body and third party on request. As a minimum, complaints must be acknowledged within 24 hours, referred to the Quality Assurance Supplier (if required in accordance with Paragraph 20.4) within one (1) Working Day and if not referred to the Quality Assurance Supplier, satisfactorily resolved within three (3) Working Days, unless otherwise agreed with the relevant Commissioning Body.
- 20.9 The Supplier shall provide information on all complaints made, as required by Schedule 9.
- 20.10 The level and nature of complaints arising, and the proposed corrective action or that under way or completed shall be reviewed by the Supplier and the Authority periodically, as appropriate according to the numbers of complaints arising, and in any event at intervals of not less than three (3) months.

20.11 The Authority may discuss with the Supplier delivery performance and address any concerns that may exist around the number of complaints or quality of the service provided at contract review meetings or as otherwise required by the Authority.

## **21. PRIORITY COMPLAINTS**

The Supplier shall ensure that any complaints received directly from a Commissioning Body encountering problems whilst an Assignment is being undertaken are dealt with as a matter of priority and the Supplier shall seek to minimise any disruption caused.

## **22. CONFIDENTIALITY**

The Supplier shall ensure that Language Professionals and all other Personnel who have access to sensitive information maintain confidentiality at all times and do not seek to make personal gain through information disclosed during their work in line with Article 5(3) – Confidentiality of the Directive and as required by the Authority Code of Conduct.

## **23. SENSITIVE SUBJECT MATTER**

23.1 The Supplier shall notify all Language Professionals that the material, content and subject matter may be distressing to some people. Such notification should take place in writing at the point of engagement of a Language Professional and written acknowledgement from the Language Professional of such notification shall be retained by the Supplier, prior to the undertaking of any work associated with this Contract and acknowledgement of this notice received from the Language Professional.

23.2 Material, which some Language Professionals may find distressing, includes the description of events which may include, but is not limited to physical or mental abuse, sexual acts or abuse, harm or abuse of young or vulnerable people, graphic descriptions of injuries or actions, acts of terrorism and hate crimes including crimes that are targeted at a person because of hostility or prejudice towards that person's: disability, race or ethnicity, religion or belief and sexual orientation.

## **24. SECURITY CLEARANCE**

24.1 The Supplier shall ensure that each Language Professional has the required Security Level, provided that a Commissioning Body may specify additional levels of security clearance (including but not limited to counter terrorism clearance) before a Language Professional shall be permitted to undertake an Assignment, as may be specified in the booking. If the Supplier is unable to fulfil the Assignment with a Language Professional with the required Security Level, the Supplier may provide a Language Professional with a lesser Security Level only with Approval of the relevant Commissioning Body. Notwithstanding any Approval given by a Commissioning Body, failure to provide a Language Professional with the Security Level specified in the Booking shall result in Service Failure performance points accruing in accordance with Schedule 6.

24.2 Except in the case of Pre-Registered Language Professionals, all the Supplier's Personnel shall be security cleared to baseline personnel security standard as a minimum.

24.3 The Supplier shall comply with the security clearance requirements in Annex 7.

## **25. DATA PROVISION**

The Supplier shall respond to ad hoc data requests in relation to FOIA requests, Parliamentary Questions or other official briefings within two (2) Working Days of the requests.

## ANNEX 1

### Urgency Types, Security Levels and Complexity Levels

**Table 1**

Method of translation	Urgency Types (as defined in Table 2)	Security Levels (as defined in Table 3)	Complexity Level (as defined in Table 4)
Written	UT1	SL1	Standard
	UT2	SL2	
	UT3	SL3	
		SL4	
Braille	UT1	SL1	Standard
	UT2	SL2	
	UT3	SL3	
		SL4	
Other formats (including large print, audio, video and pictorial English)	UT1	SL1	Standard
	UT2	SL2	
	UT3	SL3	
		SL4	

**Table 2**

Urgency Type	Definition
<b>UT1</b>	Services required within 3 hours of the Booking.
<b>UT2</b>	Services required after 3 hours but within 24 hours of the Booking.
<b>UT3</b>	Services required on or after 24 hours but within seven (7) Working Days of the Booking.

**Table 3**

Security Level	Definition
<b>SL1</b>	Security clearance to baseline personnel security standard.
<b>SL2</b>	Security clearance to counter terrorism check standard.
<b>SL3</b>	Security clearance to security check standard.

<b>SL4</b>	Security clearance to developed vetting standard.
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**Table 4**

<b>Complexity Level</b>	<b>Definition</b>
<b>Standard</b>	All Assignments shall be deemed to be of a Complexity Level of Standard.

## ANNEX 2

### Qualification Levels

**This Annex sets out the minimum level of qualification a Language Professional is required to have in order to work on the applicable Complexity Level of Assignment.**

1. A Language Professional may work on an Assignment for translation services only where their Primary Language is the Target Language or for a specified specialist alternative, including Braille, pictorial English and large print documents.
2. To work on an Assignment:
  - 2.1 the Language Professional must be a fully qualified translator with qualified membership status of a relevant professional body (such as the Chartered Institute of Linguists, American Translators Association or Institute of Translation and Interpreting); or
  - 2.2 the Language Professional must:
    - (a) have obtained a degree in the Source Language;
    - (b) have three (3) years' experience as a professional translator;
    - (c) have translated a minimum of 100,000 words of similar content to that which they have specified they have a specialism in; and
    - (d) have suitable references.
3. A Language Professional may work on an Assignment where they do not meet all or some the requirements of Paragraph 2, provided that the Language Professional demonstrates alternative qualifications and experience to the satisfaction of and with the written consent of the relevant Commissioning Body.
4. The Authority may require that a Language Professional passes an assessment before working on a particular or any Assignment, which may include the translation of a piece of text, as may be notified by the Authority to the Supplier from time to time.

## ANNEX 3

### Role of the Quality Assurance Supplier

Working with the Supplier, the Quality Assurance Supplier shall on behalf of the Authority:

1. Manage and maintain the Register.
2. Provide annual assurance to the Authority that the Onboarding Processes of the Supplier are robust and follow Good Industry Practice.
3. Carry out Spot Check Assessments, In Person Assessments and Mystery Shopping Assessments to assess the quality of the services delivered by the Language Professionals. The Mystery Shopping Assessments are to be carried out remotely (through recordings) or in person at Commissioning Bodies' Premises or other Locations.
4. The Spot Check Assessments, In Person Assessments and Mystery Shopping Assessments undertaken by the Quality Assurance Supplier shall include, as a minimum.
  - 4.1 An assessment of the Language Professionals' ability and competence to deliver the Services on behalf of the Supplier;
  - 4.2 Confirmation that the Language Professional has agreed to the Authority Code of Conduct.
  - 4.3 An independent quality check of the Onboarding Processes that took place at the time of the initial recruitment between the Language Professional and the Supplier. This will include an interrogation of the language skills and qualifications, security clearance, acceptance of the Authority Code of Conduct and the relevant experience of Language Professionals.
5. In instances where the quality of the Services being performed by the Language Professional is identified as unacceptable, take the appropriate steps to, a) suspend or b) remove the Language Professional from the Register and in the case of scenario a, in conjunction with the Supplier and the Language Professional agree a development plan which would allow the Language Professional to meet the required standard and/or reinstatement on the Register.
6. Carry out ad-hoc audits of the Services delivered by the Supplier as directed by the Authority.
7. Investigate complaints it may receive in respect of the Services delivered by the Supplier.
8. Investigate all instances of alleged breaches of the Authority Code of Conduct (in conjunction and cooperation with) the Language Services Supplier(s).
9. Undertake a periodic customer survey to measure the end user and Commissioning Body satisfaction with the Services delivered by the Supplier.
10. Work with the Supplier to ensure accurate provision of relevant (to be determined) data at regular (to be determined) intervals.

## ANNEX 4

### List of Languages

This list is not exhaustive and will be updated by the Authority as and when necessary.

<b>Languages</b>		
Acholi	Fula	Norwegian
Afar	Fulah	Oromo (Central)
Afrikaans	Fuzhou	Pahari - Kullu
Akan	Ga	Pahari - Mashu
Albanian	Galician	Pahari-potwari
Albanian (Kosovo)	Georgian	Pangasinan
Algerian	German	Pashto
Amharic	German (Austrian)	Pashto (Afganistan)
Arabic	German (Swiss)	Pashto (Afghanistan)
Arabic (Classical)	Gikuyu	Pashto (Pakistan)
Arabic (Classical/North African)	Greek	Pashto, (Afganistan)
Arabic (Modern Standard)	Gujarati	Pashto, (Pakistan)
Arabic (North African)	Gusii	Polish
Armenian	Hakka	Portuguese
Azerbaijani (North)	Hausa	Portuguese (Brazil)
Azerbaijani (Southern)	Hebrew	Portuguese (Creole)
Azeri	Hindi	Potwari
Bahasa Indonesian	Hindko	Punjabi
Bahasa Malaysian	Hindustani	Punjabi, Eastern (India)
Balochi - Southern	Hungarian	Punjabi, Western (Pakistan)
Balochi - Western	Igbo	Roma
Bamanankan	Ilocano	Romanian
Belarusian	Indonesian	Romany
Bengali	Italian	Runyankole
Bilen	Japanese	Russian
Bosnian	Javanese	Sanskrit
Bravanese	Jula	Sardinian (Campidanese)

British Sign	Kashmiri	Serbian
Bulgarian	Kazakh	Shona
Burmese	Kibajuni	Sindhi
Cantonese	Kikongo	Sinhala
Catalan	Kikuyu	Slovak
Cebuano	Kinyamulenge	Slovene
Chaldean - Neo Aramaic	Kinyarwanda	Slovenian
Creole	Kirundi	Somali
Creole - English	Kiswahili	Spanish
Creole - French	Korean	Spanish (Latin American)
Creole - Portuguese	Krio	Susu
Croatian	Kurdish (Bahdini)	Swahili
Czech	Kurdish (Kurmanji)	Swahili (Coastal)
Daju	Kurdish (Kurmanji/Bahdini)	Swahili (Congo)
Danish	Kurdish (Sorani)	Swedish
Dari	Kyrgyz	Sylheti
Dari (Afghan)	Lak	Tagalog
Dari (Iranian)	Lao	Taiwanese
Dholuo	Latvian	Tajiki
Dutch	Lingala	Tamil
Edo	Lithuanian	Telugu
English	Luganda	Thai
English - AUS	Macedonian	Tigre
English (Pidgin)	Macedonian Gorani	Tigrinya
English (US)	Malay	Tswana
Estonian	Malayalam	Turkish
Éwé	Mandarin	Turkmen
Farsi	Mandinka	Twi
Filipino	Maninka	Ukrainian
Finnish	Marathi	Urdu
Flemish	Mirpuri	Uzbek (Northern)
French	Moldovan	Vietnamese
French (Algerian)	Mongolian	Welsh



French (Belgium)	Moroccan	Wolof
French (Canada)	Ndebele - Northern	Xhosa
French (Congolese)	Ndebele - Southern	Yoruba
French (Congolese)	Ndebele (South Africa)	Zulu
French (Swiss)	Nepalese	

## ANNEX 5

### Authority Code of Conduct

**In this Code of Conduct, “Commissioning Body” refers to an organisation receiving services from Language Professionals under the Ministry of Justice language services contracts.**

#### 1. Professional Competence

All Language Professionals must:

- 1.1 At all times cooperate with the Authority Quality Assurance process through participation in the Mystery Shopping Assessment, Spot Check Assessment and In Person Assessment processes.
- 1.2 Only accept bookings/assignments for languages in which they can demonstrate that they have the required level of competency and refuse any work beyond their level of competency, either linguistically or due to a lack of specialised knowledge.
- 1.3 Be fluent in and demonstrate a comprehensive understanding of the written and spoken form of both languages; including regional dialects, colloquialisms, idiomatic expressions and technical terms.
- 1.4 Maintain language and other relevant professional linguist skills in order to discharge services to the required standard.
- 1.5 Be familiar with any cultural backgrounds relevant to the assignment.
- 1.6 Understand the relevant procedures and protocols of the justice system as required for the relevant Commissioning Body.
- 1.7 Not delegate any work to third parties nor accept any delegated work.

**Points 1.8 to 1.15 below only apply to Language Professionals when they are required to attend a location to deliver language services as specified by a Commissioning Body.**

- 1.8 Be able to verify their identity on request by the Commissioning Body at any point during their Booking, through the use of valid and up to date photo identification badge which they must have with them when they attend any assignment.
- 1.9 Ensure they arrive at the venue in readiness to commence interpreting at the time requested to by informing a member of staff of their arrival so the time can be recorded accurately.
- 1.10 Ensure they arrive at the venue with the official timesheet.
- 1.11 Ensure all timesheets are approved by the appropriate member of the Commissioning Body before leaving the venue.
- 1.12 Remain for the entire duration of the assignment until released by the Commissioning Body.
- 1.13 Dress appropriately for all assignments undertaken. Those whose appearance could be considered inappropriate are liable to be removed from the assignment.
- 1.14 Take an oath or give an affirmation before the assignment begins if directed to do so.
- 1.15 In the case of Language Professionals providing interpretation services comply with the specific requirements for face to face and remote interpretation set out in section 3 below.
- 1.16 In the case of Language Professionals providing translation and transcription services, comply with the specific requirements for the services set out in section 2 below.

## **2. Translation and Transcription Services – Written Interpretation**

Language Professionals must also:

- 2.1 Translate all documents and transcribe recordings, taking reasonable action to ensure effective communication and clear understanding between the parties.
- 2.2 Inform the Commissioning Body where difficulties are encountered with dialect, technical terms or lack of relevant background knowledge which may impair their ability to carry out the assignment. If these issues cannot be resolved to the satisfaction of the Commissioning Body the Language Professional shall withdraw from the assignment.

## **3. Face to Face and Remote Interpretation – Verbal Interpretation**

Language Professionals must also:

- 3.1 Interpret impartially between the various parties, taking reasonable action to ensure effective communication and clear understanding.
- 3.2 Convey the exact meaning of what has been said by each party, without making changes or omissions to the content; intervening only to prevent potential misunderstandings. In exceptional circumstances a summary (which must not distort in any way the meaning of what has been said) may be given if requested by the Commissioning Body.
- 3.3 Inform the Commissioning Body where difficulties are encountered with dialect, technical terms or lack of relevant background knowledge which may impair their ability to carry out the assignment. If these issues cannot be resolved to the satisfaction of the Commissioning Body the Language Professional shall withdraw from the assignment.
- 3.4 Not give legal or other advice or express opinions to any of the parties that exceed their role and duties as Language Professionals.
- 3.5 Request that the relevant parties provide an environment that is conducive to deliver interpretation; such as ensuring that all parties can be heard clearly etc. The Language Professional must inform the relevant parties if the environment appears unsuitable for the purpose.

## **4. Ethics**

All Language Professionals must:

- 4.1 At all times act with integrity, maintain high standards and conduct themselves in an ethical and professional manner.
- 4.2 Carry out assignments in an impartial manner and disclose any personal interest, such as financial or business related, in order that the Commissioning Body can assess if this constitutes a potential conflict of interest as soon as they become aware of it. If the Commissioning Body considers the conflict to be unacceptable the Language Professional shall be asked to withdraw from the assignment.
- 4.3 Not accept any gift or reward that could be construed as an incentive to act against their professional obligations.
- 4.4 Immediately notify the Commissioning Body of any prior relationship with any party to proceedings in a particular assignment.
- 4.5 Immediately notify the Commissioning Body of any previous involvement with a particular assignment.

- 4.6 Disclose to the Commissioning Body if they have had any involvement in previous assignments with the same client.
- 4.7 Disclose to the Commissioning Body any criminal record or other information which may make them unsuitable for a particular assignment. At the discretion of the Commissioning Body, individuals with a criminal record may be precluded from receiving particular assignments.
- 4.8 Not discriminate between parties (to their advantage or disadvantage) either directly or indirectly and act impartially at all times and not act in any way that might result in prejudice or preference on grounds of religion or belief, race, politics, gender, gender reassignment, age, sexual orientation or disability other than as obliged to in order to faithfully translate, interpret or otherwise transfer meaning.
- 4.9 Respond within the required timescale to any allegations of misconduct or departure from the Authority Code of Conduct.

## **5. Confidentiality**

All Language Professionals must:

- 5.1 Treat all material provided in the course of an assignment as confidential and unless disclosure is required by law, ensure no information is communicated to any third party without the express permission of the Commissioning Body.
- 5.2 Ensure that material is used only for the purpose authorised by the Commissioning Body.
- 5.3 Ensure that all material is returned to the Commissioning Body at the conclusion of an assignment.
- 5.4 Comply with all relevant data protection legislation including the Data Protection Act 1998.
- 5.5 Not use any of the information obtained during the course of an assignment for any purpose other than that as authorised.
- 5.6 Secure safely any document, recordings or media provided during the course of an assignment, ensuring that it is not copied and is returned at the end of the assignment. Documents are for the eyes of the Language Professional and authorised staff only, and must not be seen by or shared with anyone else.

## ANNEX 6

### Technology Specification

#### 1. General requirements

- 1.1 The Booking Service provided by the Supplier shall:
  - 1.1.1 meet Good Industry Practice;
  - 1.1.2 have high availability, particularly during Normal Working Hours.
- 1.2 The IT elements of the Booking Service shall be fully supported by the Supplier for the Contract Period, such support to include monitoring, reporting, updates and patching, technical support and training, reporting and resolution of problems and incidents, and change management.
- 1.3 On expiry or termination of the Contract, the Supplier shall provision for support to business continuity and to migrate any required information to a Replacement Supplier(s) in accordance with Schedule 13.
- 1.4 In order to comply with Paragraph 1.2, the Booking Service should be based as far as feasible on open source and open data standards.

#### 2. Booking Service requirements

- 2.1 The Supplier shall:
  - 2.1.1 provide a secure, fully managed, Booking Service which can be used by Commissioning Bodies, which shall include the facility to request bookings via a single point of contact;
  - 2.1.2 provide reliable and robust access to applications and service whereby users are able to access the service at any time;
  - 2.1.3 ensure that the Booking Service is not affected by either an increased or decreased volume of bookings requested by Commissioning Bodies and supports transient peaks and short term increases in demand; and
  - 2.1.4 ensure that the Booking Service has high speed, resilient connections from / to both government secure internet, public services network and the internet to ensure good connectivity at all times.

#### 3. Access

- 3.1 The Booking Service must provide robust role based access at all levels from infrastructure and administration through to end user.
- 3.2 The Booking Service must be capable of limiting users to a single logon at any one time and any exceptions to this must be clearly identified.
- 3.3 Access to the Booking Service must be authenticated using user names and passwords. All such passwords must comply with HMG Security Guidelines.
- 3.4 Administrators must have the ability to reset a user's password and users must have the ability to change their own password.
- 3.5 Users should be able to access the Booking Service using a web browser on a variety of devices including tablet and other mobile devices. Where there may be limitations in functionality (eg uploading documents from a mobile device) these should be clearly identified. Any internally

facing functionality which requires use of a computer (rather than a mobile device) interface should be clearly identified.

Note: Internal users are currently constrained by Authority and HMG policies on access from a secure environment using approved devices. In practice, internal users will be accessing the Booking Service from a desktop computer or laptop in accordance with the Authority's web browser standards.

#### **4. Archive**

- 4.1 Users must be able to access archived data within 24 hours of a legitimate request being made.
- 4.2 It must be possible to identify and securely destroy data in accordance with the requirements of the Contract including those relating to the Retention Period.

#### **5. Audit, logging and monitoring**

- 5.1 The Supplier shall put in place appropriate monitoring tools and processes to support and maintain the Key Performance Indicators and to identify any changes in demand or usage of the Booking Service.
- 5.2 The Booking Service must maintain logs and records for audit purposes. Audit logs and records must be maintained in a way that facilitates finding or identifying specific items within the log, and which supports a policy of forensic readiness capable of supporting the investigation and response to security breaches.
- 5.3 The Booking Service must maintain a log or record of all access to the Booking Service. The access log will be maintained such that it is possible to identify all successful and unsuccessful access attempts.
- 5.4 The Booking Service must log or record all operations and changes made to data and information. As a minimum, it should be possible to identify the user that accessed the Booking Service, and the time the access or any change was made, including changes and uploads made by web users.
- 5.5 Audit and monitoring logs and records must be available to designated authorised users.
- 5.6 It must not be possible to amend or delete any audit trail without a separate audit event capturing these changes.
- 5.7 Audit and log data must be held for the same amount of time as the source data it pertains to (i.e. for the same data retention period).
- 5.8 When data or information is changed, a record of the original data must be maintained.
- 5.9 The Booking Service must not delete from audit and monitoring logs any data relating to users who have been removed from the Booking Service.
- 5.10 The creation and storage of audit logs must not impact on the performance of the Booking Service.
- 5.11 In the event of error or component failure, the relevant log files must provide enough information to support investigation and isolation of the point and possible cause of failure.

#### **6. Availability and resilience**

- 6.1 The Booking Service must be sufficiently robust and resilient to meet the required hours of operation, with no single points of failure and designed to minimise data loss in line with Schedule 21.

- 6.2 It must be possible to restore the Booking Service to a known point (for example in the event of a failure or for other business reason). In support of this the Supplier must provide a backup and storage approach that will ensure that data loss is minimised and that data can be restored within a reasonable period, to be approved by the Authority.
- 6.3 Backups must be verified to ensure that they are capable of being restored and the restore procedures should be successfully tested on a regular basis but at least annually.
- 6.4 Backup data must be transported and stored securely in line with Authority Information Assurance Guidelines.

## **7. Business continuity and disaster recovery**

- 7.1 The Supplier shall ensure that their Business Continuity and Disaster Recovery Plan produced in accordance with Schedule 21 includes disaster recovery for the Booking Service.
- 7.2 In the event of a disaster, the Supplier shall minimise data loss. The Supplier shall clearly identify the maximum potential data loss and propose within their Booking Service design mechanisms and processes to facilitate data recovery and minimise the impact of data loss.
- 7.3 In the event of an incident, any proposed recovery arrangements must be capable of supporting the business until such time as the full Booking Service is restored and the Supplier shall clearly identify any constraints around such provision.

## **8. Capacity**

- 8.1 The Booking Service must be capable of managing and storing the volume of data and information produced by the service, plus all monitoring, audit and other logs.
- 8.2 The Booking Service must be able to support the anticipated required number of users as during Normal Working Hours.
- 8.3 The Booking Service must support changes in capacity and demand as required.
- 8.4 The Booking Service must support the bulk email load as required by the Supplier's operations.
- 8.5 The Booking Service must have the capability to run management reports as required by Schedule 9.

## **9. Compliance and Policy**

- 9.1 All the Supplier's Personnel working on the Booking Service with access to customer and user data shall be security cleared to a minimum of baseline standard.
- 9.2 The Booking Service should be designed in such a way as to facilitate Authority's compliance with the Equality Act 2010 and other equalities legislation, which includes but is not limited to ensuring that the Booking Service meets relevant accessibility and usability standards as referenced in Government Digital Service Guidance.
- 9.3 The Booking Service must facilitate the Authority's compliance with Laws, including but not limited to provisions for controlling access to data and monitoring changes.
- 9.4 The Supplier shall ensure that the Booking Service follows current industry and government best practices for accessibility and must work with commonly available assistive technologies. The cross government minimum accessibility standard is WCAG 1.0 AA.
- 9.5 The Booking Service must facilitate compliance with Laws relating to the use of the Welsh Language including the Welsh Language Measure 2011.

- 9.6 The Supplier shall maintain good practices in respect of coding, development, document management and record keeping which the Authority may access and audit on request.
- 9.7 The Booking Service shall be capable of identifying to the user at initial logon that:
- 9.7.1 only authorised users may logon to the Booking Service;
  - 9.7.2 by logging on, users accept that their activities are subject to protective monitoring; and
  - 9.7.3 any unauthorised access or misuse of the Booking Service is a criminal act under the Computer Misuse Act 1990.
- 9.8 The Booking Service will meet Cabinet Office digital standards, including prioritising the use of open source, open standards, open data standards and use of common components and services.

## **10. Data integrity**

- 10.1 The Booking Service must maintain the integrity of information that is processed. It must ensure that changes are completed and confirmed by the user, and are auditable (and cannot be repudiated), before they are applied.
- 10.2 It shall not be possible for more than one person to update a record at the same time.
- 10.3 The Booking Service must validate data at the point of entry. Data validation will include enforcement of any appropriate and agreed data standards or formats.
- 10.4 The Booking Service shall ensure that once a transaction has been committed by a user, the effects will persist in the Booking Service and will not be lost or undone except due to deliberate further action by the same user or by another authorised user.
- 10.5 The Booking Service shall provide the means to restore the business data to a known, consistent state following the discovery of any fault in the application software.
- 10.6 Data no longer required (subject to retention rules or authorised requests from the Authority) shall be securely removed / deleted in accordance with Schedule 14.

## **11. Design and usability**

- 11.1 The Booking Service shall be capable of automatically changing between GMT and BST and will record or display the correct UK time.
- 11.2 The design of the Booking Service shall take into account current Government Digital Service Guidance on design and usability.
- 11.3 The requirements of the Booking Service for web browsers must adhere to the Authority Web Browser Standards and any exceptions to this principle shall be clearly identified and justified by the Supplier to the satisfaction of the Authority.
- 11.4 The Booking Service will produce on screen error messages which are meaningful and appropriate to users, and which offer immediate prompts for actions to resolve the error wherever appropriate.

## **12. Documentation**

- 12.1 The Supplier will provide sufficient training and guidance documentation to support independent technical and security assessment of the status of the Booking Service as set out in Schedule 2.
- 12.2 The Supplier shall keep all documentation up to date and reflect the current state of any technology and procedures associated with the Booking Service at all times.



### **13. Support, maintenance, testing and service provision**

- 13.1 The Supplier shall support and maintain the Booking Service for the Contract Period and shall have a documented service management approach which includes but not limited to incident, problem, change and service level management disciplines.
- 13.2 All releases and changes to the production service, not limited to the live technical Booking Service shall be managed and agreed in accordance with Schedule 10.
- 13.3 All releases/changes shall be subject to Schedule 10.
- 13.4 Changes/releases identified to impact end users shall be subject to user acceptance testing (at minimum) before implementation. No changes will be made to the production service unless they have been adequately tested first to the satisfaction of the Authority.
- 13.5 The Supplier shall propose for agreement the recovery point and recovery time objective for the service.
- 13.6 Prior to the Services Commencement Date, all outstanding defects discovered during testing (including functional and non-functional areas e.g. OAT/UAT) should be documented and a live service based impact assessment completed. The impact assessment shall be:
  - 13.6.1 service based;
  - 13.6.2 end user based; and
  - 13.6.3 support based.
- 13.7 The Supplier shall provide and comply with its own documented standard incident management targets and incident classification scheme.
- 13.8 The Supplier shall provide and comply with its escalation framework that describes both hierarchical and functional escalations paths for the service.

### **14. Interoperability**

- 14.1 The Booking Service shall be capable of importing or exporting data and interfacing with other services using recognised formats or protocols (e.g.XML, SOAP, CSV) if and where the Supplier's proposal requires an interface with other systems.
- 14.2 Where required, the Booking Service must be capable of sending and receiving data and emails in batches.
- 14.3 It must be possible to export all data held in the Booking Service in a recognised open format such as XML or CSV.

### **15. Security and information assurance – general**

- 15.1 The Booking Service must be protected by appropriate people, process, technology and physical security controls as part of a 'defence-in-depth' approach.
- 15.2 The Supplier shall comply with Schedule 14 in relation to cyber security and information assurance requirements.

## ANNEX 7

### Security Clearance Requirements

#### 16. General Requirements

- 1.1 The Supplier shall comply with such requirements as the Commissioning Body may in its absolute discretion impose in relation to the security vetting level required.
- 1.2 The Supplier shall ensure that Language Professional have undergone a Baseline Personnel Security Standard check to the standard defined in the following guidance <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard> including a basic criminal records disclosure check, or received the level of checking appropriate to the site/particular booking, as dictated by the Commissioning Body.
- 1.3 This might also involve the need for National Security clearance at Counter Terrorist Check (CTC), Security Check (SC) or Developed Vetting (DV) levels or NPVV3 in the case of the police. The link below provides details of the majority of the security / vetting requirements.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/367514/Security\\_Requirements\\_for\\_List\\_X\\_Contractors.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367514/Security_Requirements_for_List_X_Contractors.pdf)

#### 17. Records and Results

- 17.1 The Supplier shall complete and retain the required Verification Record forms attached in the guidance, to evidence that vetting checks have been completed to the required standard by all Language Professional and provide these to the Quality Assurance Supplier as part of the Register and where otherwise requested .
- 17.2 The Commissioning Body must be notified of any adverse results from a criminal records check (i.e. spent or unspent convictions) relating to a Language Professional. Adverse results will be considered on a case by case basis and the Commissioning Body reserves the right to exclude Language Professional from involvement in the contract as a result. Where the Commissioning Body excludes translators on this basis it remains the responsibility of the Supplier to ensure that the Language Professionals are not given access to material processed in meeting the requirements of this contract.

#### 18. Special Circumstances

- 18.1 The Supplier shall ensure a sufficient number of Language Professionals have been vetted by the Disclosure and Barring Service in order fulfil the Authority's obligations under the Safeguarding Vulnerable Groups Act 2006. (Vulnerable Groups include those held in lawful custody or are on probation).
- 18.2 Where required by the Commissioning Body the Supplier shall provide a list of Personnel who have been vetted by the Disclosure and Barring Service.

#### 19. Access to Information

- 19.1 If and when directed by the Commissioning Body, the Supplier shall provide a list of the names and addresses, National Insurance numbers, periods of employment, immigration status and tax exemption certificates of all Language Professional who are expected to require admission in connection with the Contract to any premises occupied by or on behalf of the Commissioning Body, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Commissioning Body may reasonably desire. The Supplier must provide the Commissioning Body with a list of security cleared personnel, and documentary evidence of clearance checks on request.
- 19.2 The Supplier shall obtain the written confirmation from all Language Professional that they consent to their details and associated data to be shared with the Commissioning Body.

## **20. Renewal/Updating of Security Clearances and Vetting requirements**

- 20.1 The Supplier shall take responsibility for keeping clearances and checks up to date in accordance with their renewal periods, and shall allow the Commissioning Body access to all such records within five (5) days of receiving a request.
- 20.2 The Supplier shall ensure that Language Professional ID cards are maintained and updated, as cards will not be accepted by the Commissioning Body if they do not clearly show up to date information and an up to date photograph.
- 20.3 The Authority shall not be responsible for any costs associated with the Language Professional obtaining or renewing any security, vetting or relevant disclosure certificate.

## **21. Suspension of Language Professional services**

- 21.1 The Authority shall be entitled (either itself or through its Quality Assurance Supplier) to require the Supplier to suspend immediately any Language Professional appointed by the Supplier. The Supplier shall have the right to make representations to the Authority (or its Quality Assurance Supplier) concerning such individuals.
- 21.2 After taking any or such representations into account, the Authority (either itself or through its Quality Assurance Supplier) shall be entitled at its entire discretion to withdraw such notice of suspension, suspend its operation upon such conditions as it shall think fit, or to confirm the immediate withdrawal of the Language Professional from the provision of the Services entirely.
- 21.3 If the Authority (either itself or through its Quality Assurance Supplier) confirms immediate withdrawal of an individual, then the Supplier shall forthwith remove such individual from the provision of the Services and provide a replacement within the timescale requested by the Authority.
- 21.4 No Commissioning Body (including the Authority) shall in any circumstances be liable either to the Supplier or to the individual Language Services Professional in respect of any liability, loss or damage occasioned by such withdrawal, suspension or removal and the Supplier shall fully indemnify the Commissioning Body (including the Authority) from and against any claim made by such individual.

**SCHEDULE 3**  
**Service Solution**

**REDACTED**

## **SCHEDULE 4**

### **Transition**

#### **1. INTRODUCTION**

- 1.1 This Schedule 4, together with the Transition Plan, describes the Parties' respective rights and obligations during the Transition Period in respect of the transition of the Services to the Supplier by the Services Commencement Date (**Transition**).
- 1.2 The Parties agree the primary objective of Transition is the successful transfer of the Services to the Supplier such that the Supplier commences delivery of the Services by the Services Commencement Date without deterioration in the levels of performance of the Services (or the equivalent received from the Former Supplier).

#### **2. TRANSITION RESOURCING**

- 2.1 In readiness of the commencement of the Transition Period:
- 2.1.1 each Party shall appoint a suitably skilled and experienced Transition Manager who shall be responsible for co-ordinating and managing all aspects of each Party's obligations under the Transition Plan. In respect of the Supplier's Transition Manager, such individual shall be a member of Key Personnel; and
- 2.1.2 the Supplier shall procure that its Transition Manager shall be assisted by an appropriately skilled Transition Team who shall assist in all aspects of the Supplier's responsibilities and obligations with regard to Transition, each of whom shall be considered a member of Key Personnel.

#### **3. TRANSITION CHARGES**

- 3.1 The Parties agree that no charges, fees and/or other costs will be payable to the Supplier by the Authority for the provision of the Transition Services (including where such additional Transition Services are required during the Transition Period), nor shall the Supplier seek to recover the same from any other Commissioning Body.

#### **4. TRANSITION GOVERNANCE**

- 4.1 During the Transition Period, the Supplier shall ensure that its necessary Personnel attend the governance meetings described in this Paragraph 4.
- 4.2 The Authority may change the attendees and the frequency of any of these meetings at any point during Transition Period by notifying the Supplier in writing.
- 4.3 The Transition Project Board:
- 4.3.1 shall be attended by:
- (a) each Party's respective Transition Manager;
  - (b) each Party's senior account director responsible for Transition; and
  - (c) any other representatives or other third party's the Authority may wish to invite, including senior representatives other Commissioning Bodies, the Former Supplier and/or Other Suppliers;
- 4.3.2 shall meet within one (1) week of the Commencement Date and Monthly thereafter during the Transition Period at dates and times to be agreed between the Parties;
- 4.3.3 shall:

- (a) monitor and oversee Transition;
- (b) review risks and issues and associated remediation and mitigation plans escalated to it from the Transition Working Group;
- (c) consider requests by the Supplier to amend the Transition Plan and refer such requests to the Authority for Approval; and
- (d) have reported to it by the Supplier achievement of Transition Milestones.

4.4 The Transition Working Group:

4.4.1 shall be attended by:

- (a) the Transition Manager and appropriate members of the Transition Team;
- (b) appropriate representatives from the Authority responsible for monitoring and overseeing Transition on behalf of the Authority; and
- (c) any other representatives or other third parties the Authority may wish to invite including representatives of the Commissioning Bodies, the Former Supplier and/or Other Suppliers;

4.4.2 shall meet within one (1) week of the Commencement Date and weekly thereafter during the Transition Period at dates and times to be agreed by the Authority;

4.4.3 shall:

- (a) review progress against the Transition Plan and Transition Milestones;
- (b) consider risks and issues notified to it by either Party; and
- (c) consider remediation and mitigation plans to address such risks and issues and, as appropriate, escalate risks and issues to the Transition Project Board.

**5. TRANSITION PLAN**

5.1 The Supplier shall, throughout the Transition Period, review the Transition Plan so to identify any changes which may be needed to reflect the then-current nature of the Transition Services and the Authority's own plans in respect of Transition. A proposed change to the Transition Plan does not have to go through the Change Control Procedure but must be promptly submitted, via the Transition Project Board, to the Authority for Approval.

5.2 The Supplier shall be responsible for maintenance of all documents relating to the Transition Plan, including but not limited to:

5.2.1 documents which track progress against the Transition Milestones and Acceptance Criteria; and

5.2.2 a Transition risks and issues register.

5.3 The Supplier represents and warrants that it has used its knowledge and expertise to create an effective Transition Plan which includes all Transition Milestones that are reasonably foreseeable, reasonably capable of being determined and critical to the achievement of the Transition and the Authority has relied on the Supplier to do so.

**6. TRANSITION REQUIREMENTS**

6.1 The Supplier shall:

- 6.1.1 provide the Transition Services in accordance with the Transition Plan and this Contract;
  - 6.1.2 not cause disruption to Authority and the other Commissioning Bodies set out in Part A of Schedule 1 during the Transition Period;
  - 6.1.3 meet all the Acceptance Criteria by the Services Commencement Date; and
  - 6.1.4 fully co-operate with the Authority, Commissioning Bodies set out in Part A of Schedule 1, the Former Supplier and the Other Suppliers in respect of Transition during the Transition Period.
- 6.2 Save as set out in the Transition Plan, the Supplier shall ensure that the provision of the Transition Services shall not have any adverse effect on the continuity and quality of any services provided to it by the Former Supplier.
- 6.3 Where the Supplier becomes aware of a risk or issue relating to the Transition Services, including an actual or anticipated delay to the completion of a Transition Milestone or failure to meet the Acceptance Criteria, it shall immediately notify the Authority in writing.
- 6.4 As soon as reasonably practicable and in any event within five (5) Working Days following a risk or issue being notified in accordance with Paragraph 6.3, the Supplier shall provide the Authority with:
- 6.4.1 a plan of action to mitigate any risks identified in accordance with Paragraph 6.3;
  - 6.4.2 a rigorous timetable for implementing the plan of action to resolve the risk or issue;
  - 6.4.3 an indication of whether any change to the Acceptance Criteria or Transition Milestone (including any Deliverable relating to a Transition Milestone) is required to mitigate the risk or resolve the issue and any details relating to such change; and
  - 6.4.4 a recommendation on whether or not escalation is required to the Transition Project Board,

and the risk or issue will immediately be added by the Supplier to the transition risk and issues register and will be tracked there until closed.

- 6.5 Where the Supplier considers that it may not achieve all Booking Service Transition Milestones by the Booking Service Longstop Date, the Supplier shall immediately notify the Authority in writing and, subject to Approval by the Authority, shall implement the Booking Service Contingency Plan.

## **7. ACCEPTANCE**

- 7.1 The Acceptance Criteria shall be achieved by the Supplier where so confirmed by the Authority in accordance with this Paragraph 7.1:
- 7.1.1 the Supplier shall notify the Authority in writing when, in its opinion, an Acceptance Criterion has been achieved and shall provide to the Authority evidence of achievement as reasonably requested by the Authority;
  - 7.1.2 where an Acceptance Criterion comprises the completion (or part thereof) of a Deliverable and/or the Booking Service, the Supplier shall allow the Authority to test the Deliverable and/or the Booking Service (as appropriate) at such time and location as agreed between the Parties and:
    - (a) the Authority may invite such third parties as it deems necessary to participate in the testing; and

- (b) the Supplier shall make available:
  - (i) such members of its Personnel; and
  - (ii) such documentation as may be necessary,

to enable the proper completion of the testing;

- 7.1.3 the Authority will notify the Supplier whether it accepts each Acceptance Criterion has been achieved within three (3) Working Days of receipt of the notification pursuant to Paragraph 7.1.1 save for where testing has taken place in accordance with Paragraph 7.1.2 in which case it shall be within three (3) Working Days of such testing;
- 7.1.4 if the Authority does not accept that the relevant Acceptance Criterion has been achieved, it shall include within its notification to the Supplier the reasons for this and the Parties shall meet or attend a conference call (which must be attended by each Party's Transition Manager) within two (2) Working Days to discuss the issue;
- 7.1.5 within two (2) Working Days of the meeting held in accordance with Paragraph 7.1.4, the Supplier shall submit a draft recovery plan to the Authority detailing:
  - (a) the activities it will undertake to meet the Acceptance Criterion; and
  - (b) any additional activities required to keep, or put back on track other dependant elements of the Transition impacted by the failure to meet the Acceptance Criterion;
- 7.1.6 the Authority will notify the Supplier whether it accepts that recovery plan within two (2) Working Days of receipt. Where the Authority:
  - (a) accepts the recovery plan, the Supplier shall remedy the issues arising in accordance with the recovery plan; and
  - (b) does not accept the recovery plan, the matter shall be referred to the Transition Project Board who shall seek to resolve the matter. If the Transition Project Board cannot resolve the matter within ten (10) Working Days of it being referred to them, the issue shall be referred to the Dispute Resolution Procedure.
- 7.2 The Supplier agrees that where specifically stated as part of the Acceptance Criteria, that Acceptance Criteria must be achieved in relation to each Commissioning Body and the Authority shall not confirm acceptance of such Acceptance Criteria in accordance with this Paragraph 7 until this condition has been satisfied (or waived in writing by the Authority).

## **8. TRANSITION BOOKING PROCESS**

- 8.1 The Supplier shall not be required to accept Bookings to be started after the Services Commencement Date other than in accordance with this Paragraph 8.
- 8.2 The Supplier shall fulfil bookings the details of which are notified by the Former Supplier and transferred from the Former Supplier and which are made by Commissioning Bodies with the Former Supplier before the Services Commencement Date for Services to commence on or after the Services Commencement Date, provided that the Authority shall procure that the Former Supplier promptly notifies the Supplier of and promptly transfers such bookings to the Supplier including bookings which have been made prior to the Commencement Date for Services to commence on or after the Services Commencement Date.
- 8.3 Without prejudice to Paragraph 8.2, from and including 19 October 2016 the Supplier shall accept and fulfil Bookings for Services to commence on or after the Services Commencement Date.



- 8.4 The Supplier shall not accept bookings for Services to commence before the Services Commencement Date or be required to accept or fulfil bookings placed with the Former Supplier for Services to commence before such date, even if (in either case) such Services continue on or after the Services Commencement Date.
- 8.5 The Supplier shall direct to the Former Supplier a Commissioning Body which intends to make a booking for Services to commence before the Services Commencement Date.