SCHEDULE 34

MANAGEMENT OF INBOUND CONTRACTS

Schedule 34 (*Management of Inbound Contracts*)

1 PURPOSE

1.1 The purpose of this Schedule is to specify:

(a) the process for the take-on of Inbound Contracts by the Supplier;

(b) the ongoing management obligations of the Supplier in respect of Inbound Contracts during the Term;

(c) the methodology used by the Supplier to develop, manage and improve Inbound Contracts as part of their overall Services to enable delivery of the Services to the Performance Indicators (as set out in Schedule 3 (*Performance Levels*)) and to provide access to new ideas and technologies that address business challenges; and

(d) Annex 5 shows the Inbound Contract responsibility matrix which identifies the activities to be undertaken by each Party. These are summarised in the table below:

(i) Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;

	Managing Day to Day operational relationship	**Managing performance levels**	**Maintaining contractual relationship**	**Payment responsibility**	**Managing future renewals of contract**	**Re-tendering of contract**	**Responsibility for any potential secondary TUPE**	**Licence Ownership**	**Licence Management**	**Licence and Compliance**
Novating Contracts	Supplier	Supplier	Supplier	Supplier	Supplier	Supplier	Supplier	Supplier	Supplier	Supplier
Managed Contracts	Supplier	Supplier	Authority	Supplier	Supplier	Authority	Supplier	Authority	Supplier	Supplier
Retained Software Licences	Supplier	Supplier	Authority	Authority	Authority	Authority	N/A	Authority	Supplier	Supplier
New Supplier Contracts	Supplier	Supplier	Supplier	Supplier	Supplier	Supplier	Supplier	Supplier	Supplier	Supplier

1.2 This Schedule contains provisions relating to:

(a) Novating Contracts;

(b) Managed Contracts;

(c) Retained Software Licences; and

(d) New Supplier Contracts.

2 DEFINITIONS

"Cutover Date"	means the date by which all Inbound Contracts should have been dealt with in accordance with this Schedule 34 and as further detailed in the Detailed Implementation Plan;
"Inbound Contract Supplier"	a supplier that has entered into a contract or an agreement with the Authority or Former Supplier for the provision of Services under an Inbound Contract;
"Inbound Contracts"	any contract or agreement between the Authority, a Service Recipient or a Former Supplier and an Inbound Contract Supplier as listed in Annex 1 of this Schedule 34;
"Managed Contracts"	the Inbound Contracts which will remain with and are to be retained in the name of the Authority following the Cutover Date but managed by the Supplier on behalf of the Authority, as referred to in Paragraph 6 (*Managed Contracts*) of this Schedule 34;
"New Supplier Contracts"	any Inbound Contracts which are let by the Supplier during the Term as part of the Services, which may also include the replacement of Novating Contracts;
"Novating Contracts"	the Inbound Contracts (other than the Managed Contracts and the Retained Software Licences) which are to be novated in the favour of or assigned to the Supplier prior to, on or after the Cutover Date, as described at Paragraph 5 (*Novating Contracts*) of this Schedule 34;
"Novation Agreement"	an agreement in the form set out in Annex 3 to this Schedule 34;
"Prepayment"	has the meaning given to in Paragraph 4.1 of this Schedule 34;

"Retained Software Licences"	those software licences and other related agreements which will remain with and are to be retained in the name of the Authority following Cutover but where the Supplier will be entitled to use the relevant Software and/ or Intellectual Property Rights for the purpose of providing the Services; and
"Unsuitable Aspect"	means an Inbound Contract or element thereof that is not suitable for provision of the Services in accordance with the requirements set out in this Contract and which has been designated as an "Unsuitable Aspect" in Annex 1 to this Schedule 34.

3 IDENTIFICATION OF INBOUND CONTRACTS

3.1 A list of all Inbound Contracts at the Effective Date is set out at Annex 1 together with the proposed classifications at the Effective Date.

3.2 Both Parties agree that Inbound Contracts are transferred to the Supplier wherever possible and as required by the Authority. Although a process for identification and classification of all Inbound Contracts shall have taken place prior to the Effective Date, further work may still be required during Implementation (and thereafter to the extent so provided in this Schedule). For any Inbound Contracts identified by either of the Parties after the Effective Date, the Authority may in its absolute discretion categorise such contracts and add them to the list in Annex 1. In the event that any aspects of any Inbound Contracts that are added to the list in Annex 1 or re-categorised by the Authority and the Supplier can demonstrate that its costs have been increased as a result, the Supplier shall be entitled to a change in the Charges to take account of such increase in its costs. Any such changes to Charges being determined by the Change Control Procedure.

3.3 To the extent that an Inbound Contract contains elements out of the scope of this Agreement the Authority may require the Supplier to seek amendments to that contract with the Inbound Contract Supplier and the creation of a separate additional contract with the Supplier. In the event that the Parties agree on this course of action the Supplier shall:

(a) unless otherwise agreed by the Parties, be responsible for negotiating the necessary arrangements, for both Parties, at its own cost;

(b) keep the Authority fully informed of (and, where required by the Authority, permit the Authority to be party to) the negotiations;

(c) not prejudice the Authority's relationship (contractual and otherwise) with the Inbound Contract Supplier; and

(d) be responsible for any costs, fees or charges levied by the Inbound Contract Supplier for the arrangements (including in relation to any variations to the

existing contractual arrangements between the Authority and the Inbound Contract Supplier but excluding fees for any services provided directly to the Authority by the Inbound Contract Supplier under new contractual arrangements) and, subject to the prior written approval of the Authority and the mitigation of such fees and expenses by the Supplier, such costs, fees or charges shall be reimbursed by the Authority.

3.4 Where by the Cutover Date, it has not been possible to put in place such arrangements or the Parties agree the Inbound Contract Supplier's proposals for such are unreasonable, the Authority shall be entitled to require the Supplier to present to the Authority a proposal and options for alternative arrangements (indicating the arrangements preferred by the Supplier) in respect of such contract which will ensure that the Authority is not unduly prejudiced or adversely affected by the failure to obtain such arrangements.

3.5 It is the intention of the Parties that the assignments, novations and arrangements for the Supplier's management and additional rights of use in respect of the Inbound Contracts will have been completed by the Cutover Date. If this is not the case, the Supplier (with reasonable assistance from the Authority) shall ensure that, until such arrangements have been completed, appropriate interim arrangements (having regard to the requirements of this Agreement) are put in place between the Supplier and the relevant Inbound Contract Suppliers.

3.6 The Supplier will provide the Authority with Monthly updates of activities being carried out under this Schedule in respect of those activities specified in this Schedule which have not been completed by the Cutover Date until all such activities have been completed.

3.7 Where an Inbound Contract is designated as an Unsuitable Aspect, the Supplier will work with the Inbound Contract Supplier to identify and rectify the elements of the service or contract that is the cause of an Unsuitable Aspect. For Novating Contracts and Managed Contracts any such changes will be implemented by the Supplier. For Retained Software Licences the Supplier will advise the Authority of the modifications required to the Inbound Contract which the Authority may implement and the Supplier will at all times work to limit the impact on the Authority. Should the Authority not implement the modifications then the relevant element of the Inbound Contract shall remain an Unsuitable Aspect.

4 PREPAYMENTS

4.1 For the purposes of this Paragraph 4, the term "**Prepayment**" shall mean a sum payable under a Novating Contract or Managed Contract which relates to the period after the Cutover Date which the Authority has paid to the relevant Inbound Contract Supplier under the terms of the relevant Inbound Contract prior to the Cutover Date. Such Prepayments are listed in Annex 2.

4.2 The Supplier shall refund to the Authority each Prepayment in respect of a Novating Contract or a Managed Contract. Such refunds shall be effected by the Supplier in the form of a credit against the Charges payable at the expiry of the Month in which the Cutover Date falls.

5 NOVATING CONTRACTS

5.1 The Authority's intention is that the Novating Contracts shall be novated in favour of the Supplier, in preference to being assigned to the Supplier. The Supplier shall use all reasonable endeavours to effect such a novation of the Novating Contracts in preference to an assignment of the Novating Contracts. All references to assignment in this Schedule shall therefore be construed having regard to this Paragraph 5.1.

5.2 The Supplier shall undertake the work and administration associated with the novation or assignment of the Novating Contracts from the Authority to the Supplier. The Authority shall provide such assistance as may be reasonably required by the Supplier in support of its undertakings.

5.3 The Supplier shall use its reasonable endeavours to obtain, from each relevant Inbound Contract Supplier, consent to a novation or assignment of the Novating Contracts, to be effective on the Cutover Date, upon terms that are substantially similar to those contained in the Novation Agreement set out in Annex 3 to this Schedule (or upon such other terms as are agreed between the parties).

5.4 Subject to the remainder of this Paragraph, the Supplier shall ensure that all Novating Contracts are capable of novation back to the Authority or to any Replacement Supplier, without charge to the Authority, at the Authority's request during any Termination Assistance Period. In the event that the Supplier is unable to obtain the right of novation back to the Authority at no charge, the Supplier will advise the Authority and the Parties will agree on how best to proceed to achieve the objectives of the Authority.

5.5 In relation to any Novating Contract in respect of which a novation or assignment has not been entered into prior to the Cutover Date:

(a) this Agreement will not constitute a novation or an assignment (or attempted novation or assignment) in respect of any such Novating Contract, if that would constitute a breach of the Novating Contract; and

(b) the Supplier shall continue to comply with its obligations to obtain consent under Paragraph 5.3 above until the necessary novation or assignment has been effected.

5.6 After the Cutover Date and until the necessary novation or assignment has been effected:

(a) the Authority will hold such Novating Contracts and any money, goods or other benefits received under such Novating Contracts on trust for the Supplier and will, upon receipt of the same, account for and pay or deliver to the Supplier all such money, goods and other benefits; and

(b) subject to Paragraph 5.9, the Supplier shall with the co-operation of the Authority ensure it achieves an alternative arrangement acceptable to the Authority under which the Supplier will, at its cost, obtain the benefits and assume and discharge the burden under such Novating Contracts arising on or after the Cutover Date in accordance with this Agreement whether by way

of a right to use, sub-contracting, sub-licensing, delegation of performance, termination, replacement or otherwise.

5.7 The Supplier, with effect from the Cutover Date, shall be responsible for compliance with the terms of the Novating Contracts (including payment of any charges or fees due under the Novating Contracts). Accordingly the Supplier shall not raise any claim, demand or proceeding against the Authority in respect of any breaches or defaults under those contracts unless such breaches or defaults are due to any failure by the Authority to comply with any provisions preventing or restricting the novation or assignment of the Novating Contract to any third party or relate to any claim made against the Supplier by an Inbound Contract Supplier relating to a breach by the Authority prior to the Cutover Date of the terms of the relevant contract.

5.8 The Supplier shall indemnify and keep the Authority indemnified against any losses, liabilities, damages, costs or expenses which the Authority may incur arising out of or in connection with any breach by the Supplier of the terms of the Novating Contracts which occurs after the Cutover Date.

5.9 Notwithstanding the provisions of Paragraph 5.6 above, if an Inbound Contract Supplier refuses to novate or assign any Novating Contract to the Supplier or if consent to the novation or assignment of a Novating Contract has not been obtained prior to the expiry of three (3) Months after the Cutover Date, the Supplier shall, at the Authority's election:

(a) with the assistance of the Authority, seek to obtain rights from the relevant Inbound Contract Supplier for the Supplier to manage the contract as a Managed Contract; and/or

(b) present the Authority with a proposal and options for alternative arrangements (indicating the arrangements preferred by the Supplier) in respect of such contract which will ensure that the Authority is not unduly prejudiced or adversely affected by the failure to obtain a novation or assignment of the contract and implement such arrangements as are agreed by the Authority.

5.10 Each Party shall bear its costs and expenses associated with seeking such rights and making any such alternative arrangements in accordance with Paragraph 5.9.

5.11 Where an Inbound Contract Supplier proposes charges or fees for consent to a novation/assignment, rights of use or termination/cancellation charges or other similar fees or charges in respect of any Novating Contracts, the Parties shall meet to determine (acting reasonably) whether it is reasonable for such fees and charges to be borne by the Supplier. In the event that the Parties are unable to reach agreement, the Parties shall follow the Dispute Resolution Procedure.

6 MANAGED CONTRACTS

6.1 Without prejudice to Paragraph 6.7 and subject to the Supplier obtaining the rights referred to in Paragraph 6.3 below, the Authority hereby appoints the Supplier to manage and administer the Managed Contracts on behalf of and solely for the

benefit of the Authority and as otherwise required under this Agreement, and to pay all charges due thereunder, such obligations to include:

(a) complying with the obligations imposed on the Authority under each of the Managed Contracts;

(b) at its own cost, paying all charges under each of the Managed Contracts as they arise or fall due for payment;

(c) giving the Authority at least thirty (30) days' notice of any key decision date in respect of each of the Managed Contracts;

(d) agreeing an Operating Level Agreement ("**OLA**") substantially in the form as set out in Annex 6 to this Schedule; and

(e) recommend changes throughout the Term in order to, as a minimum, meet the Performance Indicators and associated obligations in delivering the Services.

6.2 The Supplier shall not, without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):

(a) renew, modify, extend, terminate or cancel any Managed Contracts;

(b) request or grant any consents or waivers under any Managed Contracts; or

(c) take any legal action (or any precursor to such action) in the name of the Authority or otherwise in respect of any Managed Contracts.

6.3 The Supplier shall use its reasonable endeavours to obtain from each relevant Inbound Contract Supplier, rights to use the services, goods and/or software supplied under the relevant Managed Contracts as are required for the purposes of performing the Services under this Agreement, to be effective on the Cutover Date. The Authority shall provide such assistance as may be reasonably required by the Supplier in support of its obligations.

6.4 If the relevant Inbound Contract Supplier requires any charges or fees of any kind whatsoever for the rights contemplated by Paragraph 6.3 above, the Supplier shall pay such charges or fees and, subject to the prior written approval of the Authority, such charges or fees shall be borne by the Supplier.

6.5 In relation to any Managed Contract in respect of which rights to use and manage have not been obtained prior to the Cutover Date, the Supplier shall, in respect of the period from the Cutover Date until the date of any subsequent grant of the relevant rights pursuant to Paragraph 6.3 above, present the Authority with a proposal and options for alternative arrangements (indicating the arrangements preferred by the Supplier) in respect of such contract which will ensure that the Authority is not unduly prejudiced or adversely affected by the failure to obtain such rights and implement such arrangements as are agreed by the Authority. The Supplier shall bear the costs and expenses associated with making any such alternative arrangements.

6.6 The Supplier, with effect from the Cutover Date, shall be responsible for compliance with the terms of the Managed Contract (save to the extent specified in Paragraph 6.7) and shall be responsible for and shall not raise any claim, demand or proceeding against the Authority in respect of any breaches or defaults under those contracts unless such breaches or defaults are due to any failure by the Authority to comply with any provisions preventing or restricting the management of the Managed Contract by any third party or relate to any claim made against the Supplier by an Inbound Contract Supplier relating to a breach by the Authority prior to the Cutover Date of the Managed Contract.

6.7 Without prejudice to Paragraph 6.6, the Authority shall retain the right to enforce its rights and remedies under the Managed Contracts. The Supplier shall provide such assistance and information as is reasonably required by the Authority to enable the Authority to enforce such rights and remedies.

6.8 The Supplier shall indemnify and keep the Authority indemnified against any losses, liabilities, damages, costs or expenses which the Authority may incur arising out of or in connection with any breach by the Supplier of the terms of the Managed Contracts for which it becomes responsible for under this Schedule which occurs after the Cutover Date.

7 RETAINED SOFTWARE LICENCES

7.1 To the extent required for the purposes of performing the Services under this Agreement, the Supplier shall use its reasonable endeavours to obtain from each relevant Inbound Contract Supplier, rights to use the software and all Intellectual Property Rights which have been licensed to the Authority in the Retained Software Licences, to be effective on the Cutover Date. The Authority shall provide such assistance as may be reasonably required by the Supplier in support of its obligations.

7.2 If the relevant Inbound Contract Supplier requires any charges or fees of any kind whatever, for the rights contemplated by Paragraph 7.1 above, the Supplier shall pay such charges or fees and subject to the prior written approval of the Authority, such charges or fees shall be borne by the Authority.

7.3 In relation to any Retained Software Licences in respect of which rights to use have not been obtained prior to the Cutover Date, the Supplier shall, in respect of the period from the Cutover Date until the date of any subsequent grant of the relevant rights pursuant to Paragraph 7.2 above, present the Authority with a proposal and options for alternative arrangements (indicating the arrangements preferred by the Supplier) in respect of such licences which will ensure that the Authority is not unduly prejudiced or adversely affected by the failure to obtain such rights and implement such arrangements as are agreed by the Authority. The Supplier shall bear the costs and expenses associated with seeking such rights and the Authority will pay the cost of making any such alternative arrangements.

7.4 For the avoidance of doubt the Authority shall retain responsibility for enforcing its rights and remedies under the Retained Software Licences. The Supplier shall provide such assistance and information as is reasonably required by the Authority to enable the Authority to enforce such rights and remedies.

7.5 The Supplier shall indemnify and keep the Authority indemnified against any losses, liabilities, damages, costs or expenses which the Authority may incur arising out of or in connection with any breach by the Supplier of the rights granted to it under the Retained Software Licence which occurs after the Cutover Date.

8 ESTABLISHING THE INBOUND CONTRACT ROADMAP

8.1 It is in the interest of both Parties that Inbound Contract Suppliers co-operate with the transition of existing agreements and continue to deliver a quality service to the Authority. Following the Effective Date, the Supplier will conduct supplier briefings to ensure that Inbound Contract Suppliers are informed and notified of the process of transfer and the status of their existing agreement(s) with the Authority.

8.2 Preferably before but at least ten (10) days after the Effective Date the Authority will write to each Inbound Contract Supplier informing them of the decision taken by the Authority to transfer the Services to the Supplier. This letter is intended to inform Inbound Contract Suppliers of the Authority's intention to continue the business relationship and to outline the timescales and next steps in the process.

8.3 For the Novating Contracts the letter shall indicate that the Authority will be seeking to novate contracts to the Supplier. Where novation is not possible the letter will indicate either:

(a) Managed Contracts where title remains with the Authority, but the Supplier has a right to manage and pay charges.

(b) Retained Software Licences where the Supplier will seek rights to use for the Supplier in accordance with Paragraph 7.

8.4 The Authority will state in the letter that it provides its permission for the Supplier to speak to the relevant Inbound Contract Supplier on its behalf in order for the transition to take place. A draft letter is set out in Annex 4 of this Schedule.

8.5 The Supplier will arrange and facilitate Inbound Contract Supplier briefing events (which may include a series of "webinars" where more practical than attendance at an event) where key attendees from each supplier are invited to attend to understand the business drivers for the Authority's decision to transfer the Services and also to provide the opportunity to understand the timescales and steps in the transition process.

8.6 The Inbound Contract Supplier briefing events will be attended by representatives of the Authority and Supplier.

8.7 During Implementation, the Supplier and the Authority will hold weekly meetings (or less frequently where agreed in writing by the Authority) to monitor progress and manage any issues arising out of the transfer process including:

(a) progress on Inbound Contract novation agreements;

(b) progress on obtaining rights to use;

(c) progress on Managed Contracts;

(d) progress on development of the OLA principles documents for Managed Contracts and Retained Software Licences;

(e) progress on obtaining incomplete or missing contract documentation;

(f) prepayments information and action plan;

(g) review of contracts due to expire during Implementation; and

(h) review of contracts where transfer may not be achieved prior to Cutover Date.

8.8 The Supplier will provide reports from the meetings referred to in Paragraph 8.7 above, to the Performance Board and, where required by the Authority, to the Implementation Board.

8.9 Following the completion of novation discussions, the Parties will finalise the list of Inbound Contracts categorising them as Novating Contracts, Managed Contracts and Retained Software Licences. Using Contract Change Control Procedure; this list will update Annex 1 of this Schedule.

8.10 Activities to novate contracts, obtain rights to use and implement management arrangements will continue in accordance with this Schedule. As far as is practical, all necessary arrangements will be in place at the Cutover Date. Both Parties recognise that some Inbound Contract Suppliers will insist on changes to the Novation Agreement in Annex 3 of this Schedule, to satisfy their own legal departments. Both Parties shall actively participate in discussions to agree these Novation Agreements.

8.11 Contracts which are not categorised as Novating Contracts will require an OLA substantially in the form as set out in Annex 6 of this Schedule. It will be a joint responsibility of the Parties to complete and agree this with each Inbound Contract Supplier from the Managed Contracts and Retained Software Licences.

8.12 During Implementation the Supplier will continue to analyse the Inbound Contract information to get an understanding of the scope, rights, responsibilities, risks, costs and service levels and to ascertain whether the categorisation of an Inbound Contract as an Unsuitable Aspect can be removed, and will update Annex 1 of this Schedule using the Change Control Procedure.

8.13 The Supplier will implement and populate an Inbound Contracts database to provide a central point of storage for review and reference throughout Implementation and which, as a minimum, shall include information set out in Annex 1 of this Schedule. The Supplier will maintain this database on a quarterly basis throughout the Term. The Authority reserves the right to request copies of any and all information contained in this database with five (5) Working Days written notice.

9 ONGOING MANAGEMENT OF INBOUND CONTRACTS

9.1 The Supplier will be responsible for the management of all Inbound Contracts (listed in Annex 5 to this Schedule) to ensure that the Inbound Contracts deliver value to the Authority and are aligned to the business needs of the Authority. For clarity, the table of responsibilities set out in Annex 5 shall apply.

9.2 For all Inbound Contracts (including Novating Contracts, Managed Contracts, Retained Software Licences and New Supplier Contracts) the Supplier will perform all activities as detailed in the table in Paragraph 1.1(d). This will include:

(a) the development and implementation of procurement strategies;

(b) providing a route to market for the Authority; and

(c) performing the renewal of all Inbound Contracts, with the exception that for Managed Contracts and Retained Software Licences where the Supplier notifies the Authority, in writing, of its intention to tender for the Inbound Contract, then in such cases the Authority will be responsible for the procurement process at no cost to the Supplier.

9.3 The Authority will maintain the contractual relationships with Inbound Contract Suppliers where the Authority is the contracting body, and will retain responsibility for charges related to Retained Software Licences only.

9.4 The Supplier shall maintain and make available to the Authority, on request and at no cost, a list containing summary details of all Inbound Contracts used in the provision and support of the Services.

9.5 The Supplier will continually review the Managed Contracts and Retained Software Licenses and will make appropriate recommendations in relation to those Managed Contracts and Retained Software Licenses to improve the Services whenever possible which shall include opportunities to replace the Managed Contracts or Retained Software Licenses with value effective alternatives.

9.6 The Supplier will continually review the Novating Contracts and will whenever possible make changes to those Novating Contracts to improve the Services and, if appropriate, replace Novating Contracts with value effective alternatives.

9.7 The Supplier shall maintain and with five (5) Working Days written notice make available to the Authority, full and accurate copies of all Novating Contracts which have been novated or assigned to it and all Managed Contracts which are being managed by it.

9.8 Following the Cutover Date, Inbound Contracts will be managed as follows:

(a) Inbound Contract Supplier meetings:

(i) For Novating Contracts the Supplier will set up a Monthly (unless otherwise agreed with the Authority in writing) contract review meeting attended by commercial and operational personnel from the Supplier; and

(ii) For the Managed Contracts the Supplier will set up a Monthly (unless otherwise agreed with the Authority in writing) contract review meeting attended as above; and

(iii) For the New Supplier Contracts the Supplier will set up a Monthly (unless otherwise agreed with the Authority in writing) contract review meetings attended by commercial and operational personnel from the Supplier.

The Authority may choose to attend these meetings and such attendance will not be unreasonably withheld by the Supplier. The meetings will review the Services, Performance Indicators, address operational issues and to review commercial and contractual requirements, including contract renewals. Those Inbound Contract Suppliers delivering a managed service will be expected to provide service reports.

(b) Other Inbound Contract Supplier meetings:

(i) For Retained Software Licences and any other suppliers, meetings will be arranged by the Supplier on a quarterly basis (unless otherwise agreed with the Authority in writing) to review service issues, or required changes to the services.

(c) Inbound Contract renewals:

(i) Each Novating Contract will have a trigger date set in the contracts database (set to the renewal date minus sixty (60) days as standard) and for larger, more strategic contracts the trigger date will be set at one hundred and eighty (180) days to allow a further time for review. Novating Contracts due for renewal will be reviewed taking account of the supplier's performance, the proposed renewal cost and potential alternatives.

(ii) Each Managed Contract will have a trigger date set in the contracts database. A recommendation will be made by the Supplier to the Authority at least ninety (90) days in advance of the renewal date considering performance, cost and alternatives. Subject to agreement with the Authority the contract will be renewed or replaced as appropriate.

(iii) Each Retained Software Licence will have a trigger date set in the contracts database. A recommendation will be made by the Supplier to the Authority at least ninety (90) days in advance of the renewal date considering performance, cost and alternatives. Subject to agreement with the Authority the contract will be renewed or replaced as appropriate by the Authority.

(iv) Each New Supplier Contract will have a trigger date set in the contracts database (set to the renewal date minus sixty (60) days as standard) and for larger, more strategic contracts the trigger date will be set at one hundred and eighty (180) days to allow a further time for

review. New Supplier Contracts due for renewal will be reviewed taking account of the supplier's performance, the proposed renewal cost and potential alternatives.

(d) Transferring and Managed Contracts Value for Money:

(i) The Supplier will continually assess value for money across the supply chain.

(ii) In addition the Authority benchmarking activities will address Services delivered by the Novating Contracts and Managed Contracts.

10 UNSUITABLE ASPECTS

10.1 The provisions of Paragraph 1.6.5 of Schedule 2.2 (*Performance Levels*) shall apply to Unsuitable Aspects.

10.2 Agreed Unsuitable Aspects are summarised in the table at Annex 1.

ANNEX 1

INBOUND CONTRACTS ROADMAP

The table in this Annex 1 contains the Inbound Contracts, their contract type which were added to Schedule 34 by the Authority as at the Effective Date and identifies any Agreed Unsuitable Aspects as at the Effective Date. This information shall be updated periodically where required by the Supplier via the Change Control Procedure.

For the avoidance of doubt, both Parties agree that Inbound Contracts are transferred to the Supplier wherever possible and as required by the Authority.

Document Ref	Awarded Supplier	Contract ID	Contract Title	Outline Scope of Contract	Tier 1 or Tier 2 contract	Inbound Contract type	Classification at the Cutover Date	Right To Use required?	Renewal required before the Cutover Date?	Renewal date	Renewal term	Additional requirements at renewal	Proposed Contract Roadmap	Unsuitable Aspect

ANNEX 2

DETAILS OF PREPAYMENTS

TO BE CONFIRMED DURING IMPLEMENTATION

ANNEX 3

DATED dd/mm/yyyy

(1) The Secretary of State for Justice

- and -

(2) [*insert name of software vendor*]

- and -

(3) [*insert name of Supplier*]

NOVATION AGREEMENT
relating to
Agreement Ref. xxxxxxx
("the Contract")

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THIS AGREEMENT is made dd/mm/yyyy

BETWEEN:

(1) **[*Former Supplier / Authority – as appropriate*]** (**"Outgoing Party"**)

(2) **[*insert name of software vendor*]** whose registered office is at [ ] (**"Continuing Party"**)

(3) **[*insert name of the Supplier*]** whose registered office is at [ ] (**"Incoming Party"**)

WHEREAS:

(A) This Agreement is supplemental to [*original licence agreement Ref [set out in Annex 1]]* and made between the Continuing Party and the Outgoing Party (the "**Contrac**t") whereby the Continuing Party agreed to supply software licences [and support services] to the Outgoing Party.

(B) The Incoming Party has been selected to provide to the Authority, on an outsourcing basis, certain IT services previously carried on by the Outgoing Party and as a result, the Outgoing Party has agreed to novate the Contract to the Incoming Party.

(C) The Outgoing Party wishes to be released and discharged from the Contract and the Continuing Party has agreed to release and discharge the Outgoing Party from its obligations under the Contract with effect from and including [ ] (the "**Novation Date**") on the basis that Incoming Party undertakes to perform the Outgoing Party's obligations under the Contract and be bound by its terms.

IT IS HEREBY AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (except where the context otherwise requires):

(a) references to Clauses are to clauses of this Agreement;

(b) the recitals (A) to (C) are an integral part of this Agreement;

(c) words implying the singular include the plural and vice versa;

(d) words implying a gender include every gender; and

(e) references to a person include an individual, firm, company, corporation, unincorporated body, or agency of any of the above.

2 NOVATION

2.1 In consideration of the payment of one pound sterling (£1) by each Party to the other, receipt of which is acknowledges, the parties have entered into this Agreement.

2.2 In consideration of the Continuing Party consenting to the novation by the Outgoing Party to the Incoming Party of the benefit of the Contract, the Incoming Party undertakes with the Continuing Party and the Outgoing Party to observe and perform with effect from the Novation Date all the agreements, undertakings, covenants and obligations on the part of the Outgoing Party to be observed and performed pursuant to the Contract as if it were a licensee in the place of the Outgoing Party.

2.3 The Continuing Party undertakes to the Incoming Party to perform its obligations with regards to the Contract in every way as if the Incoming Party were, with effect from the Novation Date, a licensee in place of the Outgoing Party.

2.4 In consideration of the undertaking by the Incoming Party in Clause 2.1 and in consideration of the release by the Outgoing Party in Clause 2.5, the Continuing Party hereby:

2.4.1 releases and discharges the Outgoing Party with effect from the Novation Date from the performance and observance of all and any undertakings, obligations or liabilities on the part of the Outgoing Party contained in the Contract and all claims and demands whatsoever in respect of those undertakings, obligations or liabilities;

2.4.2 accepts the performance of such undertakings and obligations by the Incoming Party and accepts the liability of the Incoming Party under the Contract in lieu of the liability of the Outgoing Party for liabilities accrued after the Novation Date in every way as if Incoming Party were named in the Contract in place of The Outgoing Party.

2.5 For the avoidance of doubt Incoming Party shall not be liable to the Continuing Party for any liabilities under the Contract accruing prior to the Novation Date. The Continuing Party and the Outgoing Party will continue to be liable to each other for their respective obligations and liabilities under the Contract. For the avoidance of doubt, this will include satisfaction of all claims arising prior to the Novation Date and adherence to all contractual clauses that would survive termination or assignment as set out in the Contract.

2.6 In consideration of the release by the Continuing Party of the obligations of the Outgoing Party pursuant to Clause 2.3 and in consideration of the undertaking given by the Incoming Party in Clause 2.1, the Outgoing Party releases and discharges the Continuing Party with effect from the Novation Date from the performance and observance of all and any undertakings or obligations on the part of the Continuing Party contained in the Contract.

2.7 The parties agree that the novation contained in this Clause 2 is effective, notwithstanding any prohibition or restriction in respect thereof which may be contained or referred to in the Contract.

2.8 [There is to be no fee paid in connection with this novation.]

3 AMENDMENTS

3.1 The Continuing Party and the Incoming Party agree that with effect from the Novation Date the Contract will be amended as set out in Annex 2.

[Note: If the Authority needs to retain a right to use the software as an end user, the Continuing Party and the Incoming Party will need to amend the original contract to recognise this right as set out in Annex 2. The draft language set out in Annex 2 will need to be edited depending on the terms of the specific licence agreement. Further amendments may also be required to the original software licence or support agreement to recognise the Supplier's role as an outsourcer. For example, some of the provisions in the original licence which may state that the licensee may only use the software for its own internal purposes may not be correct when applied to the Supplier. Also if the licence is restricted to user numbers, these figures may also need to be adjusted]

3.2 Save as expressly amended by this Agreement the Contract shall remain in full force and effect.

4 COUNTERPARTS

4.1 This Agreement may be executed in any number of counterparts each of which when executed by one or more of the parties hereto shall constitute an original but all of which shall constitute one and the same instrument.

5 NOTICES

5.1 Any notice or other document to be served under the Contract to the Incoming Party will be given to:

[ ]

6 LAWS OF ENGLAND

6.1 This Agreement shall be governed by the laws of England and Wales. The English courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement. The parties to this Agreement agree to submit to that jurisdiction.

SIGNED BY THE OUTGOING PARTY)

)

SIGNED BY INCOMING PARTY)

) Director

) Director/Secretary

SIGNED BY THE CONTINUING PARTY)

) Director

) Director/Secretary

ANNEX 1

THE CONTRACT

[*Attach copy of Software Licence/Support Agreement*]

[ANNEX 2]

[AMENDMENTS TO THE CONTRACT]

[[The Continuing Party] acknowledges that the [Incoming Party] is providing an outsourced service to its clients which includes the [Outgoing Party] and as a result, [the Continuing Party] grants the [Outgoing Party], the right to [use and operate] [the Software] an end user.

[end of ANNEX 2]

ANNEX 4

Draft Initial Supplier Briefing Letter

Sample communication from the Authority to Inbound Contract Suppliers

Contact Name
Inbound Contract Supplier Name Address 1
Address 2
Address 3
Address 4
Address 5

<Date>

Dear XXXXX

Provision of information to support the Authority proposed Services Agreement with [Supplier].

As a valued supplier to the Ministry of Justice I am writing to inform you of a significant change that will affect our ongoing contractual relationship.

The Ministry of Justice are in the process of transferring responsibility for the management of key third party supplier agreements to [Supplier]. As part of their services [Supplier] intend to implement a collaborative and participative supplier management process which allows key suppliers to become more strategically involved in key projects and opportunities that may bring mutual benefit for all parties.

To enable the novation/management arrangements process to start it is important that we establish and obtain the following information from you as soon as possible. (To assist in this we attach a detail of the contract information appropriate to your organisation and look forward to your confirmation of our understanding of the current agreed terms):-

- An up-to-date contact name, telephone number and email address of the appropriate person(s) within your business who we can liaise with to arrange and complete the novation process.

We would appreciate return of this information by <date>.

We have appropriate non disclosure arrangements in place with [Supplier] and have asked them to collect this information and to contact you on our behalf to expedite matters. Therefore please take this letter as our formal notice to you that [Supplier] will be acting on our behalf to access the confidential contractual documents currently in place between our parties. I would be grateful if you could respond back to me as soon as possible to confirm that you can send the data by the above date or to advise any issues that would need to be addressed to meet this deadline.

Thank you for your assistance and co-operation and I look forward to hearing from you at your earliest convenience.

Yours sincerely,

XXX
Contracts Manager
Ministry of Justice

ANNEX 5

INBOUND CONTRACT RACI

This Annex 5 contains the current Inbound Contracts in scope of Schedule 34

Contract Type	Contracting Party	Document Ref	Contracted Supplier	Reseller (if different from contracted supplier)	Contract Title	Outline Scope of Contract	Payment responsibility	Driving service level performance	Maintaining contractual relationship	Managing Day to Day operational relationship	Managing future renewals / re-letting of contracts	Responsibility for any potential secondary TUPE	Licence Ownership	Licence Management	Licence and Compliance

ANNEX 6

Operating Level Agreement

OPERATING LEVEL AGREEMENT between [SUPPLIER] and [SERVICE PROVIDER]

Origin/Author	:	
Approved by	:	**[Head of Operational Services]** **For the Authority (if required)** **[Service Delivery Director]** **[Supplier]** **[Service Delivery Manager]** **For [Service Provider]**
Date Approved	:	

Supplier Address

Phone +[ ]
Fax +[ ]

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1 Operating Level Agreement Overview

1.1 Purpose of the Operating Level Agreement

This document defines the minimum level of agreed operating services provided to [*Insert Supplier's Name*] by the [*Insert Service Provider's Name*] ("Service Provider"), for *[this service]*. This is a non-contractual document but should be a reflection of any Underpinning Contract between either of the Parties and the Service Provider.

It identifies the:

- Services each party provides;
- Service coverage;
- Performance measurements;
- Responsibilities and interfaces between the parties;
- Notification and escalation procedures and information;
- Change method to follow for the OLA; and
- General communications.

For the purposes of this document the Service Provider is defined as either:

- an Authority retained IT team;
- an Authority business function, e.g. Facilities, H&T, etc.;
- an Inbound Contract Supplier;
- a Sub-contractor, where the contract is managed;
- a Sub-contractor, where the contract terms do not align with the Service Levels.

Formal agreement of the operating level is ultimately between the Service Provider and [Supplier].

1.2 Agreement Period

This OLA comes into effect on the *[insert date]* and will remain in force until *[insert date]*. The OLA will be reviewed on a six (6) monthly cycle or following any substantial change to the operating agreement.

Monitoring of the operating services will take place during the first *[insert no. of months]* month(s) of the OLA being in place. The results will act as input for the first review cycle which will enable the base lining of the operating agreements.

1.3 Control of the Operating Level Agreement

<u>Approval and Signatures</u>

The OLA is formally agreed by the [Supplier's] Delivery Director or a nominated deputy and the nominated Service Delivery Manager (or equivalent) from the Service Provider. These parties must also approve all subsequent changes to the OLA.

The Parties are responsible for ensuring that their suppliers agree and conform to the details defined in the Operating Level Agreement (OLA) and for obtaining their signatures on the document.

The Authority shall approve any OLAs where the Service Provider is an Authority retained IT group or where the Authority own the contractual relationship.

Maintenance

Maintenance of the OLA document will be subject to six monthly reviews or following any substantial change to the operating agreements.

Reviews may take place sooner if circumstances change. Typical triggers are:

- Contractual, Operational or Project Change Control between the Parties;
- Variations in business volumes;
- Addition of a new service;
- Retirement of an existing service;
- Changes to the hardware or software platforms;
- Changes in Service Provider

All changes will be introduced by mutual agreement and be subject to a formal change control process.

Change requests should only be raised by the Authority or [Supplier]. These must be submitted to the [Supplier's] Delivery Director or a nominated deputy, or to the Authority's Head of Operational Services.

The [Supplier's] Delivery Director or a nominated deputy will review the change request with the Authority.

On acceptance of the change request the [Supplier's] Service Manager will have responsibility for updating the OLA.

The OLA requires approval from the approvers detailed in section 10.3 and Appendix D.

Copies of this document will be issued in accordance with the distribution list in Appendix C.

A controlled copy (i.e. signed copy) of this document will be held by the [Supplier].

Distribution

The contents of this OLA contains commercially sensitive information and should not be provided to anyone other than an employee or agent of the Authority, [Supplier] without the prior written authority of all parties

This OLA is distributed to:

- [Supplier's] Delivery Director;
- [Supplier's] Delivery Manager;

- the Authority's [Head of Operational Services];
- the Service Provider's nominated Manager;
- the [Project Office].

It should also be made available to all of the Authority, the Service Provider's and [Supplier's] personnel engaged in delivery of the services so they are familiar with the OLA and each others' service requirements. The Authority [Head of Operational Services] will be responsible for deciding, and issuing the OLA to other appropriate the Authority employees.

The current distribution list is detailed in Appendix C of this OLA.

1.4 Scope of OLA

This OLA describes the agreement on services which have an operating dependency between [Supplier] and the Service Provider to provide the Services to the Authority covered by the scope of the Agreement.

<u>In Scope of this OLA</u>

[Insert the systems and services included in the OLA]

<u>Out of Scope of this OLA</u>

[Insert the systems and services excluded in the OLA]

2 Responsibilities

2.1 The Authority Responsibilities

The following is a list of the Authority's responsibilities:

- Supplier contract management, where the Authority retain title to the contract with the Service Provider;
- Supplier dispute management and escalation, where the Authority retain title to the contract with the Service Provider;
- Supplier contact management, where the Service Provider is an Authority Inbound Contract Supplier, and the contract is retained by the Authority;
- Raising OLA change requests, as required;
- Involvement in the OLA review and approval process, as required;
- Make available to [Supplier] relevant details of the Inbound Contract Supplier Service Level commitments;
- For Authority internal Service Providers, deliver the Service to the terms of this OLA.

2.2 Supplier's Responsibilities

The following is a list of [Supplier's] responsibilities:

- Supplier contract management, where [Supplier] retain title to the contract with the Service Provider;

- Supplier contact management, where the Service Provider is an Inbound Contract Supplier, and the contract is managed by [Supplier];
- Maintenance of the OLA documents, including management of the change process;
- Review and approval of OLA's;
- Organisation of OLA reviews meetings;
- Measuring and reporting Service Provider performance in line with the OLA;
- Escalation of issues;
- Managing Service Provider compliance with the appropriate processes and standards used to deliver the Service.
- Deliver its obligations under this OLA;

2.3 Service Provider Responsibilities

The following is a list of the Service Provider's responsibilities:

- Review and sign-off this OLA;
- Deliver its obligations under the OLA;
- Participation in reviews;
- Reporting supplier performance in line with the OLA;
- Performing the services in compliance with the appropriate processes and standards;
- Providing and executing a service improvement plan where performance and/or compliance do not meet the targets set within this OLA. This does not replace or mitigate any contractual remediation available to the Party holding title to the contract.

3 Service Description

3.1 Services

The services provided under this SLA are as described in section "*In Scope of this OLA*" above.

3.2 Service Organisation and Interfaces

[This section should contain a schematic showing the relationship between the Parties and the Service Provider].

3.3 Assumptions and Constraints

The following assumptions and constraints have been made: [Insert as applicable.]

3.4 Governance

[Describe the service governance model here]

3.5 Escalation

[Insert if applicable]

3.6 **Security**

[Insert if applicable]

3.7 **Service Availability Management**

[Insert if applicable]

3.8 **Contingency Arrangements**

[Insert if applicable.]

Continuity / Disaster Recovery

[Insert if applicable]

Work-Arounds

[Insert if applicable.]

3.9 **Process Descriptions**

[For each defined process area, list the requirements and interfaces to each process set. Mark those not required as "Not Applicable", and add any relevant additional processes under "Other Processes".]

Incident Management

[Insert details].

Problem Management

[Insert details].

Change Management

[Insert details].

Asset & Configuration Management

[Insert details].

Release Management

[Insert details].

Service Introduction

[Insert details].

Other Processes

[Remove this section if not required]

Other Process 1

[Insert details].

Other Process 2

[Insert details].

Other Process 3

[Insert details].

4 Operating Levels and Measurements

4.1 Service Targets

[Define target levels (either as an extract from the Underpinning Contract, or as agreed between [Supplier's] and the Service Provider)].

4.2 Service Reporting

[Define service reporting requirements. This does not replace existing reporting requirements defined in the Underpinning Contract. As a minimum this should include:

- *The* number *of service requests made within the reporting period*
- *Any* non-*compliances with this OLA*
- *Impact on the Performance Levels].*

5 Appendices

Appendix A - Glossary Of Terms

Definition of Terms

"Service Provider"	means the individual, functional group or organisation responsible for providing a service which supports the Supplier's ability to deliver the Services as described in the Agreement. There is no mandatory requirement for the Service Provider to have a direct contractual relationship with the Supplier.
"Underpinning Contract (UC)"	As defined under ITIL V4, this is a contract between one of the principles and a third party. The third party provides goods or services that support delivery of a Service to Authority. The Underpinning Contract defines the targets and responsibilities of the third party.

The Underpinning Contract can be either an Inbound Contract or a Sub-contract as defined in Schedule 1 (*Definitions*).

Standards

Standard	Description	Comment
[Enter details of any applicable recognised standards that apply to the services detailed in this OLA]		

Processes

This section contains a list of common processes as defined in Section 3.9 above, and a hyperlink to the controlled document.

Process Name	Document Location
[Process Name]	insert the URL here

Appendix B - Contact Points

[Add additional blocks to each section as required]

The Authority

Name:
Title:
Email Address:
Telephone:

Supplier

Name:
Title:
Email Address:
Telephone:

Service Provider

Name:
Title:
Email Address:
Telephone:

Appendix C - Document Control

Revision History

Date	Version	Author	Description

Distribution

Name	Title	Document Version	Date

Approval Signatures

Name	Title	Document Version	Date

Appendix D - Signatures

The Authority signature is only required where the Service Provider is either:

- an Inbound Contract Supplier; or
- an Authority.

THE PARTIES TO THIS OPERATING LEVEL AGREEMENT AGREE TO THE CONTENTS SET OUT HEREIN.	
Signed for and on behalf of [The Supplier]	
Name:	***Signature:***
Supplier Delivery Director	***Date:***
Signed for and on behalf of [The Service Provider]	
Name:	***Signature:***
[Service Provider Delivery Manager]	***Date:***
Signed for and on behalf of [the Authority]	
Name:	***Signature:***
[Title]	***Date:***