

Ref: [RM1599](#) the provision of Multifunctional Devices and Services, Managed Print Services and Print Audit Services

Schedule 4A

CALL-OFF AGREEMENT

**TRANSPORT FOR LONDON**

- and -

HP INC UK LIMITED

AGREEMENT

relating to

THE PROVISION OF MULTIFUNCTIONAL DEVICES AND SERVICES, MANAGED PRINT SERVICES AND PRINT AUDIT SERVICES

CONTRACT REF  
[RM1599](#)

**Ref: [RM1599](#) the provision of Multifunctional Devices and Services, Managed Print Services and Print Audit Services**

**FRAMEWORK SCHEDULE 4A**

**ORDER FORM AND CALL-OFF TERMS**

**Part 1 - Order Form**

This Order Form is issued subject to the provisions of the framework agreement entered into between the Authority and the Supplier on 6<sup>TH</sup> March 2012 ("**Framework Agreement**"). The Supplier agrees to supply the goods and/or services specified below on and subject to the terms of this Contract and for the avoidance of doubt the Contract consists of the terms set out in this Order Form and the Call-Off Terms, together with the schedules thereto.

<b>Date</b>	<b>2<sup>nd</sup> December 2015</b>	<b>Order Number</b>	<b>[TBC ]</b> To be quoted on all correspondence relating to this Order
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**FROM**

Customer	<b>Transport for London "Customer"</b>		
Customer's Address	<b>Windsor House 42-50 Victoria Street, London, SW1H 0TL</b>		
Invoice Address	<b>Accounts Payable, 14 Pier Walk, London, SE10 0ES</b>		
Contact Ref:	<b>Name:</b>	[REDACTED]	
	<b>Address:</b>	[REDACTED]	
	<b>Phone:</b>	[REDACTED]	
	<b>e-mail:</b>	[REDACTED]	
	<b>Fax:</b>	[REDACTED]	[REDACTED]

**TO**

Supplier	<b>HP Inc UK Limited "Supplier"</b>		
Supplier's Address	<b>Cain Road, Bracknell, Berkshire, RG12 1HN</b>		
Account Manager	<b>Name:</b>	[REDACTED]	
	<b>Address:</b>	<b>As above</b>	
	<b>Phone:</b>	[REDACTED]	
	<b>e-mail:</b>	[REDACTED]	
	<b>Fax:</b>	[REDACTED]	[REDACTED]

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<b>1. TERM</b>	
<b>(1.1) Commencement Date</b>	
2 <sup>nd</sup> December	2015
<b>(1.2) Expiry Date</b>	
1.2.1 This Contract shall expire on:	
1.2.1	2 <sup>nd</sup> December 2019; or
1.2.2	seven (7) years after the date hereof;
whichever is the earlier, unless terminated earlier pursuant to this Contract.	
Subject to earlier termination of the Contract in accordance with clause 26, the Contract shall expire on the Expiry Date provided.	

<b>2. GOODS AND SERVICES REQUIREMENTS</b>	
<b>(2.1) Services and Deliverables required</b>	
Enter x against the relevant service/deliverables required.	
<b>X</b>	Managed Print Services Lot 3
	Optional Services – provide details below
Details of any other Optional Services required by the Customer:	
<b>Services</b> - Set out in Schedule 10	
<b>Deliverables</b> – Set out in Schedule 10	
<b>(2.2) Lots under which the above Goods and Services are being supplied:</b>	
Lot 3 – Managed Print Service	

<b>(2.3) Title to Goods</b>
Title to Goods is transferred to the Customer in accordance with clause 5.5.1 if the buy-out option is selected by the Customer at any time during the Agreement.

**(2.4) Performance/Delivery Location/Premises**

As set out in Appendix B of Part C of Schedule 10 – Statement of Work.

**(2.5) Standards**

**Quality Standards**

As set out in Schedule 2

**Technical Standards**

As set out in Schedule 10, Part B

**(2.6) Guarantee Period**

Where Goods only are supplied by the Supplier the Guarantee Period shall be the period from and including the date of Delivery of the Goods to the date twelve (12) Months thereafter.

**(2.7) Security Requirements (including details of the outline security management plan and policy)**

Set out in schedule 2

And within TfL Information Security Controls Framework as attached below.



Information Security Policy V2.0.pdf



Information Security Controls Framework \

**(2.8) Disaster Recovery and Business Continuity**

Set out in schedule 5

**(2.9) Disaster**

Disaster means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part thereof will be unavailable for a period of 20 Working Days which is reasonably anticipated will mean that the Services or a material part thereof will be unavailable for that period.

**(2.10) Staff Vetting Procedures**

BPSS (Baseline Personnel Security Standard) required as condition to be allowed on premises

**3. SUPPLIER SOLUTION**

**(3.1) Supplier Solution**

See document attached hereto as *'24082015 HP's Response to G1131 Volume 2 Technical*

Specification for MPS' set out in schedule 10 and the Statement of Work annexed thereto.

**(3.2) Key Personnel of the Supplier to be involved in the provision of the Goods, Services and Deliverables**

- [REDACTED]

**(3.3) TUPE: Transfer of Employees**

There are 4 persons in scope to transfer to Supplier under the provisions of this Agreement.

Parts A & B of Clause 16 shall apply to this Agreement.

**(3.4) Sub-contractors to be involved in the provision of the Goods, Services and Deliverables**

- Hemmesbach for the provision of hardware break fix services under the MPS Service
- Betasoft – provision of SafeCom activities
- DTP for the deployment and installation of the Devices.

**(3.5) Security Management Plan**

Set out in schedule 2 and 10

And within TfL Information Security Controls Framework as attached below.



Information Security Policy V2.0.pdf



Information Security Control Framework V:

**(3.6) Relevant Convictions**

Not Applicable

**(3.7) Training**

As set out in Schedule 10

**(3.8) Supplier's inspection of the Premises and Infrastructure**

Supplier will inspect Premises and Infrastructure as set out in Schedule 10

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**4. SOFTWARE**

Software	Supplier	Purpose	Applicable Terms				
			Gold Licence Terms	Silver Licence Terms	Bronze Licence Terms	COTS Licence Terms	Assigned Software Terms
ePrint	█	Mobile Application Management				√	
Value Management Office (VMO)	█	Reporting & analysis				√	
SafeCom GO	█	Pull Print Device licence				√	
SafeCom Enterprise Licence	█	Pull Printing				√	
JetAdvantage Security Manager	█	Device security				√	
Windows server licence	█	Server operating system				√	
Microsoft SQL server	█	Database software				√	
Universal Print Driver (UPD)	█	Device print driver				√	

**5. PERFORMANCE OF THE GOODS, SERVICES AND DELIVERABLES**

**(5.1) Implementation Plan and Milestones (including dates for completion)**

Please see mutually agreed Project Plan which covers the roll-out of the Services This Project Plan will be refined and agreed by both Parties within four (4) weeks of the Commencement Date.

- (i) The Implementation Plan as at the Commencement Date, which is subject to change, is set out below:

Milestone	Deliverables (bulleted list showing all Deliverables (and associated tasks) required for each Milestone)	Duration (Working Days)	Milestone Date	Customer Responsibilities (if applicable)	Delay Payments
Detailed Implementation Plan			16/12/2015		
Designs documented and approved			Date to be agreed in Project Plan.		
Backend Infrastructure configured & Tested			22/01/2016		
Test Complete			12/02/2016		
TUPE Activities Complete			28/02/2016		
Pilot Complete			11/03/2016		
Start of Rollout			21/03/2016		
Rollout Completion			10/06/2016		

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Refer to Schedule 12 for deployment and implementation of devices. These timing are subject to change.(ii) If so required by the Customer, the Supplier shall produce a further version of the Implementation Plan (based on the above plan) in such further detail as the Customer may reasonably require. The Supplier shall ensure that each version of the Implementation Plan is subject to Approval. The Supplier shall ensure that the Implementation Plan is maintained and updated on a regular basis as may be necessary to reflect the then current state of the implementation of the Services and/or provision of the Goods.

- (iii) The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
- (iv) The Supplier shall perform its obligations so as to Achieve each Milestone by the Milestone Date.
- (v) Changes to the Milestones shall only be made in accordance with the Variation Procedure and provided that the Supplier shall not attempt to postpone any of the Milestones using the Variation Procedure or otherwise (except in the event of a Customer Default which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).
- (vi) If a Milestone has not been achieved by the relevant Milestone Date, the Supplier shall pay to the Authority Delay Payments in accordance with the table above for each day of delay from and including the relevant Milestone Date until and including the date on which the relevant Milestone criteria are actually achieved and the Authority provides the Supplier with a Milestone Achievement Certificate.
- (vii) No payment or concession to the Supplier by the Customer or other act or omission of the Customer shall in any way affect the rights of the Customer to recover the Delay Payments pursuant to the provisions of this paragraph 5.1 of this Order or be deemed to be a waiver of the right of the Customer to recover any such damages unless such waiver has been signed by the Customer, expressly made in writing by the Customer and refers specifically to a waiver of the Customer's rights to claim Delay Payments.

**(5.2) Testing**

Set out in schedule 4 and developed and agreed by both parties post contract signature.

**(5.3) Service Levels and Service Credits**

**Service Levels:**

Set out in schedule 6 and schedule 10

**Service Credits:**

Set out in schedule 6

**(5.4) Critical Service Failure**

See Schedule 6 for Service Levels and Service Credits.

“(iv) The payment of any Service Credits under this Contract shall be subject to Clause 25.1.4.2 and Customer's sole and exclusive remedy in relation to such Default.”

**(5.5) Monitoring**

Set out in schedule 10

HP have agreed to supply TfL with Management Information, on the tenth day (or closest working day) of every month.

Management Information to be provided in accordance with clause 8 of the Call-Off Terms.

**(5.6) Continuous Improvement, Value for Money and Benchmarking**

- (i) The Customer shall regularly benchmark the Contract Charges and performance of the Goods and Services, against other suppliers providing goods and services substantially the same as the Goods and Services during the Contract Period in order to compare the Contract Charges and level of performance of the Services and delivery of the Goods with charges and service offered by third parties so as to provide the Customer with information for comparison purposes.
- (ii) The Customer shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in paragraph (i) above.
- (iii) The Customer shall be entitled to disclose the results of any benchmarking of the Contract Charges and provision of the Goods and Services to the Authority and other Contracting Bodies.
- (iv) The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Customer in order to undertake the benchmarking referred to in this paragraph 5.6, such information requirements to be at the discretion of the Customer.
- v) The Benchmarking activity will be subject to the Customer and the Supplier agreeing the scope of benchmarking activity (Service Levels and/or Pricing) in addition to the identity of the benchmarker ("Benchmarker"), who shall only carry out such benchmarking activity after agreeing a non-disclosure agreement. The parties shall share the cost of the Benchmarker equally.
- vi) For the avoidance of doubt, the parties may only undertake a benchmarking exercise after minimum periods of 12 months and subject always to agreement of the number (minimum of five) and identity of the comparative third parties.
- vii) Supplier will be measured against the median quartile in Benchmarker's report. Once the results have been mutually agreed with Supplier, Supplier shall implement such revised Service Levels and/or pricing from an agreed future date, to apply prospectively therefrom. Such revised Service Levels and or Pricing shall not apply retrospectively.

As set out in schedule 10

## 6. CUSTOMER RESPONSIBILITIES

### (6.1) Customer's Responsibilities

Set out in schedule 10

### (6.2) Customer's equipment

Set out in appendix C of Part C of schedule 10 -Statement of Work

## 7. CHARGES AND PAYMENT

### (7.1) Contract Charges payable by the Customer (including any applicable discount but excluding VAT), payment profile and method of payment (e.g. Government Procurement Card (GPC) or BACS))

As set out in schedule 11

- Quarterly in arrears by BACS transfer

Based on the Click Charges and Rate Card as listed in Schedule 11

### (7.2) Invoicing and Payment

The Supplier shall issue invoices quarterly in arrears. The Customer shall pay the Supplier within thirty (30) calendar Days of date of a Valid Invoice, submitted in accordance with this paragraph 7.2, the payment profile set out in paragraph 7.1 above and the provisions of the Contract.

## 8. LIABILITY

Subject to the provisions of Clause 25 of the Call-Off Contract:

**(8.1)** the annual aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other Party under or in connection with the Contract shall in no event exceed the [REDACTED]

**(8.2)** the annual aggregate liability under the Contract of either Party for all Defaults shall in no event exceed the greater of [REDACTED] per cent of the Contract Charges payable by the Customer to the Supplier in the year in which the liability arises or any anniversary thereof in which the liability arises during the Contract Period.

## 9. INSURANCE

### (9.1) Minimum Insurance Period

6 (six) years following the expiration or earlier termination of the Contract.

**(9.2)** To comply with its obligations under clause 25.2 and as a minimum, where requested by the Customer in writing the Supplier shall ensure that:

- professional indemnity insurance** is held by the Supplier and by any agent, sub-contractor or consultant involved in the supply of the Goods and Services has a minimum limit of indemnity of [REDACTED] pounds sterling ([REDACTED]) for each

- individual claim or such higher limit as the Customer may reasonably require (and as required by Law) from time to time;
- (ii) **public liability insurance** adequate to cover all risks in the performance of this Contract from time to time with a minimum limit of [REDACTED] pounds sterling ([REDACTED]) for each individual claim or such higher limit as the Customer may reasonably require (and as required by Law) from time to time; and
  - (iii) **employers' liability insurance** with a minimum limit of indemnity of such amount as may reasonably be required by Law from time to time.
  - (iv) **product liability insurance** adequate to cover all risks in the performance of this Lease Agreement from time to time with a minimum limit of [REDACTED] pounds sterling [REDACTED] or each individual claim or such higher limit as the Customer may reasonably require (and as required by Law) from time to time.

## 10. TERMINATION

### (10.1) Undisputed Sums Time Period

At least ninety (90) calendar Days of the date of the written notice specified in clause 26.4.3.

### (10.2) Termination Without Cause

At least thirty (30) Working Days in accordance with clause 26.5.

## 11. CONFIDENTIAL INFORMATION

The following information shall be deemed Commercially Sensitive Information or Confidential Information:

Pricing C3. Total Cost of Managed Print Services – 3 years following end of the Agreement.

## 12. AUDIT AND ACCESS

Seven (7) years after the expiry of the Contract Period or following termination of the Contract

## 13. ADDITIONAL AND/OR ALTERNATIVE CLAUSES

### (13.1) Supplemental requirements in addition to Call-off Terms

[  ]

### (13.2) Variations to the Call-off Terms

Replace clause 5.3.5.4 with the following “the Goods are free from defects in design and workmanship and shall conform to the manufacturers published technical specification.”

For the avoidance of any doubt, Clauses 5.1.4 and 31.5 shall be subject to the provisions of Clause 25.1.

Clause 46.2 Delete references to Clauses 17, 18 and 19 and replace with references to Clauses 16, 17 and 18.

### (13.3) Alternative and/or Additional clauses (as set out in schedule 9)

None

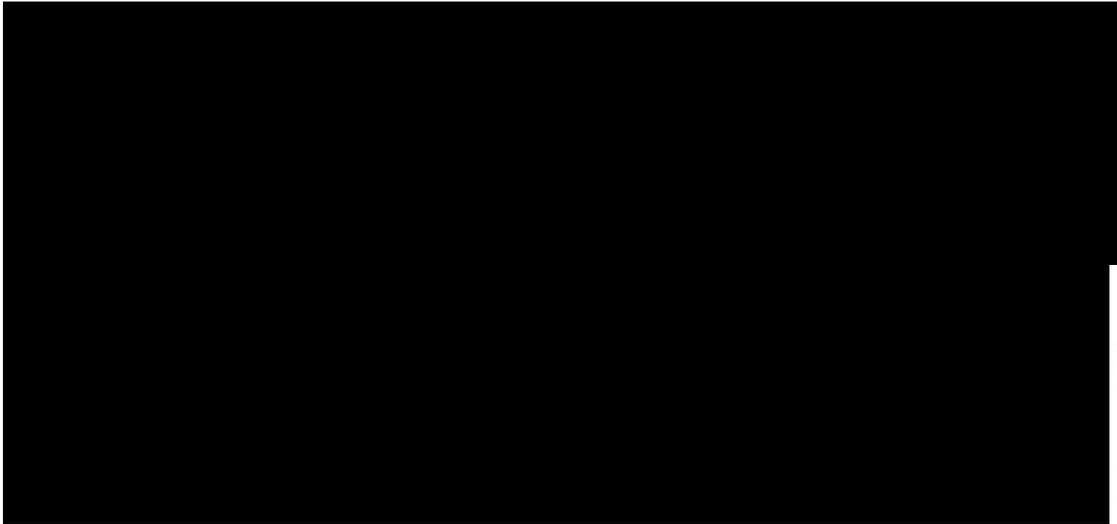
**14. FORMATION OF CONTRACT**

**(14.1)** The Customer shall enter into a Contract by sending this Order Form to the Supplier for the provision of the Goods and Services referred to in the Order Form.

**(14.2)** The Supplier shall enter into the Contract by returning a signed copy of the Order Form to the Customer.

**(14.3)** The Contract shall be formed when the Customer acknowledges receipt of the signed copy of the Order Form.

**BY SIGNING AND RETURNING THIS ORDER FORM THE SUPPLIER AGREES** to enter a legally binding contract with the Customer to provide the Goods and Services. The Parties hereby acknowledge and agree that they have read the Call-off Terms and the Order Form and by signing below agree to be bound by the terms of this Contract.



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## Call-Off Terms

### BETWEEN

- (1) The Customer identified in the Order Form (“Customer”); and
- (2) The company identified in the Order Form (the “Supplier”).

### WHEREAS

- A. the Lords Commissioners of Her Majesty’s Treasury as represented by the Government Procurement Service being a separate Trading Fund of Her Majesty’s Treasury without separate legal personality (“the AUTHORITY”) selected Framework Providers, including the Supplier, to provide Goods and/or Services;
- B. the Supplier undertook to provide the Goods and/or Services on the terms set out in a Framework Agreement number RM1599 dated 6<sup>TH</sup> March 2012 (the “Framework Agreement”);
- C. the AUTHORITY established a set of framework agreements, including the Framework Agreement, in consultation with and for the benefit of public sector bodies.
- D. the AUTHORITY and the Supplier agree that public sector bodies within the UK may enter into Contracts under the Framework Agreement with the Supplier for the Supplier to supply Goods and/or Services;
- E. the Customer is granted rights by the AUTHORITY in accordance with the Contracts (Rights of Third Parties) Act 1999 to enter into a Contract under the Framework Agreement pursuant to an Order Form served by the Customer on the Supplier;
- F. the Supplier served an Order Form for Goods and/or Services on the Supplier; and
- G. the Supplier confirmed its agreement to the terms of this Contract by its acceptance of the Order Form.

## 1. GENERAL PROVISIONS

### 1.1 Definitions

In the Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

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<b>"Achieve"</b>	means in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone in accordance with paragraph 5.1 of the Order Form and <b>"Achieved"</b> and <b>"Achievement"</b> shall be construed accordingly;
<b>"Affiliates"</b>	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
<b>"Affected Party"</b>	means the party seeking to claim relief in respect of a Force Majeure;
<b>"Approval"</b>	means the prior written consent of the Customer and "Approve" and "Approved" shall be construed accordingly;
<b>"Assigned Software Terms"</b>	means the terms set out in schedule 7 paragraph 5 that shall apply to all elements of Bronze Software;
<b>"Assigned Software"</b>	means software identified as such in paragraph 4 of the Order Form;
<b>"Auditor"</b>	means the National Audit Office or an auditor appointed by the Audit Commission as the context requires;
<b>"Authority"</b>	means <b>THE MINISTER FOR THE CABINET OFFICE</b> (" <b>Cabinet Office</b> ") as represented by Government Procurement Service formerly Buying Solutions, trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP (the " <b>Authority</b> ");
<b>"BCDR Plan"</b>	means any plan relating to business continuity and disaster recovery as referred to in paragraph 2.8 of the Order Form;
<b>"Bronze Licence Terms"</b>	means the terms set out in schedule 7 paragraph 1 that shall apply to all elements of Bronze Software;
<b>"Bronze Software"</b>	means software identified as such in paragraph 4 of the Order Form;
<b>"Business Continuity Plan"</b>	has the meaning set out in paragraph 1.2.2 of schedule 5 (Disaster Recovery and Business Continuity);
<b>"Call-off Terms"</b>	means these terms and conditions in respect of the provision of the Goods and Services, together with the schedules hereto;

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<b>“Call-Off Agreement”</b>	means a legally binding agreement (entered into pursuant to the provisions of this Framework Agreement) for the provision of the Goods and Services made between a Contracting Body and the Supplier pursuant to Framework Schedule 5 (Ordering Procedure) of the Framework Agreement;
<b>"Change in Law"</b>	means any change in Law or policy which impacts on the supply of the Goods and Services and performance of the Call-off Terms which comes into force after the Commencement Date;
<b>"Clearance"</b>	means national security clearance and employment checks undertaken by and/or obtained from the Defence Vetting Agency;
<b>Commencement Date"</b>	means the date set out in paragraph 1.1 of the Order Form;
<b>"Commercially Sensitive Information"</b>	means the Confidential information listed in paragraph 12 of the Order Form (if any) comprising of a commercially sensitive information:  relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;
<b>"Confidential Information"</b>	means the Customer's Confidential Information and/or the Supplier's Confidential Information;
<b>“Continuous Improvement Plan”</b>	means a plan for improving the provision of Available Services and/or reducing the charges produced by the Supplier pursuant to schedule 7 of the Framework Agreement;
<b>"Contract"</b>	means the written agreement between the Customer and the Supplier consisting of the Order Form and the Call-off Terms save that for the purposes of clause 1.2.11 only, reference to Contract shall not include the Order Form;
<b>"Contract Period"</b>	means the period from the Commencement Date to:  (a) the Expiry Date; or  (b) such earlier date of termination or partial termination of the Contract in accordance with Law or the provisions of the Contract;
<b>"Contract Charges"</b>	means the prices (exclusive of any applicable VAT), payable to the Supplier by the Customer under the Contract, as set out in paragraph 7.1 of the Order Form, for the full and proper performance by the Supplier of its

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obligations under the Contract less any Service Credits;

<b>"Contracting Authority"</b>	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the Customer;
<b>"Control"</b>	Means control as defined in section [1124] [450] Corporation Tax Act 2010 and <b>"Controls"</b> and <b>"Controlled"</b> shall be interpreted accordingly;
<b>"Conviction"</b>	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006.);
<b>"COTS Licence Terms"</b>	means the terms set out in schedule 7 paragraph 4 that shall apply to all elements of COTS Software;
<b>"COTS Software"</b>	means software identified as such in paragraph 4 of the Order Form;
<b>"Critical Service Failure"</b>	shall have the meaning given in paragraph 5.4 of the Order Form;
<b>"Crown"</b>	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Customer"</b>	means the customer(s) identified in the Order Form;
<b>"Customer Data"</b>	means: <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 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 the Customer; or</li></ul></li></ul>

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(ii) the Supplier is required to generate, process, store or transmit pursuant to this Contract; or

(b) any Personal Data for which the Customer is the Data Controller;

**"Customer Pre-Existing IPR"** shall mean any Intellectual Property Rights vested in or licensed to the Customer prior to or independently of the performance by the Supplier of its obligations under the Contract and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;

**"Customer's Premises"** the premises identified in paragraph 2.4 of the Order Form and which are to be made available for use by the Supplier for the provision of the Goods and Services on the terms set out in this Contract;

**"Customer Responsibilities"** means the responsibilities of the Customer set out in paragraph 6.1 of the Order Form;

**"Customer Representative"** means the representative appointed by the Customer from time to time in relation to the Contract;

**"Customer Software"** means software which is owned by or licensed to the Customer, including Assigned Software and software which is or will be used by the Supplier for the purposes of providing the Goods and the Services but excluding the Supplier Software;

**"Customer System"** means the Customer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Customer or the Supplier in connection with this Contract which is owned by or licensed to the Customer by a third party and which interfaces with the Supplier System or which is necessary for the Customer to receive the Goods and Services;

**"Customer's Confidential Information"** means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Customer, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;

**"Data Controller"** shall have the same meaning as set out in the Data Protection Act 1998;

**"Data"** shall have the same meaning as set out in the Data

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<b>"Processor"</b>	Protection Act 1998;
<b>"Data Protection Legislation"</b>	means the Data Protection Act 1998 and all 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 or relevant Government department in relation to such legislation;
<b>"Data Subject"</b>	shall have the same meaning as set out in the Data Protection Act 1998;
<b>"Default"</b>	means any breach of the obligations of the Supplier (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 Supplier or Supplier's Staff in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to the Customer;
<b>"Deliverables"</b>	means those deliverables listed in part 2.1 of the Order Form (if any);
<b>"Delivery"</b>	means the time at which the Goods and Services have been installed by the Supplier and the Customer has issued a Satisfaction Certificate in respect thereof and <b>"Deliver"</b> and <b>"Delivered"</b> shall be construed accordingly;
<b>"Disaster"</b>	shall have the meaning given in paragraph 2.9 of the Order Form;
<b>"Disaster Recovery"</b>	means the process of restoration of the Services by the provision of the Disaster Recovery Services;
<b>"Disaster Recovery Plan"</b>	means has the meaning set out in paragraph 1.2.3 of schedule 5 (Disaster Recovery and Business Continuity);
<b>"Disaster Recovery Services"</b>	means the disaster recovery and/or business continuity services (as the context may require) to be provided by the Supplier pursuant to schedule 5 (Disaster Recovery and Business Continuity);
<b>"Disaster Recovery System"</b>	means the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
<b>"Dispute Resolution Procedure"</b>	means the dispute resolution procedure set out in clause 49.2;
<b>"Documentation"</b>	means the technical specifications, user manuals, operating manuals, operating manuals, process definitions and procedures and other documentation

including designs relating to the Supplier Software;

**"Employee Liabilities"**

means all claims actions, proceedings, orders, demands, complains, investigations 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 including in relation to the following:

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

(b) unlawful deduction of wages;

(c) unfair, wrongful or constructive dismissal compensation;

(d), compensation claims for sex, race or disability discrimination or discrimination on the grounds of religion, age, belief or sexual orientation or claims for equal pay;

(e) compensation for less favourable treatment of part-time or agency workers;

(f) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Customer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-contractor if such payment should have been made prior to the Service Transfer Date;

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

(h) , any investigation by the Equal Opportunities Commission, the Disability Rights Commission, or the Commission for Racial Equality or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation);

**"Environmental Information Regulations"**

means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

**"Equipment"**

means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance

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	of its obligations under the Contract which, for the avoidance of doubt does not include the Goods;
<b>"Exit Plan"</b>	has the meaning set out in clause 5.9;
<b>"Expiry Date"</b>	means the date set out in paragraph 1.2 of the Order Form;
<b>"Fair Deal Employee"</b>	means (a) the Transferring Customer Employees and (b) those Former Supplier Employees whose period of continuous employment commenced with and who originally transferred from employment with central or local government or a public sector employer pursuant to a Relevant Transfer under TUPE (or the predecessor legislation to TUPE), and who remain in employment relating to the provision of services to which that Relevant Transfer applied;
<b>"FOIA"</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

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<b>"Force Majeure"</b>	<p>means any event, occurrence or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none"><li>a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;</li><li>b) riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</li><li>c) acts of government, local government or Regulatory Bodies;</li><li>d) fire, flood or any disaster acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;</li><li>e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:<ul style="list-style-type: none"><li>any industrial dispute relating to the Supplier, the Supplier's Staff or any other failure in the Supplier or the Sub-Contractor's supply chain; and</li><li>any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned;</li></ul></li></ul>
<b>"Framework Agreement"</b>	<p>means the framework agreement between the Authority and the Supplier referred to in the Order Form;</p>
<b>"Fraud"</b>	<p>means any offence under any Laws creating offences in respect of fraudulent acts or in relation to 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 a Contracting Authority or the Customer;</p>
<b>"General Principles"</b>	<p>has the meaning set out in paragraph 1.2.1 of schedule 5 (Disaster Recovery and Business Continuity);</p>
<b>"Gold Licence Terms"</b>	<p>means the terms set out in schedule 7 paragraph 3 that shall apply to all elements of Gold Software;</p>
<b>"Gold Software"</b>	<p>means software identified as such in paragraph 4 of the Order Form [together with all other software which is not listed in paragraph 4 of the Order Form but which is or will be used by the Supplier or any Sub-contractor for the purposes of providing the Services or is embedded in or forms part of the Goods and in respect of such other software is required to be licensed in order for the Customer to receive the benefit of and/or make use of the</p>

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Goods and Services;

<b>"Good Industry Practice"</b>	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
<b>"Goods and Services"</b>	means the goods and services to be supplied as specified in paragraph 2.1 of the Order Form;
<b>"Guarantee"</b>	means the deed of guarantee set out in schedule 3;
<b>"Guarantee Period"</b>	means the period specified as such in paragraph 2.6 of the Order Form;
<b>"Holding Company"</b>	shall have the meaning given to it in section 1159 and Schedule 6 of the Companies Act 2006;
<b>"ICT"</b>	means information and communications technology;
<b>"ICT Environment"</b>	means the Customer System and the Supplier System;
<b>"Implementation Plan"</b>	means the plan referred to in paragraph 5.1 of the Order Form;
<b>"Information"</b>	has the meaning given under section 84 of the FOIA;
<b>"Intellectual Property Rights" or "IPRs"</b>	means:  (a) patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, semi-conductor topography rights, rights in inventions, domain names and website addresses, trade or business names, rights in Know-How and moral rights and other similar rights or obligations whether registerable or not;  (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and  (c) all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off;
<b>ITT Response</b>	means the response submitted by the Supplier to the Invitation to Tender issued by the Authority on 07 July

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<b>"Key Personnel"</b>	means the individuals (if any) identified in paragraph 3.2 of the Order Form;
<b>"Know-How"</b>	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Goods and Services but excluding know-how already in the Supplier's or the Customer's possession before the Commencement Date;
<b>"Law"</b>	means 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 statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of Court or directives or requirements of any Regulatory Body, delegated or subordinate legislation;
<b>"Management Information"</b>	means the management information specified in Framework Schedule 8 (Management Information Requirements);
<b>"Malicious Software"</b>	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
<b>"Milestone"</b>	means an event or task described in the Implementation Plan which must be completed by the corresponding date set out in such plan;
<b>"Milestone Date"</b>	means the date set against the relevant Milestone in the Implementation Plan;
<b>"Minimum Insurance Period"</b>	has the meaning given in paragraph 9.1 of the Order Form;
<b>"Month"</b>	means calendar month and "monthly" shall be interpreted accordingly;
<b>"Material Breach"</b>	means a material breach of this Call-Off Agreement [and/or, breach by the Supplier of any of the following clauses: Clause 24 (Warranties and Representations), Clause 23.5 (Protection of Personal Data), Clause 23.7 (Official Secrets Acts 1911 to 1989), Clause 8

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(Monitoring of Contract Performance), Clause 32 (Records and Audits Access), Clause 35 (Transfer and Sub-Contracting), Clause 31 (Prevention of Bribery and Corruption), Clause 34 (Prevention of Fraud), Clause 9 (Continuous Improvement) shall be a material breach.

- "Order"** means the order submitted by the Customer to the Supplier in accordance with the Framework Agreement;
- "Order Form"** means the form containing details of an Order, together with other information in relation to such Order, including without limitation the description of the Goods and Services to be supplied;
- "Parent Company"** means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;
- "Party"** means the Supplier or the Customer and "Parties" shall mean both of them;
- "Personal Data"** shall have the same meaning as set out in the Data Protection Act 1998;
- "Premises"** means the location where the Services are to be provided and/or the Goods are to be supplied, as set out in paragraph 2.4 of the Order Form;

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- "Process"** has the meaning given to "processing" under the Data Protection Act 1998 (but shall include both manual and automatic processing) , and "Process" and "Processed" shall be interpreted accordingly;
- "Prohibited Act"** means:
- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or the Authority a financial or other advantage to:
- (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity; or
- (b) committing any offence:
- (i) under the Bribery Act 2010; or
  - (ii) under legislation creating offences concerning fraudulent acts; or
  - (iii) at common law concerning fraudulent acts relating to this Call-Off Agreement or any other contract with the Authority and/or Customer and/or any other Contracting Body; or
  - (iv) defrauding, attempting to defraud or conspiring to defraud the Authority and/or the Customer any other Contracting Body.

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<b>"Project Specific IPRs"</b>	<p>Means</p> <p>(a) IPRs in the Services, Deliverables and/or Goods provided by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the A and all updates and amendments of these items created during the Contract Period; and/or</p> <p>(b) IPRs arising as a result of the provision of the Services, Deliverables and/or Goods by the Supplier (or by a third party on behalf of the Supplier) under the Contract,</p> <p>including the rights in or to any database developed and supplied by the Supplier to the Customer in accordance with the terms of this Contract;</p>
<b>"Property"</b>	<p>means the property, other than real property and IPR, issued or made available to the Supplier by the Customer in connection with the Contract;</p>
<b>"Quality Standards"</b>	<p>means the quality standards published by BSI British Standards, 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 (as may be further detailed in paragraph 2.5 of the Order Form) and any other applicable quality standards, Government codes of practice and guidance;</p>
<b>"Regulatory Bodies"</b>	<p>means 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 Customer;</p>
<b>"Related Supplier "</b>	<p>means any person who provides services to the Customer which are related to the Services from time to time;</p>
<b>"Relevant Transfer Date"</b>	<p>means the date upon which the Relevant Transfer takes place;</p>
<b>"Relevant Transfer"</b>	<p>means a transfer of employment to which TUPE applies or is treated as applying;</p>
<b>"Relevant Conviction"</b>	<p>means a Conviction that is relevant to the nature of the Services to be provided or as specified in paragraph 3.5 of the Order Form;</p>

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<b>"Replacement Supplier"</b>	any third party service provider of Replacement Services appointed by the Customer from time to time;
<b>"Replacement Service"</b>	any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry or termination of this Contract, whether those services are provided by the Customer internally and/or by any third party;
<b>"Request for Information"</b>	means a request for information or an apparent request relating to this Contract or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
<b>"Review Report"</b>	has the meaning set out in paragraph 6 of schedule 5 (Disaster Recovery and Business Continuity);
<b>"Satisfaction Certificate"</b>	means the certificate materially in the form of the document contained in the Appendix to schedule 4 granted by the Customer when the Supplier has Achieved a Milestone;
<b>"Second Generation Fair Deal Employee"</b>	means any employee whose employment transfers under a Relevant Transfer from the Former Supplier to the Supplier on the Relevant Transfer Date and who (i) in relation to previous employment with the Customer, had been accruing pension rights as an active member of [*** insert name of public sector pension scheme ***] immediately before a Relevant Transfer of his employment from the Customer to the Former Supplier, or a series of Relevant Transfers starting with employment with the Customer and finishing with employment with the Former Supplier, and (ii) had elected to transfer such pension rights from [*** insert name of public sector pension scheme ***] to the Former Supplier's Scheme;
<b>"Security Management Plan"</b>	means the Supplier's security management plan prepared pursuant to paragraph 3 of schedule 2 an outline of which is set out in paragraph 2.7 of the Order Form as updated from time to time;
<b>"Security Policy"</b>	means the Customer's security policy set out in paragraph 2.7 of the Order Form, as updated from time to time;
<b>"Service Credits"</b>	means the sums referred to in paragraph 5.3 of the Order Form as being payable by the Supplier in respect of any failure by the Supplier to meet one or more Service Levels;
<b>"Service"</b>	means any service levels applicable to the provision of the Services as referred to in paragraph 5.3 of the Order

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<b>"Levels"</b>	Form;
<b>"Services"</b>	means the services to be supplied as referred to in paragraph 2.1 of the Order Form;
<b>"Silver Licence Terms"</b>	means the terms set out in schedule 7 paragraph 2 that shall apply to all elements of Silver Software;
<b>"Silver Software"</b>	means software identified as such in paragraph 4 of the Order Form;
<b>"Sites"</b>	means any premises from which the Services are provided or from which the Supplier manages, organises or otherwise directs the provision or the use of the Services or where any part of the Supplier System is situated or where any physical interface with the Customer System takes place;
<b>"Software"</b>	means the Supplier Software and Customer Software;
<b>["Source Code"</b>	means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all technical information and documentation necessary for the use, reproduction, modification and enhancement of such software;]
<b>"Staff"</b>	means all persons employed by the Supplier and/or any Sub-contractor to perform its obligations under the Contract together with the Supplier's and/or any Sub-contractor's servants, consultants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract;
<b>"Staff Vetting Procedures"</b>	means the Customer's procedures and departmental policies for the vetting of personnel as set out in paragraph 2.10 of the Order Form;
<b>"Sub-contract"</b>	means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Goods and Services or any part thereof or facilities, goods or services necessary for the provision of the Goods and Services or any part thereof or necessary for the management, direction or control of the Goods and Services or any part thereof;
<b>"Sub-contractor"</b>	means the third party with whom the Supplier enters into a Sub-contract or its servants or agents and any third party with whom that third party enters into a Sub-contract or its servants or agents;
<b>"Supplier"</b>	means the person, firm or company with whom the Customer enters into the Contract as identified in the

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Order Form;

<b>"Supplier Pre-Existing IPR"</b>	shall mean any Intellectual Property Rights vested in or licensed to the Supplier prior to or independently of the performance by the Customer of its obligations under the Contract and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;
<b>"Supplier's Proposals"</b>	has the meaning set out in paragraph 6.3.3 of schedule 5 (Disaster Recovery and Business Continuity);
<b>"Supplier Software"</b>	means the Gold Software, Silver Software, Bronze Software and COTS Software;]
<b>"Supplier Solution"</b>	means the Supplier's solution for the provision of the Goods and Services as referred to in paragraph 3.1 of the Order Form;
<b>"Supplier System"</b>	means the information and communications technology system used by the Supplier in performing the Services including the Software, the Equipment and related cabling (but excluding the Customer System);
<b>"Supplier's Confidential Information"</b>	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
<b>"Technical Standards"</b>	means the technical standards set out in paragraph 2.5 of the Order Form;
<b>"Tender"</b>	means the tender submitted by the Supplier to the Customer in response to the Customer's invitation to suppliers for formal offers to supply it with the Goods and Services pursuant to the Framework Agreement;
<b>"Tests" and "Testing"</b>	means any tests required to be carried out pursuant to this Contract and as referred to in paragraph 5.2 of the Order Form;
<b>"Test Issue"</b>	means any variance or non-conformity of Goods, Services or Deliverables from its requirements as set out in the Contract;
<b>"Test Plan"</b>	means a plan for the Testing of the Goods, Services or Deliverables and other agreed criteria related to the achievement of Milestones as described further in

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paragraph 4 of schedule 4;

<b>"Test Strategy"</b>	means a strategy for the conduct of Testing as described further in paragraph 3 of schedule 4;
<b>"TUPE"</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations or UK legislation implementing the Acquired Rights Directive;
<b>"Transferring Supplier Employees"</b>	means those employees of the Supplier to which TUPE will apply on the Service Transfer Date, and in respect of whom written notification has been given by the Supplier to the Customer before the Service Transfer Date;
<b>"Transferring Customer Employees"</b>	means those employees of the Customer to which TUPE will apply on the Relevant Transfer Date, and in respect of whom written notification has been given by the Customer to the Supplier before the Relevant Transfer Date;
<b>"Transferring Goods"</b>	means Goods, title to which transfers between the Parties in accordance with clause 5.5.1, as may be specified in paragraph 2.1 of the Order Form;
<b>"Undelivered Goods"</b>	shall have the meaning given in clause 5.4.7;
<b>"Undisputed Sums Time Period"</b>	has the meaning given in paragraph 10.1 of the Order Form;
<b>"Use"</b>	means: <ul style="list-style-type: none"><li>(a) with respect to Bronze Software, Silver Software and COTS Software, the right to load, execute, store, transmit, display and copy (for the purposes of loading, execution, storage, transmission or display) that software; and</li><li>(b) with respect to the Gold Software, the right to load, execute, store, transmit, display, copy (for the purposes of loading, execution, storage, transmission or display), modify, adapt, enhance, reverse compile, decode, translate, or otherwise utilise that software;</li></ul>
<b>"Valid Invoice"</b>	means an invoice issued by the Supplier to the Customer that complies with clause 13.2.2;
<b>"Variation"</b>	has the meaning given to it in clause 40.1;
<b>"Variation"</b>	means the procedure set out in clause 40;

**Procedure"**

**"VAT"** means value added tax in accordance with the provisions of the Value Added Tax Act 1994;

**"Working Day"** means any day other than a Saturday or Sunday or public holiday in England and Wales.

**1.2 Interpretation**

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;
- 1.2.3 the words "include", "includes" and "including" "for example" and "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;
- 1.2.4 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 and their successors and permitted assigns or transferees;
- 1.2.5 the schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract. Any reference to this Contract includes the schedules;
- 1.2.6 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- 1.2.8 references to "clauses" and "schedules" are, unless otherwise provided, references to the clauses of and schedules to this Contract. References to "paragraphs" are, unless otherwise provided, references to paragraphs of the schedule in which the references are made;
- 1.2.9 terms or expressions contained in this Contract which are capitalised but which do not have an interpretation in clause 1 shall be interpreted in accordance with the Framework Agreement save for such words as do not have an interpretation in the

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Framework Agreement in which case they shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning;

- 1.2.10 reference to a clause is a reference to the whole of that clause unless stated otherwise; and
- 1.2.11 in the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract, any document referred to in the clauses of the Contract and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
  - 1.2.11.1 the Framework Agreement;
  - 1.2.11.2 the clauses of the Contract;
  - 1.2.11.3 the Order Form; and
  - 1.2.11.4 any other document referred to in the clauses of the Contract.

**2. DUE DILIGENCE**

2.1 The Supplier acknowledges that it:

- 2.1.1 has 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 the Customer;
- 2.1.2 has raised all relevant due diligence questions with the Customer before the Commencement Date; and
- 2.1.3 has entered into this Contract in reliance on its own due diligence alone.

**3. GUARANTEE – Not used.**

Where the Customer has specified in the Order Form that this Contract shall be conditional upon receipt of a Guarantee from the Guarantor, the Supplier shall deliver to the Customer an executed Guarantee substantially in the form set out in schedule 3 from the Guarantor, on or prior to the Commencement Date.

**4. CONTRACT PERIOD**

- 4.1 This Contract shall take effect on the Effective Date and shall either expire on:
  - 4.1.1 the date specified in the Order Form; or
  - 4.1.2 seven 7 years after the Effective Date.

whichever is the earlier, unless terminated earlier pursuant to clause 12.

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The Contract is for 4 years and the Customer retains an option to extend this Contract for a further three years. The Customer may exercise any such option by giving the Supplier notice of its intention to renew not less than three (3) Months prior to the date when this Contract would otherwise expire.

4.2 For the purposes of this Contract, the initial period [and any extensions thereof] shall be referred to as the "Term".

**5. SUPPLY OF GOODS AND SERVICES**

**5.1 Supply of the Goods and Services**

5.1.1 The Supplier shall supply the Goods and Services in accordance with the Implementation Plan.

5.1.2 The Supplier shall supply the Goods and Services during the Contract Period in accordance with the Customer's requirements as set out in the Contract in consideration for the payment of the Contact Charges. The Customer may inspect and examine the manner in which the Supplier supplies the Goods and Services at the Premises during normal business hours on reasonable notice.

5.1.3 If the Customer informs the Supplier in writing that the Customer reasonably believes that any part of the Goods and Services does not meet the requirements of the Contract or differs in any way from those requirements, the Supplier shall at its own expense re-schedule and carry out the Goods and Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Customer.

5.1.4 The Supplier accepts responsibility for all damage to, shortage or loss of the Ordered Goods if:

5.1.4.1 the same is notified in writing to the Supplier within three (3) Working Days of receipt of the Ordered Goods by the Customer; and

5.1.4.2 the Ordered Goods have been handled by the Customer in accordance with the Supplier's instructions.

5.1.5 Where the Supplier accepts responsibility under clause 5.1.4 it shall, at its sole option, replace or repair the Ordered Goods (or part thereof) which have been proven, to the Supplier's reasonable satisfaction, to have been lost or damaged in transit.

5.1.6 The Supplier agrees that the Customer relies on the skill and judgment of the Supplier in the supply of the Goods and Services and the performance of its obligations under the Contract.

**5.2 Provision and Removal of Equipment**

5.2.1 Unless otherwise stated in the Order Form, the Supplier shall provide all the Equipment necessary for the supply of the Goods and/or the Services.

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- 5.2.2 The Supplier shall not deliver any Equipment nor begin any work on the Premises without obtaining Approval.
- 5.2.3 All Equipment brought onto the Premises shall be at the Supplier's own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless and to the extent that the Supplier is able to demonstrate that such loss or damage was caused by or contributed to by the Customer's Default. The Supplier shall be wholly responsible for the haulage or carriage of the Equipment to the Premises and the removal thereof when it is no longer required by the Customer and in each case at the Supplier's sole cost. Unless otherwise stated in this Contract, Equipment brought onto the Premises will remain the property of the Supplier.
- 5.2.4 The Supplier shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 5.2.5 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
- 5.2.5.1 remove from the Premises any Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with the Contract; and
  - 5.2.5.2 replace such item with a suitable substitute item of Equipment.
- 5.2.6 Upon termination or expiry of the Contract, the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Goods and Services and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or Supplier's Staff.

**5.3 Quality**

- 5.3.1 The Supplier shall at all times comply with the Technical Standards and the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards' authorisation body. To the extent that the standard to which the Goods and Services must be provided has not been specified in the Contract, the Supplier shall agree the relevant standard for the provision of the Goods and Services with the Customer prior to the supply of the Goods and Services commencing and in any event, the Supplier shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

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- 5.3.2 The Supplier shall ensure that the Staff shall at all times during the Contract Period:
- 5.3.2.1 faithfully and diligently perform those duties and exercise such powers as necessary in connection with the provision of the Goods and Services;
  - 5.3.2.2 obey all lawful instructions and reasonable directions of the Customer and provide the Goods and Services to the reasonable satisfaction of the Customer; and
  - 5.3.2.3 apply all due skill, care, diligence and are appropriately experienced, qualified and trained.
- 5.3.3 The Supplier shall without prejudice to clause 5.1.4 above perform its obligations under the Contract in a timely manner.
- 5.3.4 The Supplier shall supply the Goods and Services and, where relevant, install the Goods in accordance with the specification in the Framework Agreement (if any), the Order Form and in accordance with all applicable Laws, including but not limited to, any obligation implied by sections 12, 13 and 14 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982.
- 5.3.5 The Supplier shall at all times during the Contract Period ensure that:
- 5.3.5.1 the Goods and Services conform in all respects with the specifications set out in the Order Form and/or where applicable the Framework Agreement;
  - 5.3.5.2 the Goods and Services operate in accordance with the relevant technical specifications and correspond with all requirements set out in the Order Form;
  - 5.3.5.3 the Goods and Services conform in all respects with all applicable Laws, Quality Standards and Technical Standards;
  - 5.3.5.4 the Goods are free from defects in design and workmanship and are fit for the purpose that such Goods are ordinarily used for and for any particular purpose made known to the Supplier by the Customer; and
  - 5.3.5.5 the Goods and Services are supplied in accordance with the Supplier Solution.

**5.4 Delivery**

- 5.4.1 The Supplier shall Deliver the Goods and provide the Services in accordance with the Implementation Plan and Milestones.

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- 5.4.2 The issue by the Customer of a receipt note for delivered Equipment shall not constitute any acknowledgement of the condition, quantity or nature of that Equipment.
- 5.4.3 Time of delivery in relation to commencing and/or supplying the Goods and Services shall be of the essence and if the Supplier fails to deliver the Goods and Services within the time specified in accordance with clause 5.1.1 and paragraph 5.1 of the Order Form and without prior written Approval, the Customer may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Customer.
- 5.4.4 Except where otherwise provided in the Contract, the Goods shall be installed and the Services provided by the Staff or the Sub-contractors at such place or places as set out in paragraph 2.2 of the Order Form.
- 5.4.5 Where the Goods are delivered by the Supplier, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. Where the Goods are collected by the Customer, the point of delivery shall be when the Goods are loaded on the Customer's vehicle.
- 5.4.6 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Supplier's suppliers or carriers at such place as the Customer or duly authorised person shall reasonably direct.
- 5.4.7 In the event that not all of the Goods and Services are Delivered by the relevant Milestone Dates specified in the Implementation Plan ("**Undelivered Goods and Services**") then the Customer shall be entitled to withhold payment of the Contract Charges for any Goods and Services that were not Delivered in accordance with the corresponding Milestone Date until such time as the Undelivered Goods and Services are Delivered.
- 5.4.8 The Customer shall be under no obligation to accept or pay for any Goods Delivered in excess of the quantity specified in paragraph 2 of the Order Form. If the Customer elects not to accept such over-Delivered Goods it shall give notice in writing to the Supplier to remove them within five (5) Working Days and to refund to the Customer any expenses incurred by the Customer as a result of such over-Delivery (including but not limited to the costs of moving and storing the Goods), failing which the Customer may dispose of such Goods and charge the Supplier for the costs of such disposal. The risk in any over-Delivered Goods shall remain with the Supplier.

**5.5 Ownership and Risk**

- 5.5.1 Ownership and passing of title in the Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer on the earlier of payment by the Customer of the

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Contract Charges or put into use of the relevant Goods by the Customer to the Order.

5.5.2 Risk in the Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer at the time of acceptance of Delivery.

**5.6 Testing**

The Parties shall carry out their obligations set out in schedule 4.

**5.7 Guarantee**

The Supplier hereby guarantees the Transferring Goods for the Guarantee Period against faulty materials and workmanship. If the Customer shall within such Guarantee Period or within twenty five (25) Working Days thereafter give notice in writing to the Supplier of any defect in any of the Transferring Goods as may have arisen during such Guarantee Period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the Customer may have) promptly remedy such defects (whether by repair or replacement as the Customer shall elect) free of charge.

**5.8 Service Levels**

5.8.1 The Supplier shall provide the Services to meet or exceed the Service Levels and any failure to meet the Service Levels shall entitle the Customer to Service Credits calculated in accordance with the provisions of schedule 6 or in the event of a Critical Service Failure shall give rise to a right for the Customer to terminate the Contract with immediate effect upon giving written notice to the Supplier.

5.8.2 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.

**5.9 Exit Planning**

The Supplier shall, within three months after the Commencement Date, deliver to the Customer a plan (the "**Exit Plan**") which sets out the Supplier's proposed methodology for achieving orderly transition of the Services from the Supplier to the Customer and/or the Replacement Supplier on the expiry or termination of this Contract. Within thirty (30) Working Days after submission of the draft Exit Plan (or any revised Exit Plan) the parties will use their reasonable endeavours to agree its content and if they are unable to reach agreement then the dispute shall be referred to the Dispute Resolution Procedure. The Supplier will review and update the Exit Plan within one month of each anniversary of the Commencement Date and shall comply with the exit planning provisions as set out in Schedule 8.

**6. ASSISTANCE ON EXPIRY OR TERMINATION**

In the event that this Contract expires or is terminated the Supplier shall, where so requested by the Customer, provide assistance to the Customer to migrate the provision of the Services to a Replacement Supplier including as set out in the Exit Plan Schedule 8.

**7. DISASTER RECOVERY AND BUSINESS CONTINUITY**

The parties shall comply with the provisions of schedule 5 (Disaster Recovery and Business Continuity).

**8. MONITORING OF CONTRACT PERFORMANCE**

8.1 The Supplier shall comply with the monitoring arrangements referred to in paragraph 5.5 of the Order Form including, but not limited to, providing such data and information as the Supplier may be required to produce under the Contract.

8.2 Where requested by the Customer, the Supplier shall supply the Management Information to the Customer in the form set out in the Management Information schedule 8 of the Framework Agreement (as amended from time to time) on such date during the Contract Period as specified in paragraph 5.5 of the Order Form.

**9. CONTINUOUS IMPROVEMENT**

9.1 The Supplier shall have an ongoing obligation throughout the Contract Period to identify new or potential improvements to the Services pursuant to which it will regularly review with the Customer the Goods and Services and the manner in which it is providing the Goods and Services with a view to reducing the Customer's costs (including the Contract Price) and/or improving the quality and efficiency of the Goods and Services and to comply with any specific provisions in accordance with the provisions referred to in paragraph 5.6 of the Order Form (if any).

9.2 Any amendments to the Goods and Services and/or the Contract Price, required by the Customer to implement or effect such improvements identified as a result of the Supplier's compliance with clause 9.1, shall be implemented by the Supplier (subject to compliance with EU procurement Law and the Framework Agreement) and the Supplier shall implement such variation amendment or improvement at no additional cost to the Customer.

9.3 The Supplier shall ensure that the information that it provides to the Customer in accordance with clause 9.1 shall be sufficient for the Customer to decide whether any improvement to the Services should be implemented. The Supplier shall provide any further information that the Customer requests in connection with any improvements to the Services identified by the Supplier.

9.4 Notwithstanding the Supplier's obligations under clause 9.1 to 9.3 above, the Customer shall be entitled to regularly benchmark the Contract Price and performance of the Goods and Services, against other suppliers

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providing services substantially the same as the Goods and Services during the Contract Period in order to compare the Contract Price and level of performance of the Goods and Services with charges and service offered by third parties so as to provide the Customer with information for comparison purposes.

- 9.5 The Customer shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in clause 9.4 above.
- 9.6 The Customer shall be entitled to disclose the results of any benchmarking of the Contract Price and provision of the Goods and Services carried out under clause 9.4 to the Authority and any Contracting Body (subject to the Contracting Body entering into reasonable confidentiality undertakings).
- 9.7 The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Customer in order to undertake the benchmarking in accordance with clause 9.4 and such information requirements shall be at the discretion of the Customer.
- 9.8 Where, as a consequence of any benchmarking carried out by the Customer under clause 9.4, the Customer decides improvements to the Services should be implemented such improvements shall be implemented by way of the Contract Variation procedures set out in clause 40.
- 9.9 The benefit of any work carried out by the Supplier to improve or update the Goods and Services or to facilitate their delivery to any other Contracting Body and/or any alterations or variations to the Contract Price or the provision of the Goods and Services, which are identified in the Continuous Improvement Plan produced by the Supplier and/or as a consequence of any benchmarking carried out by the Authority pursuant to Framework Schedule 7 (Value for Money), shall be implemented by the Supplier (subject to EU procurement Law and the Framework Agreement) at no additional cost to the Customer.

## **10. [DISRUPTION]**

- 10.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- 10.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Supplier's own employees or others, which affects or might affect the Supplier's ability at any time to perform its obligations under the Contract.
- 10.3 In the event of industrial action by the Staff, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Goods and Services in accordance with its obligations under the Contract.
- 10.4 If the Supplier's proposals referred to in clause 10.3 are considered insufficient or unacceptable by the Customer acting reasonably then the

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Contract may be terminated with immediate effect by the Customer by notice in writing.

- 10.5 If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business caused by the Customer, an appropriate allowance by way of extension of time will be approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.]

**11. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES OR PROVISION OF THE GOODS**

- 11.1 Without prejudice to any other right or remedy which the Customer may have, if any Goods and Services are not supplied in accordance with, or the Supplier fails to comply with any of the terms of the Contract then the Customer may (whether or not any part of the Goods and Services have been Delivered) do any of the following:

- 11.1.1 at the Customer's option, give the Supplier the opportunity at the Supplier's expense to either remedy any defect in the Goods and/or failure in the performance of the Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) or to supply replacement Goods and Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled, in accordance with the Customer's instructions;
- 11.1.2 reject the Goods (in whole or in part) and require the Supplier to remove the Goods (in whole or in part) at the risk and cost of the Supplier on the basis that a full refund for the Goods so rejected shall be paid to the Customer forthwith by the Supplier;
- 11.1.3 refuse to accept any further Goods and Services to be Delivered but without any liability to the Customer;
- 11.1.4 if paragraph 5.1 of the Order Form provides for the payment of Delay Payments, then the Supplier shall pay such amounts (calculated in accordance with paragraph 5.1 of the Order Form) on demand. The Delay Payments will accrue on a daily basis from the relevant Milestone Date and will continue to accrue until the date when the Milestone is Achieved;
- 11.1.5 carry out at the Supplier's expense any work necessary to make the Goods and Services comply with the Contract;
- 11.1.6 without terminating the Contract, itself supply or procure the supply of all or part of the Goods and Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to supply all or such part of the Goods and Services in accordance with the Contract;

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11.1.7 without terminating the whole of the Contract, terminate the Contract in respect of part of the Goods and Services only (whereupon a corresponding reduction in the Contract Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Goods and Services; and/or

11.1.8 charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Goods and Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Goods and Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods and Services.

11.2 In the event that the Supplier:

11.2.1 fails to comply with clause 11.1 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or

11.2.2 persistently fails to comply with clause 11.1 above,

the Customer may terminate the Contract with immediate effect by giving the Supplier notice in writing.

## **12. [PREMISES]**

### **12.1 Inspection of Premises**

12.1.1 The Supplier acknowledges that it has inspected the Customer's Premises and has advised the Customer of any aspect of the Customer's Premises that is not suitable for the provision of the Goods and Services and that the specified actions to remedy the unsuitable aspects of the Customer's Premises, together with a timetable for and the costs of those actions, have been specified in paragraph 3.8 of the Order Form.

12.1.2 If the Supplier has either failed to inspect the Customer's Premises or failed to notify the Customer of any required remedial actions in accordance with clause 12.1.1 then the Supplier shall not be entitled to recover any additional costs or charges from the Customer relating to any unsuitable aspects of the Customer's Premises except in respect of any latent structural defect in the Customer's Premises. The onus shall be on the Supplier to prove to the Customer that any work to the Customer's Premises is required in respect of a latent structural defect and that the additional costs or charges are reasonable and necessary. The Supplier shall not incur such additional costs or charges without obtaining Approval.

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- 12.1.3 Any disputes relating to due diligence as set out in clause 2 or this clause 12 shall be resolved in accordance with the Dispute Resolution Procedure.

**12.2 Licence to occupy Premises**

- 12.2.1 Any Customer's Premises made available from time to time to the Supplier by the Customer in connection with the Contract shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under the Contract. The Supplier shall have the use of such Customer's Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of the Contract.

- 12.2.2 The Supplier shall limit access to the Customer's Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Supplier shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such Customer's Premises as the Customer may reasonably request.

- 12.2.3 Save in relation to such actions identified by the Supplier in accordance clause 12.2.1 and set out in paragraph 3.8 of the Order Form, should the Supplier require modifications to the Customer's Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Supplier's expense. The Customer shall undertake any modification work which it approves pursuant to this clause 12.2.3 without undue delay. Ownership of such modifications shall rest with the Customer.

- 12.2.4 The Supplier shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Customer's Premises and conduct of personnel at the Customer's Premises as determined by the Customer, and the Supplier shall pay for the cost of making good any damage caused by the Supplier or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

- 12.2.5 The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Supplier or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Customer retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

**12.3 Property**

- 12.3.1 Where the Customer issues Property free of charge to the Supplier such Property shall be and remain the property of the Customer and the Supplier irrevocably licences the Customer and its agents

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to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Property. The Supplier shall not in any circumstances have a lien or any other interest on the Property and at all times the Supplier shall possess the Property as fiduciary agent and bailee of the Customer. The Supplier shall take all reasonable steps to ensure that the title of the Customer to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-contractors and other appropriate persons and shall, at the Customer's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Customer.

- 12.3.2 The Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Customer otherwise within five (5) Working Days of receipt.
- 12.3.3 The Supplier shall maintain the Property in good order and condition (excluding fair wear and tear) and shall use the Property solely in connection with the Contract and for no other purpose without Approval.
- 12.3.4 The Supplier shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Customer's reasonable security requirements as required from time to time.
- 12.3.5 The Supplier shall be liable for all loss of, or damage to, the Property, (excluding fair wear and tear), unless such loss or damage was caused by the Customer's Default. The Supplier shall inform the Customer within two (2) Working Days of becoming aware of any defects appearing in or losses or damage occurring to the Property.]

### **13. PAYMENT AND CONTRACT CHARGES**

#### **13.1 Contract Charges**

- 13.1.1 In consideration of the Supplier's performance of its obligations under the Contract, the Customer shall pay the Contract Charges in accordance with clause 13.2 (Payment and VAT).
- 13.1.2 The Customer shall, in addition to the Contract Charges and following delivery by the Supplier of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Goods and Services supplied in accordance with the Contract.
- 13.1.3 If at any time during the Contract Period the Supplier reduces its Rates of Charges for any Goods and Services which is provided under the Framework Agreement (whether or not such Goods and Services are offered in a catalogue which is provided under the Framework Agreement) in accordance with the terms of the Framework Agreement, the Supplier shall immediately reduce the

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Contract Price for such Goods and Services under this Contract by the same amount.

- 13.1.4 The benefit of any work being done pursuant to the provisions of Schedule 7 (Value for Money) of the Framework Agreement) which is specifically commissioned from the Supplier by another Contracting Body at any time prior to or during the Contract Period to reduce costs or to improve the quality or efficiency of the Goods and Services or to facilitate their delivery shall be offered by the Supplier to the Customer at no charge.

**13.2 Payment and VAT**

- 13.2.1 The Customer shall pay all sums properly due and payable to the Supplier in cleared funds within the time period specified in paragraphs 7.1 and 7.2 of the Order Form.
- 13.2.2 The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Goods supplied and/or the Services provided and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice.
- 13.2.3 Where the Supplier enters into a Sub-contract it shall ensure that a provision is included in such Sub-contract which requires payment to be made of all sums due by the Supplier to the Sub-contractor within a specified period not exceeding thirty (30) Working Days from the receipt of a validly issued invoice, in accordance with the terms of the Sub-contract.
- 13.2.4 The Supplier shall add VAT to the Contract Charges at the prevailing rate as applicable.
- 13.2.5 The Supplier shall indemnify the Customer on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this clause 13.2.5 shall be paid by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.
- 13.2.6 The Supplier shall not suspend the supply of the Services and/or Goods (as applicable) unless the Supplier is entitled to terminate the Contract under clause 26.4 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Customer on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 13.2.7 [The Supplier shall accept the Government Procurement Card as a means of payment for the Goods and Services where such card is

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agreed with the Customer to be a suitable means of payment. The Supplier shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Customer.]

**13.3 Recovery of Sums Due**

- 13.3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Contract or under any other agreement or contract with the Customer.
- 13.3.2 Any overpayment by either Party, whether of the Contract Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 13.3.3 The Supplier shall make any payments due to the Customer 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 Customer to the Supplier.
- 13.3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

**13.4 Euro**

- 13.4.1 Any requirement of Law to account for the Goods and Services in Euro, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Customer.
- 13.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with clause 13.4.1 by the Supplier.

**14. KEY PERSONNEL**

- 14.1 The Parties have agreed to the appointment of the Key Personnel. The Supplier shall and shall procure that any Sub-contractor shall obtain Approval before removing or replacing any Key Personnel during the Contract Period.
- 14.2 The Supplier shall provide the Customer with at least [one (1)] Month's written notice of its intention to replace any member of Key Personnel.
- 14.3 The Customer shall not unreasonably delay or withhold its Approval to the removal or appointment of a replacement for any relevant Key Personnel by the Supplier or Sub-contractor.

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- 14.4 The Supplier acknowledges that the persons designated as Key Personnel from time to time are essential to the proper provision of the Goods and Services to the Customer. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as qualified and experienced or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 14.5 The Customer may also require the Supplier to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.

**15. SUPPLIER'S STAFF**

- 15.1 The Customer may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Customer's Premises:
- 15.1.1 any member of the Staff; or
- 15.1.2 any person employed or engaged by any member of the Staff,
- whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.
- 15.2 At the Customer's written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission to the Customer's Premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.
- 15.3 Staff engaged within the boundaries of the Customer's Premises shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Customer's Premises.
- 15.4 If the Supplier fails to comply with clause 15.2 within [three (3)] weeks of the date of the request, the Customer may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- 15.5 The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Supplier has failed to comply with clause 15.2 shall be final and conclusive.

**[Relevant Convictions]**

- 15.6 The Supplier shall ensure that no person who discloses that he has a Relevant Conviction, or who is found by the Supplier to have any Relevant Convictions (whether as a result of a police check or through the Criminal Records Bureau procedures or otherwise), is employed or engaged in any part of the provision of the Goods and Services without Approval.

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- 15.7 For each member of Staff who, in providing the Goods and Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Customer owes a special duty of care, the Supplier shall (and shall procure that the relevant Sub-contractor shall):
- 15.7.1 carry out a policy check with the records held by DfES;
  - 15.7.2 conduct thorough questioning regarding any Relevant Convictions; and
  - 15.7.3 ensure a police check is completed and such other checks as may be carried out through the Criminal Records Bureau,

and the Supplier shall not (and shall ensure that any Sub-contractor shall not) engage or continue to employ in the provision of the Goods and Services any person who has a Relevant Conviction or an inappropriate record.]

**16. TUPE**

- 16.1 The Customer shall, based upon a reasonable assessment of the facts, state in paragraph 3.3 of the Order Form which TUPE wording set out in Parts A, B and C (Parts A and B may both apply) of this clause 16 will apply to the Contract.

**PART A**

- 16.2 The Customer and the Supplier will proceed on the basis that the commencement of the provision of the Services by the Supplier under this Contract will be a "Relevant Transfer" to which TUPE and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of TUPE, the contracts of employment between the Customer and the Transferring Customer Employees (except in relation to any contract terms relating to occupational pension schemes) will have effect from the Relevant Transfer Date as if originally made between the Supplier and each such Transferring Customer Employee.
- 16.3 The Customer will perform and discharge all its obligations in respect of all the Transferring Customer Employees prior to the Relevant Transfer Date including all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, and any necessary apportionments in respect of any periodic payments will be made.
- 16.4 The Supplier shall comply with all of its obligations under TUPE and shall perform and discharge all its obligations in respect of all the Transferring Customer Employees from and after the Relevant Transfer Date. The Supplier shall indemnify the Customer against all Employee Liabilities arising from the Supplier's failure to comply with all of its obligations under TUPE and/or perform and discharge any such obligation.

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- 16.5 The Customer will indemnify the Supplier against any Employee Liabilities in respect of the Transferring Customer Employees arising from or as a result of:
- 16.5.1 any act or omission by the Customer relating to a Transferring Customer Employee occurring on or before the Relevant Transfer Date or any other matter, event or circumstance (other than an act or omission of the Supplier or any Sub-Contractor) occurring or having its origin before the Relevant Transfer Date;
  - 16.5.2 any claim made by or in respect of any person employed or formerly employed by the Customer other than a Transferring Customer Employee for which it is alleged the Supplier may be liable by virtue of this Contract and/or TUPE and/or the Acquired Rights Directive; and
  - 16.5.3 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Customer Employee relating to any act or omission of the Customer in relation to its obligations under Regulation 13 of TUPE, except to the extent that the liability arises from the Supplier's or any Sub-contractor's failure to comply with Regulation 13(4) of TUPE.
- 16.6 If any person who is not a Transferring Customer Employee claims, or it is determined, that his contract of employment has been transferred from the Customer to the Supplier pursuant to TUPE or the Acquired Rights Directive then:
- 16.6.1 the Supplier shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer; and
  - 16.6.2 the Customer may offer employment to such person within fifteen (15) Working Days of the notification by the Supplier, or take such other steps as it considers appropriate to deal with the matter.
- 16.7 If such offer is accepted, or if the situation has otherwise been resolved by the Customer, the Supplier shall immediately release the person from his employment.
- 16.8 If, after the fifteen (15) Working Day period specified in clause 16.6.2 has elapsed:
- 16.8.1 no such offer of employment has been made; or
  - 16.8.2 such offer has been made but not accepted; or
  - 16.8.3 the situation has not otherwise been resolved,
- the Supplier may within five (5) Working Days give notice to terminate the employment of such person.

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- 16.9 Subject to the Supplier acting in accordance with the provisions of clauses 16.2 to 16.16 (inclusive) and subject to the Supplier complying with all applicable proper employment procedures set out in Law, the Customer will indemnify the Supplier against all Employee Liabilities arising out of termination pursuant to the provisions of clause 16.8.
- 16.10 If any such person as is described in clause 16.6 is neither re-employed by the Customer nor dismissed by the Supplier within the time scales set out in clauses 16.2 to 16.16 (inclusive) such person will be treated as a Transferring Customer Employee.
- 16.11 The Supplier shall indemnify the Customer against all Employee Liabilities arising from the Supplier's and any Sub-Contractor's failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Transferring Customer Employees arising from or as a result of any act or omission by the Supplier or any Sub-Contractor relating to a Transferring Customer Employee occurring before, on or after the Relevant Transfer Date and/or any other matter, event or circumstance occurring or having its origin on or after the Relevant Transfer Date which would give rise to a substantial change in working conditions to the material detriment of a Transferring Customer Employee.
- 16.12 The Supplier shall indemnify the Customer against all Employee Liabilities in connection with or arising from any claim made by or in respect of any Transferring Customer Employee (or, where applicable, any trainee or employee representative (as defined in TUPE) of any Transferring Customer Employee) arising out of or in connection with:
- 16.12.1 any act or omission of the Supplier or any Sub-contractor in relation to its or their obligations under TUPE whether occurring before, on or after the Relevant Transfer Date or any other matter, event or circumstance occurring or having its origin after the Relevant Transfer Date including any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Customer Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its or their obligations under Regulation 13 of TUPE or in respect of an award of compensation under Regulation 15 of TUPE except to the extent that the liability arises from the Customer's failure to comply with its obligations under TUPE;
  - 16.12.2 in relation to the breach or non-observance by the Supplier after the Relevant Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Transferring Customer Employee;
  - 16.12.3 any proceeding, claim or demand by the Inland Revenue or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - 16.12.3.1 in relation to any Transferring Customer Employee, to the extent that the proceeding,

claim or demand by the Inland Revenue or other statutory authority relates to financial obligations arising after the Relevant Transfer Date; and

16.12.3.2 in relation to any employee who is not a Transferring Customer Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Customer to the Supplier, to the extent that the proceeding, claim or demand by the Inland Revenue or other statutory authority relates to financial obligations arising after the Relevant Transfer Date.

16.12.4 in relation to his/her employment or its termination arising or occurring after the Relevant Transfer Date;

16.13 The Supplier shall notify the Customer of any claims by any Transferring Customer Employee as soon as practicably possible to allow the Customer to conduct or control the defence to such claims as well as any settlement negotiations and shall comply with all reasonable instructions of the Customer and provide such co-operation as the Customer may reasonably require in this respect.

16.14 The Supplier will, and will procure that any Sub-contractor will, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Customer Employee as set down in (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000 and (b) HM Treasury's paper entitled "Fair Deal for Staff Pensions: Procurement of Bulk Transfers and Related Issues" of June 2004 or any other replacement statement of practice, paper or other guidance. Parts A, B, D and E of schedule 8 will apply.

16.15 The Customer warrants that the information provided to the Supplier regarding Transferring Customer Employees shall be true and accurate in all material respects.

16.16 The Customer agrees that it shall not other than in the ordinary course of business, in respect of those employees engaged in the provision of the Services during the period prior to the Relevant Transfer Date save where legally or contractually obliged to do so:

16.16.1 replace or re-deploy any such employee other than where any replacement is of equivalent grade, skills, experience and expertise;

16.16.2 make, promise, propose or permit any changes to their terms and conditions of employment (including any payments connected with the termination of employment);

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- 16.16.3 increase the proportion of working time spent on the Services (or the relevant part) by any of the staff save for fulfilling assignments and projects previously scheduled and agreed;
- 16.16.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees; and
- 16.16.5 increase or reduce the total number of employees so engaged, replace or deploy any other person to perform the Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of any Transferring Customer Employee save for:
  - 16.16.5.1 the execution of assigned operations as detailed in 16.16.3; and/or
  - 16.16.5.2 replacing voluntary resignations or staff terminated by due disciplinary process to satisfy the fulfilment of previously agreed work streams provided that any replacement is employed on the same terms and conditions of employment as the person he/she replaces;

**PART B**

- 16.17 The Customer and the Supplier will proceed on the basis that the commencement of the provision of the Services by the Supplier under this Contract will be a “Relevant Transfer” to which TUPE and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of TUPE, the contracts of employment between the Former Supplier and the Former Supplier Employees (except in relation to any contract terms relating to occupational pension schemes) will have effect from the Relevant Transfer Date as if originally made between the Supplier and each such Former Supplier Employee.
- 16.18 The Customer will use reasonable endeavours to procure (to the extent it has a contractual right to do so) that the Former Supplier will perform and discharge all its obligations in respect of all the Former Supplier Employees, including all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, prior to the Relevant Transfer Date and any necessary apportionments in respect of any periodic payments due to them will be made.
- 16.19 The Supplier shall comply with all of its obligations under TUPE and shall perform and discharge all its obligations in respect of all the Former Supplier Employees including all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, from and after the Relevant Transfer Date. The

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Supplier shall indemnify the Customer for itself and on behalf of the Former Supplier against all Employee Liabilities arising from the Supplier's failure to comply with all of its obligations under TUPE and/or perform and discharge any such obligation in relation to the Former Supplier Employees.

16.20 The Customer will use reasonable endeavours to procure (to the extent it has a contractual right to do so) that the Former Supplier will indemnify the Supplier against all liabilities, damages, costs (including reasonable legal costs), claims, awards and expenses (save for any claims for personal injury which are covered by insurance) in connection with or arising from any claim by any Former Supplier Employee (or, where applicable, any trainee or employee representative of any Former Supplier Employees) arising out of or in connection with:

16.20.1 any fact or matter concerning or arising from his/her employment, or the termination thereof, on or before the Relevant Transfer Date, including (but not limited to) any claims of unfair dismissal, wrongful dismissal, unlawful deduction, breach of contract, sex discrimination, race discrimination or disability discrimination, or any claim for a redundancy payment;

16.20.2 the breach or non-observance by the Former Supplier during the period prior to the Relevant Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Former Supplier Employees; and

16.20.3 any proceeding, claim or demand by the Inland Revenue or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

16.20.3.1 in relation to any Former Supplier Employees, to the extent that the proceeding, claim or demand by the Inland Revenue or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

16.20.3.2 in relation to any employee who is not a Former Supplier Employees, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Former Supplier to the Supplier, to the extent that the proceeding, claim or demand by the Inland Revenue or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.

16.21 If any person who is not a Former Supplier Employee claims, or it is determined, that his contract of employment has been transferred from the

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Former Supplier to the Supplier pursuant to TUPE or the Acquired Rights Directive then:

16.21.1 the Supplier shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer (which may include notice to an Former Supplier); and

16.21.2 the Former Supplier may offer employment to such person within fifteen (15) Working Days of the notification by the Supplier, or take such other steps as it considers appropriate to deal with the matter.

16.22 If such offer is accepted, or if the situation has otherwise been resolved by the Former Supplier, the Supplier shall immediately release the person from his employment.

16.23 If, after the fifteen (15) Working Day period specified in clause 16.21.2 has elapsed:

16.23.1 no such offer of employment has been made; or

16.23.2 such offer has been made but not accepted; or

16.23.3 the situation has not otherwise been resolved,

the Supplier may within five (5) Working Days give notice to terminate the employment of such person.

16.24 Subject to the Supplier acting in accordance with the provisions of clauses 16.17 to 16.28 (inclusive) and subject to the Supplier complying with all applicable proper employment procedures set out in Law, the Customer will use reasonable endeavours to procure (to the extent it has a contractual right to do so) that the Former Supplier will indemnify the Supplier against all liabilities, damages, costs (including reasonable legal costs), claims, awards and expenses (save for any claims for personal injury which are covered by insurance) in connection with or arising from any claim by any employee (or, where applicable, any trainee or employee representative of any employee) in relation to the operation of TUPE upon the contract of employment or upon the employment or termination by the Supplier of the employment of any employee, subject to the provisions of clause 16.23, who is later alleged or determined to have transferred to the employment of the Supplier pursuant to TUPE.

16.25 If any such person as is described in clause 16.21 is neither re-employed by the Former Supplier nor dismissed by the Supplier within the time scales set out in clauses 16.17 to 16.28 (inclusive) such person will be treated as a Former Supplier Employee.

16.26 The Supplier shall indemnify the Customer on behalf of the Former Supplier against all Employee Liabilities arising from the Supplier's or any Sub-Contractor's failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Former Supplier Employees arising from or as a result of any act or omission by the Supplier or any Sub-Contractor relating to a Former Supplier Employee

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occurring before, on or after the Relevant Transfer Date and/or any other matter, event or circumstance occurring or having its origin on or after the Relevant Transfer Date which would give rise to a substantial change in working conditions to the material detriment of a Former Supplier Employee.

- 16.27 The Supplier will, and will procure that any Sub-contractor will, comply with any requirement notified to it by the Customer relating to pensions in respect of any Former Supplier Employee who is a Second Generation Fair Deal Employee as set down in (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000 and (b) HM Treasury's paper entitled "Fair Deal for Staff Pensions: Procurement of Bulk Transfers and Related Issues" of June 2004 or any other replacement statement of practice, paper or other guidance. Parts A, C, D and E of schedule 8 will apply.
- 16.28 The Supplier shall indemnify the Customer for itself and on behalf of the Former Supplier against all Employee Liabilities (save for any claims for personal injury which are covered by insurance) in connection with or arising from any claim by any Former Supplier Employee (or, where applicable, any trainee or employee representative of any Former Supplier Employee) arising or in connection with:
- 16.28.1 his/her employment or its termination arising or occurring after the Relevant Transfer Date;
  - 16.28.2 a failure of the Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and National Insurance contributions relating to the Former Supplier Employee in respect of the period after the Relevant Transfer Date;
  - 16.28.3 any act or omission by the Supplier or any Sub-contractor occurring on or after the Relevant Transfer Date;
  - 16.28.4 any claim made by or in respect of a Former Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its or their obligations under TUPE whether occurring before, on or after the Relevant Transfer Date including any claim made by or in respect of a Former Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its or their obligations under Regulation 13 of TUPE or in respect of an award of compensation under Regulation 15 except to the extent that the liability arises from the Customer's or any Former Supplier's failure to comply with their obligations under TUPE;
  - 16.28.5 any statement communicated to or action undertaken by the Supplier to, or in respect of, any Former Supplier Employee on or before the Relevant Transfer Date regarding the Relevant

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Transfer which has not been agreed in advance with the Customer in writing.

- 16.28.6 the breach or non-observance by the Supplier during the period after the Relevant Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Former Supplier Employee;
- 16.28.7 any proceeding, claim or demand by the Inland Revenue or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - 16.28.7.1 in relation to any Former Supplier Employee, to the extent that the proceeding, claim or demand by the Inland Revenue or other statutory authority relates to financial obligations arising after the Relevant Transfer Date; and
  - 16.28.7.2 in relation to any employee who is not a Former Supplier Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Former Supplier to the Supplier, to the extent that the proceeding, claim or demand by the Inland Revenue or other statutory authority relates to financial obligations arising after the Relevant Transfer Date.
- 16.28.8 The Supplier shall notify the Customer of any claims by any Former Supplier Employee as soon as practicably possible to allow the Customer and the Former Supplier to conduct or control the defence to such claims as well as any settlement negotiations and shall comply with all reasonable instructions of the Customer and provide such co-operation as the Customer may reasonably require in this respect.

**[PART C**

16.29 NOT USED

**17. PRE-SERVICE TRANSFER OBLIGATIONS**

- 17.1 The Supplier agrees that, subject to compliance with the Data Protection Legislation:
  - 17.1.1 within twenty (20) Working Days of the earliest of:
    - 17.1.1.1 receipt of a notification from the Customer of a Service Transfer or intended Service Transfer; or

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- 17.1.1.2 receipt of the giving of notice of early termination of this Contract or any part thereof; or
- 17.1.1.3 the date which is twenty four (24) Months before the due expiry date of this Contract,
  - it shall provide the Supplier's Provisional Staff List which the Supplier believes will transfer to the Customer or the Replacement Supplier (as the case may be), together with Staffing Information in relation to such employees and it will provide an updated Supplier's Provisional Staff List at such intervals as are reasonably requested by the Customer;
- 17.1.2 at least ten (10) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Customer for itself or on behalf of any Replacement Supplier (as the case may be) a final list of Transferring Supplier Employees which shall transfer under TUPE (the "**Supplier's Final Staff List**"); and
- 17.1.3 the Customer shall be permitted to use and disclose information provided by the Supplier under clause 17.1 for informing any tenderer or other prospective Replacement Supplier for any services which are substantially the same type of services (or any part thereof) as the Services.
- 17.2 The Supplier's Final Staff List will identify which of the Staff named are Transferring Supplier Employees. The provision of personal data regarding those individuals detailed on the Supplier's Final Staff List is subject to the consent of such individuals (which the Supplier will use its reasonable endeavours to obtain) and being mindful that the final "Personalised List" can change up to the date of transfer or in the absence of such individual's approval, the Supplier's Final Staff List being suitably anonymised so as to comply with the DPA.
- 17.3 The Supplier warrants, for the benefit of the Customer and any Replacement Supplier, that the information provided under clauses 17.1 and 17.2 of this Contract shall be true and accurate in all material respects.
- 17.4 From the date of the earliest event referred to in clauses 17.1.1.1 to 17.1.1.3 (inclusive), the Supplier agrees, for the benefit of the Customer and any Replacement Supplier, that it shall not, and agrees to procure that its Sub-contractors shall not, other than in the ordinary course of business, in respect of those employees engaged in the provision of the Services:
  - 17.4.1 replace or re-deploy any such employee other than where any replacement is of equivalent grade, skills, experience and expertise;
  - 17.4.2 make, promise, propose or permit any changes to their terms and conditions of employment (including any payments connected with the termination of employment);

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- 17.4.3 increase the proportion of working time spent on the Services (or the relevant part) by any of the Staff save for fulfilling assignments and projects previously scheduled and agreed;
- 17.4.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Staff List; and
- 17.4.5 increase or reduce the total number of employees so engaged, replace any Staff listed on the Supplier's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Staff List save for:
  - 17.4.5.1 the execution of assigned operations as detailed in 17.4.3; and/or
  - 17.4.5.2 replacing voluntary resignations or Staff terminated by due disciplinary process to satisfy the fulfilment of previously agreed work streams provided that any replacement is employed on the same terms and conditions of employment as the person he/she replaces;
- 17.5 The Supplier will promptly notify or as appropriate will procure that the Sub-contractor will promptly notify the Customer or, at the direction of the Customer, the Replacement Supplier of any notice to terminate employment given by the Supplier or any Subcontractor or received from any persons listed on the Supplier's Provisional Staff List regardless of when such notice takes effect.
- 17.6 During the Contract Period, the Supplier will provide to the Customer any information the Customer may reasonably require relating to any individual employed, assigned or engaged in providing the Services (subject to any limitations imposed by the DPA) including without limitation the Staffing Information and, upon reasonable request by the Customer and subject only to any limitation imposed by the DPA, the Supplier will provide, and will procure that its Subcontractors will provide, the Customer or at the request of the Customer, the Replacement Supplier, with access (on reasonable notice and during normal working hours) to such employment records as the Customer reasonably requests and will allow the Customer or the Replacement Supplier to have copies of any such documents.
- 17.7 Within seven (7) Working Days following the Service Transfer Date, the Supplier will provide to the Customer or any Replacement Supplier, in respect of each person on the Supplier's Final Staff List who is a Transferring Supplier Employee:
  - 17.7.1 the most recent Month's copy pay slip data;
  - 17.7.2 details of cumulative pay for tax and pension purposes;
  - 17.7.3 details of cumulative tax paid;

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- 17.7.4 tax code;
- 17.7.5 details of any voluntary deductions from pay; and
- 17.7.6 bank/building society account details for payroll purposes.

**18. TUPE EXIT PROVISION**

- 18.1 The Customer shall determine whether or not based upon a reasonable assessment of the facts a Service Transfer is a situation to which TUPE and/or the Acquired Rights Directive may apply. In circumstances where it is so reasonably determined, it is agreed the Customer or a Replacement Supplier would inherit liabilities in respect of employees of the Supplier or any Sub-contractor engaged in the provision of the Services and, accordingly, the provisions in clauses 18 shall apply.
- 18.2 The Customer and the Supplier will proceed on the basis that the commencement of the provision of the Services by the Replacement Supplier under a replacement contract will be a "Relevant Transfer" to which TUPE and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of TUPE, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms relating to occupational pension schemes) will have effect from the Service Transfer Date as if originally made between the Replacement Supplier and each such Transferring Supplier Employee.
- 18.3 The Supplier shall, and shall procure that any Sub-contractor shall, perform and discharge all its obligations in respect of all the Transferring Supplier Employees up to and including the Service Transfer Date and any necessary apportionments in respect of any periodic payments due to them will be made. The Supplier shall indemnify the Customer for itself and on behalf of any Replacement Supplier against all Employee Liabilities arising from the Supplier's, or any Sub-contractor's, failure to perform and discharge any such obligation.
- 18.4 The Supplier shall indemnify the Customer for itself and on behalf of any Replacement Supplier against any Employee Liabilities in respect of the Transferring Supplier Employees arising from or as a result of:
  - 18.4.1 any act or omission by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date;
  - 18.4.2 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee for which it is alleged that the Customer or any Replacement Supplier may be liable by virtue of this Contract and/or TUPE and/or the Acquired Rights Directive;
  - 18.4.3 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-

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contractor in relation to its or their obligations under TUPE whether occurring before, on or after the Service Transfer Date including any claim relating to its or their obligations under Regulation 13 of TUPE or in respect of an award of compensation under Regulation 15 of except to the extent that the liability arises from the Customer's or any Replacement Supplier's failure to comply with Regulation 13(4) of TUPE;

- 18.4.4 any statement communicated to or action undertaken by the Supplier to, or in respect of, any Transferring Supplier Employee on or before the Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the Customer in writing;
- 18.4.5 in relation to any proposed change by the Supplier in the working conditions or terms of employment of any Transferring Supplier Employees to take effect after the Service Transfer Date (including any claim for constructive dismissal), whether such change is proposed before or after the Service Transfer Date;
- 18.4.6 a failure of the Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and National Insurance contributions relating to the Transferring Supplier Employees in respect of the period on or before the Service Transfer Date);
- 18.4.7 in respect of any fact or matter concerning or arising from the Transferring Supplier Employees employment, or the termination thereof, on or before the Service Transfer Date including (any claim for a redundancy payment;
- 18.4.8 in relation to the breach or non-observance by the Supplier during the period prior to the Service Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees; and
- 18.4.9 any proceeding, claim or demand by the Inland Revenue or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - 18.4.9.1 in relation to any Transferring Supplier Employees, to the extent that the proceeding, claim or demand by the Inland Revenue or other statutory authority relates to financial obligations arising before the Service Transfer Date; and
  - 18.4.9.2 in relation to any employee who is not a Transferring Supplier Employees, and in respect of whom it is later alleged or determined that TUPE applied so as to

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transfer his/her employment from the Supplier to the Customer or the Replacement Supplier, to the extent that the proceeding, claim or demand by the Inland Revenue or other statutory authority relates to financial obligations arising before the Service Transfer Date.

- 18.5 If any person who is not a Transferring Supplier Employee claims, or it is determined, that his contract of employment has been transferred from the Supplier or any Sub-contractor to the Customer or any Replacement Supplier pursuant to TUPE or the Acquired Rights Directive, then:
- 18.5.1 the Customer will and shall use its reasonable endeavours to procure that the Replacement Supplier will, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
- 18.5.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Customer or the Replacement Supplier or take such other steps as it considers appropriate to deal with the matter.
- 18.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier, the Customer shall and shall use its reasonable endeavours to procure that the Replacement Supplier shall immediately release the person from his employment.
- 18.7 If, after the fifteen (15) Working Day period specified in clause 18.5.2 has elapsed:
- 18.7.1.1 no such offer of employment has been made;  
or
- 18.7.1.2 such offer has been made but not accepted;  
or
- 18.7.1.3 the situation has not otherwise been resolved,
- the Customer may and shall advise the Replacement Supplier that it may within five (5) Working Days give notice to terminate the employment of such person.
- 18.8 Subject to the Customer or the Replacement Supplier acting in accordance with the provisions of this clause 18 and in accordance with all applicable proper employment procedures set out in Law, the Supplier shall indemnify the Customer for itself and on behalf of the Replacement Supplier against all Employee Liabilities arising out of termination pursuant to the provisions of clause 18.7.
- 18.9 If any such person as is described in clause 18.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Customer or

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Replacement Supplier within the time scales set out in this clause 18, such person will be treated as a Transferring Supplier Employee.

- 18.10 The Customer shall indemnify the Supplier against all Employee Liabilities arising from the Customer's, and shall procure that the Replacement Supplier shall indemnify the Supplier against all Employee Liabilities arising from the Replacement Supplier's, failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Transferring Supplier Employee arising from or as a result of any act or omission by the Customer or a Replacement Supplier (as appropriate) relating to a Transferring Supplier Employee occurring before, on or after the Service Transfer Date and/or any other matter, event or circumstance occurring or having its origin on or after the Service Transfer Date which would give rise to a substantial change in working conditions of a Transferring Supplier Employee to the material detriment of a Transferring Supplier Employee.
- 18.11 The Customer shall procure that the Replacement Supplier shall indemnify the Supplier against any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or any of its sub-contractors in relation to its or their obligations under TUPE whether occurring before, on or after the Service Transfer Date including any claim relating to its obligations under Regulation 13(4) of TUPE except to the extent that the liability arises from any Supplier's or Supplier Subcontractor's failure to comply with its obligations under TUPE.
- 18.12 The Customer shall indemnify the Supplier against any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Supplier Employee relating to any act or omission of the Customer in relation to its obligations under TUPE whether occurring before, on or after the Service Transfer Date including any claim relating to its or their obligations under Regulation 13(4) of TUPE except to the extent that the liability arises from the Supplier's or Supplier Subcontractor's failure to comply with Regulation 13 of TUPE.
- 18.13 If, in the event of a Service Transfer to which TUPE or the Acquired Rights Directive do not apply the following provisions shall apply:
- 18.13.1 the Customer can and shall advise the Replacement Supplier that it can, in its discretion, make to any of the employees identified on the list provided by the Supplier under clause 18, an offer, in writing, to employ that employee under a new contract of employment to take effect on the Day after the termination referred to in clause 8.2.
- 18.13.2 When the offer has been made by the Customer or Replacement Supplier and accepted by any employee or worker, the Supplier shall and shall procure that any Sub-contractor shall permit the employee or worker to leave its employment, as soon as practicable depending on the business

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needs of the Supplier, which could be without the employee or worker having worked his full notice period, if the employee so requests.

- 18.13.3 If the employee does not accept an offer of employment made by the Customer or Replacement Supplier, or no such offer is made, the employee shall remain employed by the Supplier (or the relevant Sub-contractor, as the case may be) and all Employee Liabilities in relation to the employee shall remain with the Supplier or the relevant Sub-contractor and the Supplier shall indemnify the Customer for itself and on behalf of any Replacement Supplier against any Employment Liabilities that either of them may incur in respect of any such employees of the Supplier or the relevant Sub-contractor.

## 19. TRAINING

- 19.1 The Supplier shall provide training to the Customer's personnel in accordance with paragraph 3.7 of the Order Form (if any) in respect of the use and maintenance of the Goods.
- 19.2 The Contract Charges shall include the cost of any training and instruction of the Customer's personnel in the use and maintenance of the Goods.

## 20. STAFFING SECURITY

- 20.1 The Supplier shall comply with the Staff Vetting Procedures in respect of all Supplier Staff employed or engaged in the provision of the Goods and Services. The Supplier confirms that all Staff employed or engaged by the Supplier at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 20.2 The Supplier shall provide training on a continuing basis for all Staff employed or engaged in the provision of the Goods and Services in compliance with the Security Policy and Security Management Plan.
- 20.3 The Supplier agrees that it will not require that the persons engaged by any Sub-contractor obtain Clearance who have not previously held Clearance except where there is an urgent priority requirement including:
- 20.3.1 Clearance being genuinely necessary and proportionate; or
- 20.3.2 [the work must be completed by the relevant person within thirty (30) Working Days (in relation to Defence Vetting Agency Security Checks and Defence Vetting Agency Counter Terrorist Checks ("**CTC**") and 100 days (in relation to Defence Vetting Agency Developed Vetting) of the Commencement Date; or
- 20.3.3 the role of the Sub-contractor requires immediate and routine unsupervised access to:
- 20.3.3.1 sites or persons at risk of terrorist attack, in which case a CTC can be required; or

20.3.3.2 assets protectively marked as at least SECRET.]

- 20.4 Save in respect of the circumstances set out in clause 20.3 above in the event that it will take longer for the Supplier to carry out the work than to secure Clearance, the Customer's existing practices for escorting and supervising un-cleared Sub-contractors will be followed until such time as the Sub-contractor's Clearance is confirmed.
- 20.5 Where the persons engaged by a Sub-contractor have previously held Clearance, the Supplier may consider such person's Clearance as current if that person has not worked continuously on jobs where Clearance is required, only where the following conditions are met:
- 20.5.1 that person's existing Clearance is not more than three years old in relation to non List x or five years old in relation to List x;
  - 20.5.2 the Sub-contractor has worked on a previous job and had required clearance in the past 12 months; or
  - 20.5.3 the Sub-contractor has not resided overseas for more than six months since its last cleared post.

## **21. INTELLECTUAL PROPERTY RIGHTS**

21.1 Save as expressly granted elsewhere under the Contract:

21.1.1 the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:

21.1.1.1 the Supplier Software;

21.1.1.2 the Documentation; or

21.1.1.3 the Supplier Pre-Existing IPR,

and

21.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including:

21.1.2.1 the Customer Software;

21.1.2.2 the Customer Pre-Existing IPR;

21.1.2.3 the Customer Data;

21.1.2.4 the Assigned Software; or

21.1.2.5 Specially Written Software;

21.1.2.6 the Project Specific IPR;

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- 21.2 Where either party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in clause 21.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other party on the request of the other party (whenever made).
- 21.3 The Supplier shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the Contract) without Approval, use or disclose any of the Customer's Software, Customer's Pre-Existing IPR, Assigned Software, Customer Data, Specially Written Software or the Project Specific IPRs to any third party.
- 21.4 [In relation to the Supplier Software:
- 21.4.1 the Gold Software shall be licensed on the Gold License Terms;
  - 21.4.2 the Silver Software shall be licensed on the Silver License Terms;
  - 21.4.3 the Bronze Software shall be licensed on the Bronze License Terms;
  - 21.4.4 the COTS Software shall be licensed on the COTS License Terms; and
  - 21.4.5 the Assigned Software shall be subject to the Assigned Software Terms.]
- 21.5 [The Supplier hereby grants, or shall procure the direct grant, to the Customer (and the Replacement Supplier) of a perpetual, transferrable, irrevocable, sub-licensable, non-exclusive, royalty free licence to use the Supplier Pre-Existing IPR and the Documentation so far as is necessary for the Customer to receive the Services and make use of the Goods and any services and/or goods provided by the Replacement Supplier.
- 21.6 The Supplier hereby grants to the Customer a perpetual, transferrable, irrevocable, sub-licensable, non-exclusive, royalty free licence to copy the Documentation for any purpose connected with the receipt of the Goods and Services or that is incidental to the exercise of the rights granted to the Customer under this Contract.
- 21.7 The Supplier hereby assigns to the Customer, with full title guarantee, title to and all rights and interest in the Project Specific IPRs or shall procure that the first owner of the Project Specific IPRs assigns them to the Customer on the same basis. Such assignment shall either 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 Project Specific IPRs, as appropriate. The Supplier shall waive or procure a waiver of any moral rights in the Project Specific IPRs assigned to the Customer under this Contract.
- 21.8 If requested to do so by the Customer, the Supplier shall without charge to the Customer execute all documents and do all such further acts as the Customer may require to perfect the assignment under clause 21.5.

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- 21.9 The Customer hereby grants to the Supplier a non-exclusive, non-assignable royalty free licence to use the [Customer Software, Customer's Pre-Existing IPR, Assigned Software, Specially Written Software, Customer Data and the Project Specific IPRs] during the Contract Period for the sole purpose of enabling the Supplier to provide the Services and supply the Goods. Such licence:
- 21.9.1 includes the right to grant sub-licences to Sub-contractors provided that any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in clause 23.6 (Confidentiality); and
  - 21.9.2 is granted solely to the extent necessary for performing the Services and providing the Goods in accordance with this Contract. The Supplier shall not, and shall procure that the Sub-contractors do not, use the licensed materials for any other purpose or for the benefit of any person other than the Customer.
- 21.10 In the event of the termination or expiry of this Contract, the licence referred to in clause 21.9 and any sub-licence granted in accordance with clause 21.9.1 shall terminate automatically and the Supplier shall deliver to the Customer all material licensed to the Customer pursuant to clause 21.9 in the Supplier's possession or control.
- 21.11 Subject to clause 21.12 and clause 22.13 the Supplier shall ensure that no unlicensed software or open source software [(other than such Software in relation to which the Supplier has deposited the Source Code into escrow)] is interfaced with or embedded within any Customer Software or Specially Written Software.
- 21.12 Prior to using any third party IPRs in connection with the supply of the Services and/or provision of the Goods, the Supplier shall submit all details of such third party IPRs as the Customer may request to the Customer for Approval ("**Request for Approval**"). The Supplier shall provide the Customer with details of any third party licence required by the Supplier and/or the Customer in order for the Supplier to carry out its obligations under the Contract using the third party IPRs in the Request for Approval. The Customer reserves the right to withhold Approval in the event that it does not agree to the terms of the third party licence or where any additional charges will be incurred.
- 21.13 Where the Supplier is granted Approval to use the third party IPRs set out in a Request for Approval, the Supplier shall procure that the owner of such third party IPRs grants to the Customer a licence upon the terms informed to the Customer in the Request for Approval.
- 21.14 The Supplier shall on demand, during and after the Contract Period, fully indemnify and keep fully indemnified and hold the Customer and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer or the Crown may suffer or incur as a result of any claim that the rights granted to the Customer pursuant to this Contract and/or the performance by the Supplier of the Services and/or supply of the Goods and/or Deliverables and/or the possession or use by the Customer of the

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Goods and/or Deliverables infringes or allegedly infringes a third party's Intellectual Property Rights ("**Claim**") except where the Claim arises from:

- 21.14.1 items or materials based upon designs supplied by the Customer;  
or
- 21.14.2 the use of data supplied by the Customer which is not required to be verified by the Supplier under any provision of the Contract.

21.15 The Customer shall notify the Supplier in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Supplier:

- 21.15.1 shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
- 21.15.2 shall take due and proper account of the interests of the Customer;
- 21.15.1 shall consider and defend the Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute; and
- 21.15.2 shall not settle or compromise the Claim without Approval (not to be unreasonably withheld or delayed).

21.16 If a Claim is made in connection with the Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall immediately notify the Customer and, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), use its best endeavours to:

21.16.1 modify the relevant part of the Services, Goods and/or the Deliverables without reducing the performance or functionality of the same, or substitute alternative services or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that:

- 21.16.1.1 the provisions herein shall apply with any necessary changes to such modified services or deliverables or to the substitute services or deliverables; or
- 21.16.1.2 such substitution shall not increase the burden on the Customer; or
- 21.16.1.3 the replaced or modified item does not have an adverse effect on any other Services or the ICT Environment;
- 21.16.1.4 there is no additional cost to the Customer; and

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21.16.1.5 such modified or substituted goods and/or services items shall be acceptable to the Customer (such acceptance not to be unreasonably withheld); or

21.16.2 procure a licence to use and supply the Services, Goods and/or the Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Customer;

21.16.3 in relation to the performance of the Supplier's responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations,

and in the event that the Supplier is unable to comply with clauses 21.16.1 or 21.16.2 within twenty (20) Working Days of receipt of the Supplier's notification the Customer may terminate the Contract with immediate effect by notice in writing and the Supplier shall, upon demand, refund the Customer with all monies paid in respect of the Services, Goods and/or Deliverable that is subject to the Claim.

21.17 The Supplier's compliance with clause 21.16 shall be at its own expense and the Supplier shall be liable for all costs and expenses that the Customer may incur resulting from the Customer's compliance with clause 21.16.

21.18 In the event that a modification or substitution in accordance with clause 21.16.1 is not possible so as to avoid the infringement, or the Supplier has been unable to procure a licence in accordance with clause 21.16.2, the Customer shall be entitled to delete the relevant Service, Goods and/or Deliverable from the Contract.

21.19 If the Supplier elects to modify or replace an item pursuant to clause 21.16.1 or to procure a licence in accordance with clause 21.16.2, but this has not avoided or resolved the Claim, then the Customer may terminate this Contract by written notice with immediate effect and, without prejudice to the indemnity set out in clause 21.14, the Supplier shall, be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring and implementing and the substitute items.

21.20 The Supplier shall have no rights to use any of the Customer's names, logos or trademarks without prior Approval.

21.21 [This clause 21 sets out the entire financial liability of the Supplier with regard to the infringement of any IPRs as a result of the provision of the Goods and Services hereunder. This shall not affect the Supplier's financial liability for other Defaults or causes of action that may arise.]

## **22. SOURCE CODE**

22.1 [In relation to the Silver Software, Bronze Software [and COTS Software], the Supplier shall, at such intervals notified by the Customer from time to time, deposit the Source Code to such software in escrow with such

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person as the Customer shall notify and the Supplier shall ensure that the deposited version of such Source Code is kept up to date as such software is modified or upgraded.

22.2 In circumstances where the Customer obtains the release of the Source Code to the Silver Software, Bronze Software [and COTS Software] from escrow, the Supplier hereby grants to the Customer a perpetual, assignable, royalty-free and non-exclusive licence to Use and support the Source Code version of such software to the extent necessary for the receipt of the Services or any Replacement Services, use of the Goods or the Customer's normal business undertakings.

22.3 In relation to the Gold Software and Assigned Software, the Supplier will deliver to the Customer the Source Code in respect of such software at such intervals as the Customer specifies from time to time including at the same time as each new release of the Gold Software and Assigned Software.]

## **23. PROTECTION OF INFORMATION**

### **23.1 Security Requirements**

23.1.1 The Supplier shall comply, and shall procure the compliance of the Staff, with the Security Policy and the Security Management Plan and the Supplier shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.

23.1.2 The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.

23.1.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Goods and Services it may notify the Customer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Contract Charges shall then be agreed in accordance with the procedure set out in clause 40.

23.1.4 Until and/or unless a change to the Contract Charges is agreed by the Customer pursuant to clause 40 the Supplier shall continue to perform the Services and provide the Goods in accordance with its existing obligations.

### **23.2 Malicious Software**

23.2.1 The Supplier shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software in the ICT Environment (or as otherwise agreed between the Parties).

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23.2.2 Notwithstanding clause 23.2.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

23.2.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of clause 23.2.1 shall be borne by the Parties as follows:

23.2.3.1 by the Supplier, where the Malicious Software originates from the Supplier Software or the Customer Data (whilst the Customer Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Supplier; and

23.2.3.2 by the Customer if the Malicious Software originates from the Customer Software or the Customer Data (whilst the Customer Data was under the control of the Customer).

**23.3 Security of Premises**

23.3.1 The Customer shall be responsible for maintaining the security of the Customer's Premises in accordance with its standard security requirements. The Supplier shall comply with all reasonable security requirements of the Customer while on the Customer's Premises and shall ensure that all Staff comply with such requirements.

23.3.2 The Customer shall provide the Supplier upon request copies of its written security procedures and shall afford the Supplier upon request an opportunity to inspect its physical security arrangements.

**23.4 Customer Data**

23.4.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.

23.4.2 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly Approved by the Customer.

23.4.3 To the extent that Customer Data is held and/or processed by the Supplier, the Supplier shall supply that Customer Data to the

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Customer as requested by the Customer and in the format specified in this Contract (if any) and in any event as specified by the Customer from time to time in writing.

- 23.4.4 To the extent that Customer Data is held and/or processed by the Supplier, the Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 23.4.5 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy.
- 23.4.6 [The Supplier shall ensure that any system on which the Supplier holds any Customer Data which is protectively marked shall be accredited using [Security Policy Framework and IA Policy, taking into account guidance on Risk Management and Accreditation of Information Systems] [HMG IA Standard Number 2 (Risk Management and Accreditation of Information Systems)] and the Supplier shall review such accreditation status at least once in each calendar Year to assess whether material changes have occurred which could alter the original accreditation decision. If any such changes have occurred then the Supplier shall resubmit such system for accreditation.]
- 23.4.7 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Customer may:
- 23.4.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the BCDR Plan and the Supplier shall do so as soon as practicable but in accordance with the time period notified by the Customer; and/or
  - 23.4.7.2 itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the BCDR Plan.
- 23.4.8 If at any time the Supplier suspects or has reason to believe that Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.

**23.5 Protection of Personal Data**

23.5.1 With respect to the Parties' rights and obligations under this Contract, the Parties agree that the Customer is the Data Controller and that the Supplier is the Data Processor.

23.5.2 The Supplier shall:

23.5.2.1 Process the Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Customer to the Supplier during the Contract Period);

23.5.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services and Goods or as is required by Law or any Regulatory Body;

23.5.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

23.5.2.4 take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data;

23.5.2.5 obtain Approval in order to transfer the Personal Data to any Sub-contractors or Affiliates for the provision of the Services and Goods;

23.5.2.6 ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 23.5;

23.5.2.7 ensure that none of the Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer;

23.5.2.8 notify the Customer (within five (5) Working Days) if it receives:

(a) a request from a Data Subject to have access to that person's Personal Data; or

(b) a complaint or request relating to the Customer's obligations under the Data Protection Legislation;

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23.5.2.9 provide the Customer with full cooperation and assistance in relation to any complaint or request made, including by:

- (a) providing the Customer with full details of the complaint or request;
- (b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer's instructions;
- (c) providing the Customer with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and
- (d) providing the Customer with any information requested by the Customer;

23.5.2.10 permit the Customer or the Customer Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, the Supplier's data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that the Supplier is in full compliance with its obligations under this Contract;

23.5.2.11 provide a written description of the technical and organisational methods employed by the Supplier for processing Personal Data (within the timescales required by the Customer); and

23.5.2.12 [not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the Commencement Date, the Supplier (or any Sub-contractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area, the following provisions shall apply:

- (a) the Supplier shall submit a request for Variation to the Customer which shall be dealt with in accordance with the Variation Procedure and paragraph (b) to (d) below;
- (b) the Supplier shall set out in its request for a Variation details of the following:
  - (i) the Personal Data which will be Processed and/or transferred outside the European Economic Area;

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- (ii) the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the European Economic Area;
  - (iii) any Sub-contractors or other third parties who will be Processing and/or transferring Personal Data outside the European Economic Area; and
  - (iv) how the Supplier will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure the Customer's compliance with the Data Protection Legislation) in respect of the Personal Data that will be Processed and/or transferred outside the European Economic Area;
- (c) in providing and evaluating the request for Variation, the Parties shall ensure that they have regard to and comply with then-current Customer, Government and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing and/or transfers of Personal Data outside the European Economic Area and/or overseas generally but, for the avoidance of doubt, the Customer may, in its absolute discretion, refuse to grant Approval of such Process and/or transfer any Personal Data outside the European Economic Area; and
- (d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:
  - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) in this Contract or a separate data processing agreement between the parties; and
  - (ii) procuring that any Sub-contractor or other third party who will be Processing and/or transferring the Personal Data

outside the European Economic Area enters into a direct data processing agreement with the Customer on such terms as may be required by the Customer, which the Supplier acknowledges may include the incorporation of standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation).]

- 23.5.3 The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Customer to breach any of its applicable obligations under the Data Protection Legislation.
- 23.5.4 The Supplier acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to Personal Data that the Customer may be irreparably harmed (including harm to its reputation). In such circumstances, the Customer may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).
- 23.5.1 The Supplier shall, at all times during and after the Contract Period, indemnify the Customer and keep the Customer indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Customer arising from any breach of the Supplier's obligations under this clause 23 except and to the extent that such liabilities have resulted directly from the Customer's instructions.

## 23.6 Confidentiality

- 23.6.1 Except to the extent set out in this clause 23.6 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
  - 23.6.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
  - 23.6.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 23.6.2 Clause 23.6.1 shall not apply to the extent that:
  - 23.6.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to clause 23.8 (Freedom of Information);

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- 23.6.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 23.6.2.3 such information was obtained from a third party without obligation of confidentiality;
  - 23.6.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
  - 23.6.2.5 it is independently developed without access to the other Party's Confidential Information.
- 23.6.3 The Supplier may only disclose the Customer's Confidential Information to the Staff who are directly involved in the provision of the Services and Goods and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 23.6.4 The Supplier shall not, and shall procure that the Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Contract.
- 23.6.5 At the written request of the Customer, the Supplier shall procure that those members of Staff identified in the Customer's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 23.6.6 In the event that any default, act or omission of any Staff causes or contributes (or could cause or contribute) to the Supplier breaching its obligations as to confidentiality under or in connection with this Contract, the Supplier shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Staff, the Supplier shall provide such evidence to the Customer as the Customer may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings to demonstrate that the Supplier is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Staff, and any minutes of meeting and any other records which provide an audit trail of any discussions or exchanges with Staff in connection with obligations as to confidentiality.
- 23.6.7 Nothing in this Contract shall prevent the Customer from disclosing the Supplier's Confidential Information (including the Management Information obtained under clause 8.2):
- 23.6.7.1 to any Crown body or any other Contracting Authority. All Crown bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other

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Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any Contracting Authority;

23.6.7.2 to any consultant, contractor or other person engaged by the Customer or any person conducting an Office of Government Commerce gateway review;

23.6.7.3 for the purpose of the examination and certification of the Customer's accounts; or

23.6.7.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.

23.6.8 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Supplier's Confidential Information is disclosed pursuant to clause 23.6.7 is made aware of the Customer's obligations of confidentiality.

23.6.9 Nothing in this clause 23.6 shall prevent either party 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 the other party's Confidential Information or an infringement of IPR.

23.6.10 In the event that the Supplier fails to comply with clause 23.6.1 to clause 23.6.6, the Customer reserves the right to terminate this Contract with immediate effect by notice in writing.

23.6.11 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of this Contract, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.

**23.7 Official Secrets Acts 1911 to 1989, section 182 of the Finance Act 1989**

23.7.1 The Supplier shall comply with and shall ensure that its Staff comply with, the provisions of:

23.7.1.1 the Official Secrets Acts 1911 to 1989; and

23.7.1.2 Section 182 of the Finance Act 1989.

23.7.2 In the event that the Supplier or its Staff fail to comply with this clause 23, the Customer reserves the right to terminate the Contract by giving notice in writing to the Supplier.

**23.8 Freedom of Information**

- 23.8.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.
- 23.8.2 The Supplier shall and shall procure that its Sub-contractors shall:
- 23.8.2.1 transfer to the Customer 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;
  - 23.8.2.2 provide the Customer with a copy of all Information in its possession, or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and
  - 23.8.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 23.8.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other Contract whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 23.8.4 In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 23.8.5 The Supplier acknowledges that (notwithstanding the provisions of clause 23.6) the Customer may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Goods and Services:
- 23.8.5.1 in certain circumstances without consulting the Supplier; or
  - 23.8.5.2 following consultation with the Supplier and having taken their views into account,

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provided always that where clause 23.8.5 applies the Customer shall, in accordance with any recommendations of the Code, 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.

23.8.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with the provisions of this Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Customer to inspect such records as requested from time to time.

23.8.7 The Supplier acknowledges that the Commercially Sensitive Information is of indicative value only and that the Customer may be obliged to disclose it in accordance with clause 23.8.5.

**23.9 Transparency**

23.9.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

23.9.2 Notwithstanding any other term of this Contract, the Supplier hereby gives his consent for the Customer to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Agreement, to the general public.

23.9.3 The Customer may consult with the Supplier to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.

23.9.4 The Supplier shall assist and cooperate with the Customer to enable the Customer to publish this Contract.

**24. WARRANTIES AND REPRESENTATIONS**

24.1 The Supplier warrants, represents and undertakes to the Customer that:

24.1.1 it has full capacity and authority and all necessary consents licences, permissions (statutory, regulatory, contractual or otherwise) (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;

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

24.1.3 in entering the Contract it has not committed any Fraud;

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- 24.1.4 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
  - 24.1.5 this Contract shall be performed in compliance with all Laws (as amended from time to time) and all applicable Standards;
  - 24.1.6 as at the Commencement Date, all information, statements and representations contained in the Tender and the PQQ Response for the Goods and Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Customer prior to execution of the Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading and all warranties and representations contained in the PQQ Response and Tender shall be deemed repeated in this Contract;
  - 24.1.7 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 its assets which will or might affect its ability to perform its obligations under the Contract;
  - 24.1.8 it is not subject to any contractual obligation, compliance with which is likely to have an adverse affect on its ability to perform its obligations under the Contract;
  - 24.1.9 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
  - 24.1.10 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract and shall maintain the same in full force and effect;
- 24.2 The Supplier warrants represents and undertakes to the Customer that:
- 24.2.1 the Goods and Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
  - 24.2.2 it shall discharge its obligations hereunder (including the provision of the Goods and Services) with all due skill, care and diligence including in accordance with Good Industry Practice and its own established internal procedures;
  - 24.2.3 the Goods and Services are and will continue to be during the Contract Period:
    - 24.2.3.1 of satisfactory quality; and

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- 24.2.3.2 in conformance with the relevant specifications set out in this Contract, the relevant Order and (if applicable) the manufacturer's specifications and documentation;
- 24.2.4 in the three (3) Years prior to the Commencement Date:
  - 24.2.4.1 it has conducted all financial accounting and reporting activities in all material respects in compliance with the generally accepted accounting principles that apply to it in any country where it files accounts; and
  - 24.2.4.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
  - 24.2.4.3 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract; and
  - 24.2.4.4 for the Contract Period that all Staff will be vetted in accordance with Good Industry Practice, the Security Policy and the Quality Standards.
- 24.3 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of breach of that provision by the Supplier.
- 24.4 The Supplier acknowledges and agrees that:
  - 24.4.1 the warranties, representations and undertakings contained in this Contract are material and are designed to induce the Customer into entering into this contract; and
  - 24.4.2 the Customer has been induced into entering into this Contract and in doing so has relied upon the warranties, representations and undertakings contained herein.

**25. LIABILITIES**

**25.1 Liability**

- 25.1.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:
  - 25.1.1.1 death or personal injury caused by its negligence or that of its Staff;
  - 25.1.1.2 Fraud or fraudulent misrepresentation by it or that of its Staff;
  - 25.1.1.3 any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;

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- 25.1.1.4 any claim under clause 24.1;
  - 25.1.1.5 any claim under the indemnity in clauses 13.2.5, [16 to 19 (inclusive), 21.14, 23.5.2 or in respect of a breach of clause 23.6; or
  - 25.1.1.6 any other matter which, by Law, may not be excluded or limited.
- 25.1.2 Subject to clause 25.1.45 and clause 25.1.5 the Supplier shall on demand indemnify and keep indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported late supply or non supply, of the Goods and Services or the performance or non-performance by the Supplier of its obligations under the Contract or the presence of the Supplier or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier.
- 25.1.3 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.
- 25.1.4 Subject always to clause 25.1.1 and clause 25.1.5, the aggregate liability of either Party for each Year of this Contract under or in relation to this Contract:
- 25.1.4.1 all defaults resulting in direct loss to the property of the other Party shall be subject to the financial limits set out in paragraph 8.1 of the Order Form; and
  - 25.1.4.2 in respect of all other Defaults, claims, losses or damages, whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equivalent to one hundred and twenty five percent (125%) of the Charges paid or payable to the Supplier in the year of this Contract, as calculated as at the date of the event giving rise to the claim under consideration (or if such event occurs in the first twelve (12) Months of the Term, the amount estimated to be paid in the first twelve (12) Months of the Term) and subject to the financial limits set out in paragraph 8.2 of the Order Form.
- 25.1.5 Subject to clauses 25.1.1 and 25.1.66, in no event shall either Party be liable to the other for any:
- 25.1.5.1 loss of profits;

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25.1.5.2 loss of business;

25.1.5.3 loss of revenue;

25.1.5.4 loss of or damage to goodwill;

25.1.5.5 loss of savings (whether anticipated or otherwise);  
and/or

25.1.5.6 any indirect, special or consequential loss or damage.

25.1.6 Subject always to the provisions of clauses 25.1.1, 25.1.2, 25.1.4 and 25.1.5, the provisions of 25.1.7 shall not be taken as limiting the right of the Customer to recover as a direct loss:

25.1.6.1 any additional operational and/or administrative expenses arising from the Supplier's Default;

25.1.6.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Supplier's Default;

25.1.6.3 the additional cost of procuring replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Supplier; and

25.1.6.4 any losses, costs, damages, expenses or other liabilities suffered or incurred by the Customer which arise out of or in connection with the loss of, corruption or damage to or failure to deliver Customer Data by the Supplier.

25.1.7 Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Supplier that may arise by virtue of either a breach of the Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.

**25.2 Insurance**

25.2.1 The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss (including the insurance policies specified in paragraph 9 of the Order Form). Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the Contract Period and for the Minimum Insurance Period.

25.2.2 The Supplier shall hold employer's liability insurance in respect of Staff in accordance with paragraph 9 of the Order Form.

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- 25.2.3 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in this clause 25 and paragraph 9 of the Order Form or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 25.2.4 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of the Contract the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 25.2.5 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability referred to in clause 25.1.2.
- 25.2.6 The Supplier shall effect and maintain a professional indemnity insurance policy during the Contract Period in accordance with paragraph 9 of the Order Form and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services effect and maintain appropriate professional indemnity insurance during the Contract Period in accordance with paragraph 9 of the Order Form.
- 25.2.7 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as avoided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or avoid any insurance, or any cover or claim under any insurance in whole or in part.

**25.3 Taxation, National Insurance and Employment Liability**

The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Supplier shall at all times indemnify the Customer and keep the Customer indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Customer is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

## 26. TERMINATION

### 26.1 Termination on insolvency

- 26.1.1 The Customer may terminate the Contract with immediate effect by giving notice in writing to the Supplier where the Supplier is a company and in respect of the Supplier:
- 26.1.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
  - 26.1.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
  - 26.1.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
  - 26.1.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
  - 26.1.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
  - 26.1.1.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986 ; or
  - 26.1.1.7 being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
  - 26.1.1.8 any event similar to those listed in clause 26.1.1.1 to 26.1.1.7 occurs under the law of any other jurisdiction.
- 26.1.2 The Customer may terminate the Contract with immediate effect by notice in writing where the Supplier is an individual and:
- 26.1.2.1 an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors; or

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- 26.1.2.2 a petition is presented and not dismissed within 14 days or order made for the Supplier's bankruptcy; or
- 26.1.2.3 a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- 26.1.2.4 the Supplier is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or
- 26.1.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days; or
- 26.1.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- 26.1.2.7 the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

**26.2 Termination on Change of Control**

26.2.1 The Supplier shall notify the Customer immediately if the Supplier undergoes a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 ("**Change of Control**") and provided this does not contravene any Law shall notify the Customer immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation. The Customer may terminate the Contract by notice in writing with immediate effect within six months of:

- 26.2.1.1 being notified that a Change of Control has occurred or is planned or in contemplation; or
- 26.2.1.2 where no notification has been made, the date that the Customer becomes aware of the Change of Control,

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

[For the purposes of clause 26.2.1, the following shall be disregarded any transfer of shares or of any interest in shares by a person to its Affiliate where such transfer forms part of a bona fide re-organisation or restructuring.]

### 26.3 Termination relating to Guarantee

26.3.1 Where the Supplier has procured a Guarantee pursuant to clause 3, the Customer may terminate the Contract with immediate effect if:

26.3.1.1 the Guarantor withdraws the Guarantee for any reason whatsoever;

26.3.1.2 the Guarantor is in breach or anticipatory breach of the Guarantee;

26.3.1.3 any of the events set out in clauses 26.1.1.1 to 26.1.1.8 occurs in respect of the Guarantor; or

26.3.1.4 the Guarantee becomes invalid or unenforceable for any reason whatsoever,

and in each case the Guarantee is not replaced by an alternative agreement acceptable to the Customer.

### 26.4 Termination on Default

26.4.1 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a Default and if:

26.4.1.1 the Supplier has not remedied the Default to the satisfaction of the Customer within ten (10) Working Days or such other longer period as may be specified by the Customer, after issue of a written notice specifying the Default and requesting it to be remedied; or

26.4.1.2 the Default is not, in the opinion of the Customer, capable of remedy; or

26.4.1.3 the Default is a Material Breach of the Contract.

26.4.2 In the event that through any Default of the Supplier, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded so as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such Default of the Supplier.

26.4.3 If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within the Undisputed Sums Time Period, the Supplier may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is

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due to the Customer exercising its rights under clause 13.3 (Recovery of Sums Due).

**26.5 Termination without Cause**

The Customer shall have the right to terminate the Contract at any time by giving the length of written notice to the Supplier specified in paragraph 10.2 of the Order Form.

**26.6 Termination of Framework Agreement**

The Customer may terminate the Contract by giving written notice to the Supplier with immediate effect if the Framework Agreement is fully or partly terminated for any reason whatsoever other than the termination of the Framework Agreement by the Authority under Clause 26.14 of the Framework Agreement.

**26.7 Termination on Financial Standing**

The Customer may terminate this Contract by serving notice on the Supplier in writing with effect from the date specified in such notice where (in the reasonable opinion of the Customer), there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:

26.7.1 adversely impacts on the Supplier's ability to supply the Goods and Services under this Contract; or

26.7.2 could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Goods and Services under this Contract.

**26.8 Termination on Audit**

The Customer may terminate this Contract by serving notice in writing with effect from the date specified in such notice if the Supplier commits a Default of clauses 32.1 to and 32.5 and clause 32.7 (Records and Audit Access).

**26.9 Termination in relation to Benchmarking**

The Customer may terminate this Contract by serving notice on the Supplier in writing with effect from the date specified in such notice if the Supplier refuses or fails to comply with its obligations as set out in [Schedule 7 of the Framework Agreement] (Continuous Improvement and Benchmarking).

**26.10 Partial Termination**

If the Customer is entitled to terminate this Contract pursuant to this clause 26, it may (at its sole discretion) terminate all or part of this Contract.

**27. CONSEQUENCES OF EXPIRY OR TERMINATION**

27.1 Where the Customer terminates the Contract under clauses 26.4 (Guarantee), 26.4 (Termination on Default), 26.7 (Financial Standing), 26.8 (Audit), 26.9 (Benchmarking) and then makes other arrangements for the

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supply of Goods and/or the Services, the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clauses 26.3, 26.4, 26.7, 26.8 and 26.9, no further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.

- 27.2 Subject to clause 25, where the Customer terminates the Contract under clause 26.5 (Termination without Cause), the Customer shall indemnify the Supplier against any reasonable and proven commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of the Contract, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under clause 26.5 (Termination without Cause).
- 27.3 The Customer shall not be liable under clause 27.2 to pay any sum which:
- 27.3.1 was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
  - 27.3.2 when added to any sums paid or due to the Supplier under the Contract, exceeds the total sum that would have been payable to the Supplier if the Contract had not been terminated prior to the expiry of the Contract Period.
- 27.4 On the termination of the Contract for any reason, the Supplier shall:
- 27.4.1 immediately return to the Customer all Confidential Information, Personal Data and Customer's Pre-Existing IPRs and the Project Specific IPRs in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Goods and Services;
  - 27.4.2 cease to use the Customer Data and, at the direction of the Customer provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form in the formats and on media agreed with the Customer and/or the Replacement Supplier;
  - 27.4.3 except where the retention of Customer Data is required by Law, on the earlier of the receipt of the Customer's written instructions or 12 months after the date of expiry or termination, destroy all copies of the Customer Data and promptly provide written confirmation to the Customer that the data has been destroyed.

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- 27.4.4 immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Supplier under clause 5.2. Such property shall be handed back to the Customer in good working order (allowance shall be made for reasonable wear and tear);
  - 27.4.5 transfer to the Customer and/or the Replacement Supplier (as notified by the Customer) such of the Licensed Goods and/or contracts listed in the Exit Plan as are notified to it by the Supplier and/or the Customer in return for payment of the costs (if any) set out in the Exit Plan in respect of such Licensed Goods and/or contracts;
  - 27.4.6 assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Supplier and/or the completion of any work in progress in accordance with the Exit Plan, or if no Exit Plan has been agreed, provide such assistance and co-operation as the Customer may require;
  - 27.4.7 return to the Customer any sums prepaid in respect of the Goods and Services not provided by the date of expiry or termination (howsoever arising); and
  - 27.4.8 promptly provide all information concerning the provision of the Goods and Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Goods and Services have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence.
- 27.5 If the Supplier fails to comply with clause 27.4.1 and 27.4.8, the Customer may recover possession thereof and the Supplier grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted agents or Sub-contractors where any such items may be held.
- 27.6 Where the end of the Contract Period arises due to the Supplier's Default, the Supplier shall provide all assistance under clause 27.4.5 and 27.4.8 free of charge. Otherwise, the Customer shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.
- 27.7 At the end of the Contract Period (howsoever arising) the licence granted pursuant to clause 12.2.1 shall automatically terminate without the need to serve notice.
- 27.8 Save as otherwise expressly provided in the Contract:
- 27.8.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and

- 27.8.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under clauses 13.2 (Payment and VAT), 13.3 (Recovery of Sums Due), 21 (Intellectual Property Rights), 23.5 (Protection of Personal Data), 23.6 (Confidentiality), 23.7 (Official Secrets Acts 1911 to 1989), 23.8 (Freedom of Information), 25 (Liabilities), 27 (Consequences of Expiry or Termination), 31 (Prevention of Bribery and Corruption), 32 (Records and Audit Access), 38 (Cumulative Remedies), 44 (Conflicts of Interest), 34 (Prevention of Fraud), 46 (The Contracts (Rights of Third parties Act 1999) and 49.1 (Governing Law and Jurisdiction).

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

- 28.1 The Supplier shall not make any press announcements or publicise the Contract in any way without Approval and shall take reasonable steps to ensure that its servants, agents, employees, sub-contractors, suppliers, professional advisors and consultants comply with this clause 28. Any such press announcements or publicity proposed under this clause 28.1 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information,
- 28.2 Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Customer shall be entitled to publicise the Contract in accordance with any legal obligation upon the Customer, including any examination of the Contract by the Auditor.
- 28.3 The Supplier shall not do anything or permit to cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

## **29. HEALTH AND SAFETY**

- 29.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's Premises and which may affect the Supplier in the performance of its obligations under the Contract.
- 29.2 While on the Customer's Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.
- 29.3 The Supplier shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 29.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the supply of the Goods and Services under the Contract.

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29.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Customer on request.

**30. ENVIRONMENTAL REQUIREMENTS**

The Supplier shall, when working on the Premises, perform its obligations under the Contract in accordance with the Customer's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

**31. PREVENTION OF BRIBERY AND CORRUPTION**

31.1 The Supplier shall not:

31.1.1 offer or give, or agree to give, to any employee, agent, servant or representative of the Customer, or any other public body or person employed by or on behalf of the Customer, any gift or other consideration of any kind which could act as an inducement or a reward for any act or failure to act in relation to this Contract;

31.1.2 engage in and shall procure that all Supplier's Staff, consultants, agents or Sub-contractors or any person acting on the Supplier's behalf shall not commit, in connection with this Contract, a Prohibited Act under the Bribery Act 2010, or any other relevant laws, statutes, regulations or codes in relation to bribery and anti-corruption; and

31.1.3 commit any offences under the Prevention of Corruption Acts 1889 to 1916.

31.2 The Supplier warrants, represents and undertakes that it has not:

31.2.1 paid commission or agreed to pay commission to the Customer or any other public body or any person employed by or on behalf of the Customer or a public body in connection with the Contract; and

31.2.2 entered into this Contract with knowledge, that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Customer or any other public body or any person employed by or on behalf of the Customer in connection with the Contract, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Customer and the Authority before execution of this Contract;

31.3 The Supplier shall:

31.3.1 in relation to this Contract, act in accordance with the Ministry of Justice Guidance pursuant to Section 9 of the Bribery Act 2010;

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- 31.3.2 immediately notify the Customer and the Authority if it suspects or becomes aware of any breach of this clause 31;
  - 31.3.3 respond promptly to any of the Customer's enquiries regarding any breach, potential breach or suspected breach of this clause 31 and the Supplier shall co-operate with any investigation and allow the Customer to audit Supplier's books, records and any other relevant documentation in connection with the breach;
  - 31.3.4 if so required by the Customer, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing of the Supplier and all persons associated with it or other persons who are supplying the Goods and Services in connection with this Contract compliance with this clause 31. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request;
  - 31.3.5 have and maintain an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it any of its Staff, consultants, agents or Sub-contractors, or any person acting on the Supplier's behalf from committing a Prohibited Act and shall enforce it where appropriate.
- 31.4 If the Supplier, its Staff, consultants, agents or Sub-contractors or any person acting on the Supplier's behalf, in all cases whether or not acting with the Supplier's knowledge breaches:
- 31.4.1 this clause 31; or
  - 31.4.2 the Bribery Act 2010 in relation to this Contract or any other contract with the Customer or any other public body or any person employed by or on behalf of the Customer or a public body in connection with the Contract,
- the Customer shall be entitled to terminate this Contract by written notice with immediate effect.
- 31.5 Without prejudice to its other rights and remedies under this clause 31, the Customer shall be entitled to recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full from and against:
- 31.5.1 the amount of value of any such gift, consideration or commission; and
  - 31.5.2 any other loss sustained by the Customer in consequence of any breach of this clause 31.

## **32. RECORDS AND AUDIT ACCESS**

- 32.1 The Supplier shall keep and maintain for [seven (7)] Years after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Goods and Services provided under it, and the amounts paid by the Customer.

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- 32.2 .The Supplier shall keep the records and accounts referred to in clause 32.1 above in accordance with Good Industry Practice and generally accepted accounting principles.
- 32.3 The Supplier shall afford the Customer and the Auditors access to the records and accounts referred to in clause 32.2 at the Supplier's premises and/or provide copies of such records and accounts, as may be required by the Customer and/or the Auditors from time to time, in order that the Customer and/or the Auditors may carry out an inspection including for the following purposes:
- 32.3.1 to verify the accuracy of the Contract Price (and proposed or actual variations to them in accordance with this Contract), and/or the costs of all Supplier (including Sub-contractors) of the Services;
  - 32.3.2 to review the integrity, confidentiality and security of the Customer Data held or used by the Supplier;
  - 32.3.3 to review the Supplier's compliance with the DPA in accordance with this Contract and any other Laws;
  - 32.3.4 to review the Supplier's compliance with its continuous improvement and benchmarking obligations set out in schedule 7 of the Framework Agreement and clause 9 of the Contract;
  - 32.3.5 to review the Supplier's compliance with its security obligations set out in clause 21;
  - 32.3.6 to review any books of account kept by the Supplier in connection with the provision of the Service;
  - 32.3.7 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 Customer has used its resources;
  - 32.3.8 to inspect the Customer's assets, including the Intellectual Property Rights, equipment, facilities and maintenance, for the purposes of ensuring that the Customer's assets are secure and that any register of assets is up to date; and/or
  - 32.3.9 to ensure that the Supplier is complying with its obligations under this Contract.
- 32.4 The Supplier shall on request afford the Customer, the Customer's representatives and/or the Auditor access to such records and accounts as may be required by the Customer from time to time.
- 32.5 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) on request during the Contract Period and for a period of [seven (7)] Years after termination or expiry of the Contract Period or the last Contract (whichever is the later) to the Customer and/or its Auditors.

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- 32.6 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Contract Period and for the period specified in paragraph 12 of the Order Form after the date of termination or expiry of the Contract to the Customer and the Auditor.
- 32.7 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services or supply of Goods save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.
- 32.8 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each audit, including:
- 32.8.1 all reasonable information requested by the Customer within the scope of the audit;
  - 32.8.2 reasonable access to sites controlled by the Supplier and to Equipment used in the provision of the Goods and Services; and
  - 32.8.3 access to the Staff.
- 32.9 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 32, unless the audit reveals a material Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

**33. DISCRIMINATION**

- 33.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any Law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).
- 33.2 The Supplier shall take all reasonable steps to secure the observance of clause 33.1 by all servants, employees or agents of the Supplier and all suppliers and sub-contractors employed in the execution of the Contract.

**34. PREVENTION OF FRAUD**

- 34.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
- 34.2 The Supplier shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur save where complying with this provision would cause the Supplier or its Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.

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- 34.3 If the Supplier or its Staff commits any Fraud in relation to this or any other contract with a Contracting Authority or the Customer, the Customer may:
- 34.3.1 terminate the Contract with immediate effect by giving the Supplier notice in writing; and/or
  - 34.3.2 recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full from any loss sustained by the Customer in consequence of any breach of this clause 34 including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods and Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period.

**35. TRANSFER AND SUB-CONTRACTING**

- 35.1 Subject to clause 35.4, the Supplier shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without Approval. The Customer has consented to the engagement of the Sub-contractors listed in paragraph 3.4 of the Order Form.
- 35.2 The Supplier shall not substitute or remove a Sub-contractor or appoint an additional sub-contractor without the prior written consent of the Authority and the Customer. Notwithstanding any permitted sub-contract in accordance with this clause 35, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. 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 employees, staff, agents and the Sub-contractors' employees, staff and agents also do, or refrain from doing, such act or thing.
- 35.3 Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract. The Supplier shall supply such information about proposed Sub-contractors as the Customer may reasonably require in order to enable the Customer to consider whether to grant Approval.
- 35.4 The Supplier may assign to a third party ("**the Assignee**") the right to receive payment of the Contract Charges or any part thereof due to the Supplier under this Contract (including any interest which the Customer incurs under clause 13.2.6). Any assignment under this clause shall be subject to:
- 35.4.1 reduction of any sums in respect of which the Customer exercises its right of recovery under clause 13.3;
  - 35.4.2 all related rights of the Customer under the contract in relation to the recovery of sums due but unpaid; and
  - 35.4.3 the Customer receiving notification under both clauses 35.5 and 35.6.

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- 35.5 In the event that the Supplier assigns the right to receive the Contract Charges under clause 35.4, the Supplier or the Assignee shall notify the Customer in writing of the assignment and the date upon which the assignment becomes effective.
- 35.6 The Supplier shall ensure that the Assignee notifies the Customer of the Assignee's contact information and bank account details to which the Customer shall make payment.
- 35.7 The provisions of clause 13.2 shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Customer.
- 35.8 The Supplier shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 35.9 Where the Customer has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Customer, be sent by the Supplier to the Customer as soon as reasonably practicable.
- 35.10 The Customer may, at its sole discretion, require the Supplier to ensure that each Sub-contract shall include:
- 35.10.1 a right under the Contracts (Rights of Third Parties) Act 1999 for the Customer to enforce the terms of that Sub-contract as if it were the Supplier;
  - 35.10.2 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-contract to the Customer;
  - 35.10.3 a provision requiring the Sub-contractor to enter into a direct confidentiality agreement with the Customer on the same terms as set out in clause 23.6 (Confidentiality);
  - 35.10.4 a provision requiring the Sub-contractor to comply with protection of data requirements pursuant to clauses 23.4 (Customer Data) and 23.5 (Protection of Personal Data);
  - 35.10.5 a provision requiring the Sub-contractor to comply with the restrictions on corrupt gifts and payments pursuant to clause 31 (Prevention of Bribery and Corruption);
  - 35.10.6 require the Supplier to pay any undisputed sum due to the relevant sub-contractor within a specified period that does not exceed 30 days from the date the Supplier receives the sub-contractor's invoice; and
  - 35.10.7 a provision restricting the ability of the Sub-contractor to further sub-contract elements of the service provided to the Supplier without first seeking the prior written consent of the Customer and the Authority.

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- 35.11 If the Customer is able to obtain from any Sub-contractor or any other third party more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier in the supply of the Goods and Services, then the Customer may:
- 35.11.1 require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Customer in respect of the relevant item.
- 35.12 If the Customer exercises the option pursuant to clause 35.11, then the Contract Charges shall be reduced by an amount that is agreed in accordance with the Variation Procedure.
- 35.13 Subject to clause 35.15, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- 35.13.1 any Contracting Authority; or
  - 35.13.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
  - 35.13.3 any private sector body which substantially performs the functions of the Customer,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under the Contract.
- 35.14 Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not, subject to clause 35.15, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Customer.
- 35.15 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause 35.13 to a body which is not a Contracting Authority or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as "**the Transferee**"):
- 35.15.1 the rights of termination of the Customer in clauses 26.1 (Termination on insolvency) 26.2 (Termination on change of control) and 26.4 (Termination on Default) shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and
  - 35.15.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Supplier.
- 35.16 The Customer may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under the Contract. In such circumstances the Customer shall

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authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

- 35.17 For the purposes of clause 35.15 each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

**36. FORCE MAJEURE**

- 36.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing to the other Party.
- 36.2 Any failure or delay by the Supplier in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, Sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Supplier.
- 36.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in clause 36.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.
- 36.4 If an event of Force Majeure event affects the Services, the Customer may direct the Supplier to procure those Goods and/or Services from a third party service provider in which case the Supplier will be liable for payment for the provision of those Goods and/or Services for as long as the delay in performance continues.
- 36.5 The Supplier will not have the right to any payment from the Customer under this Contract where the Supplier is unable to provide the Goods and Services because of an event of Force Majeure. However if the Customer directs the Supplier to use a replacement supplier pursuant to sub-clause 36.4, then the Customer will pay the Supplier (a) the Contract Price; and (b) the difference between the Contract Price and the new supplier's costs if, in respect of the Goods and Services that are subject to Force Majeure, the new service provider's costs are greater than the Contract Price.

**37. WAIVER**

- 37.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- 37.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 47 (Notices).
- 37.3 A waiver by either Party of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

**38. CUMULATIVE REMEDIES**

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 be deemed an election of such remedy to the exclusion of other remedies.

**39. FURTHER ASSURANCES**

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

**40. VARIATION**

- 40.1 Subject to the provisions of this clause 40, the Customer may request a variation to the Goods and Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "**Variation**".
- 40.2 The Customer may request a Variation by completing and sending the Variation form set out in schedule 1 ("**the Variation Form**") to the Supplier giving sufficient information for the Supplier to assess the extent of the Variation and any additional cost that may be incurred. The Supplier shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.
- 40.3 In the event that the Supplier is unable to provide the Variation to the Goods and Services or where the Parties are unable to agree a change to the Contract Charges, the Customer may:
  - 40.3.1 agree to continue to perform their obligations under the Contract without the Variation; or
  - 40.3.2 terminate the Contract with immediate effect, except where the Supplier has already delivered part or all of the Order in accordance with the Order Form or where the Supplier can show

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evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

- 40.4 If the Parties agree the Variation and any variation in the Contract Charges, the Supplier shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

**41. SEVERABILITY**

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

41.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

**42. MISTAKES IN INFORMATION**

The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Supplier in connection with the supply of the Goods and Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein, except where such mistakes are the fault of the Customer.

**43. SUPPLIER'S STATUS**

At all times during the Contract Period the Supplier shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties 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.

**44. CONFLICTS OF INTEREST**

44.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Staff and the duties owed to the Customer under the provisions of the Contract.

44.2 The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in clause 44.1 above arises or is reasonably foreseeable.

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- 44.3 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- 44.4 This clause shall apply during the Contract Period and for a period of two (2) Years after expiry of the Contract Period.

**45. ENTIRE AGREEMENT**

- 45.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 45.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract.
- 45.3 The Supplier acknowledges that it has:
- 45.3.1 entered into the Contract in reliance on its own due diligence alone; and
  - 45.3.2 received sufficient information required by it in order to determine whether it is able to provide the Goods and Services in accordance with the terms of the Contract.
- 45.4 Nothing in clauses 45.1 and 45.2 shall operate to exclude Fraud or fraudulent misrepresentation.
- 45.5 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.

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

- 46.1 A person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.
- 46.2 The parties agree that the Contracts (Rights of Third Parties) Act 1999 (CRITPA) shall apply to clauses 17, 18 and 19 to the extent necessary that

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any Former Supplier and Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Former Supplier and the Replacement Supplier by the Supplier under that clause 17, 18 and 19 in its own right pursuant to clause 1(1) of CRITPA.

- 46.3 No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of this Contract or any one or more clauses of it.

**47. NOTICES**

- 47.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.
- 47.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 47.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
- 47.3 For the purposes of clause 47.2, the address, email address or fax number of each Party shall be the address, email address and fax number set out in the Order Form.
- 47.4 Either Party may change its address for service by serving a notice in accordance with this clause.

**48. LEGISLATIVE CHANGE**

The Supplier shall neither be relieved of its obligations under this Contract nor be entitled to an increase in the Contract Price as the result of a General Change in Law.

**49. DISPUTES AND LAW**

**49.1 Governing Law and Jurisdiction**

The Contract shall be governed by and interpreted in accordance with the laws of England and Wales and the Parties agree to submit to the exclusive jurisdiction of the English courts any dispute that arises in connection with the Contract.

**49.2 Dispute Resolution**

- 49.2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying

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the other of the dispute and such efforts shall involve the escalation of the dispute to the level of representative of each Party specified in paragraph 11.1 of the Order Form.

- 49.2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 49.2.3 If the dispute cannot be resolved by the Parties pursuant to clause 49.2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 49.2.5 unless:
  - 49.2.3.1 the Customer considers that the dispute is not suitable for resolution by mediation; or
  - 49.2.3.2 the Supplier does not agree to mediation.
- 49.2.4 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Supplier and the Staff shall comply fully with the requirements of the Contract at all times.
- 49.2.5 The procedure for mediation is as follows:
  - 49.2.5.1 a neutral adviser or mediator ("**the 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 ("**CEDR**") to appoint a Mediator];
  - 49.2.5.2 the Parties shall within 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 mediation provider specified in paragraph 11 of the Order Form to provide guidance on a suitable procedure;
  - 49.2.5.3 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;

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- 49.2.5.4 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;
- 49.2.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. 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 prior written consent of both Parties; and
- 49.2.5.6 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.

**SCHEDULE 1**  
**VARIATION FORM**

No of Order Form being varied:.....

Variation Form No:.....

**BETWEEN:**

[  ] ("the Customer")

and

HP Inc UK Limited of Cain Road, Bracknell, Berkshire, RG12 1HN ("the Supplier")

1. The Order is varied as follows and shall take effect on the date signed by both Parties: **[Guidance: Insert details of the Variation]**
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

**Signed by an authorised signatory for and on behalf of the Customer**

Signature .....

Date .....

Name in Capitals .....

Address .....

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

Signature .....

Date .....

Name in Capitals .....

Address .....

## SCHEDULE 2

### SECURITY MANAGEMENT PLAN

**[Guidance to customer: please see the guidance contained in the OGC ppn for further information on how this schedule is used.]**

In this schedule the following provisions shall have the meanings given to them below:

<b>"Breach of Security"</b>	in accordance with the security requirements in paragraph 2.7 of the Order Form and the Security Policy, the occurrence of: <ul style="list-style-type: none"><li>(a) any unauthorised access to or use of the Services, the Premises, the Sites, the Supplier System and/or any ICT, information or data (including the Confidential Information and the Customer Data) used by the Customer and/or the Supplier in connection with this Contract; and/or</li><li>(b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Customer Data), including any copies of such information or data, used by the Customer and/or the Supplier in connection with this Contract;</li></ul>
<b>"ISMS"</b>	The Information Security Management System as defined by ISO/IEC 27001. The scope of the ISMS will be as agreed by the parties and will directly reflect the scope of the Services;
<b>"Protectively Marked"</b>	shall have the meaning as set out in the Security Policy Framework;
<b>"Security Policy Framework"</b>	means the Cabinet Office Security Policy Framework (available from the Cabinet Office Security Policy Division);
<b>"Security Tests"</b>	shall have the meaning set out in paragraph <b>Error! Reference source not found.</b> of this schedule 2;
<b>"Statement of Applicability"</b>	shall have the meaning set out in ISO/IEC 27001 and as agreed by the parties [during the procurement phase].

## 1. INTRODUCTION

1.1 This schedule covers:

1.1.1 principles of protective security to be applied in delivering the Services;

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- 1.1.2 [wider aspects of security relating to the Service];
- 1.1.3 the development, implementation, operation, maintenance and continual improvement of an ISMS;
- 1.1.4 the creation and maintenance of the Security Management Plan;
- 1.1.5 audit and testing of ISMS compliance with the security requirements (as set out in paragraph 2.7 of the Order Form);
- 1.1.6 conformance to ISO/IEC 27001 (Information Security Requirements Specification) and ISO/IEC27002 (Information Security Code of Practice) and;
- 1.1.7 obligations in the event of actual, potential or attempted breaches of security.

## 2. PRINCIPLES OF SECURITY

- 2.1 The Supplier acknowledges that the Customer places great emphasis on the confidentiality, integrity and availability of information and consequently on the security provided by the ISMS.
- 2.2 The Supplier shall be responsible for the effective performance of the ISMS and shall at all times provide a level of security which:
  - 2.2.1 is in accordance with Good Industry Practice, Law and this Contract;
  - 2.2.2 complies with the Security Policy;
  - 2.2.3 [complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4) available from the Cabinet Office Security Policy Division (COSPD)];
  - 2.2.4 meets any specific security threats to the ISMS;
  - 2.2.5 complies with ISO/IEC27001 and ISO/IEC27002 in accordance with paragraph **Error! Reference source not found.** of this schedule;
  - 2.2.6 complies with the security requirements as set out in paragraph 2.7 of the Order Form; and
  - 2.2.7 complies with the Customer's ICT standards.
- 2.3 Subject to clause [21.1.3], the references to standards, guidance and policies set out in paragraph 2.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.
- 2.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Customer's

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Representative of such inconsistency immediately upon becoming aware of the same, and the Customer's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

**3. ISMS AND SECURITY MANAGEMENT PLAN**

**3.1 Introduction**

- 3.1.1 The Supplier shall develop, implement, operate, maintain and continuously improve and maintain an ISMS which will, without prejudice to paragraph 2.2, be approved, by the Customer, tested in accordance with schedule 4, periodically updated and audited in accordance with ISO/IEC 27001.
- 3.1.2 The Supplier shall develop and maintain a Security Management Plan in accordance with this schedule to apply during the Contract Period.
- 3.1.3 The Supplier shall comply with its obligations set out in the Security Management Plan.
- 3.1.4 Both the ISMS and the Security Management Plan shall, unless otherwise specified by the Customer, aim to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Premises, the Sites, the Supplier System and any ICT, information and data (including the Customer Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Contract.

**3.2 Development of the Security Management Plan**

- 3.2.1 Within [20] Working Days after the Commencement Date and in accordance with paragraph 3.4 (Amendment and Revision), the Supplier will prepare and deliver to the Customer for approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.
- 3.2.2 If the Security Management Plan, or any subsequent revision to it in accordance with paragraph 3.4 (Amendment and Revision), is approved by the Customer it will be adopted immediately and will replace the previous version of the Security Management Plan. If the Security Management Plan is not approved by the Customer the Supplier shall amend it within 10 Working Days or such other period as the parties may agree in writing of a notice of non-approval from the Customer and re-submit to the Customer for approval. The parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the Customer. If the Customer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution

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Procedure. No approval to be given by the Customer pursuant to this paragraph **Error! Reference source not found.** of this schedule may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 3.3.4 shall be deemed to be reasonable.

**3.3 Content of the Security Management Plan**

3.3.1 The Security Management Plan will set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this schedule (including the principles set out in paragraph 2.2);

3.3.2 The Security Management Plan (including the draft version) should also set out the plans for transiting all security arrangements and responsibilities from those in place at the Commencement Date to those incorporated in the Supplier's ISMS at the date set out in the Implementation Plan for the Supplier to meet the full obligations of the security requirements set out in paragraph 2.7 of the Order Form.

3.3.3 The Security Management Plan will be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other schedules of this Contract which cover specific areas included within that standard.

3.3.4 The Security Management Plan shall be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the Services and shall only reference documents which are in the possession of the Customer or whose location is otherwise specified in this schedule.

**3.4 Amendment and Revision of the ISMS and Security Management Plan**

3.4.1 The ISMS and Security Management Plan will be fully reviewed and updated by the Supplier annually, or from time to time to reflect:

- 3.4.1.1 emerging changes in Good Industry Practice;
- 3.4.1.2 any change or proposed change to the Supplier System, the Services and/or associated processes;
- 3.4.1.3 any new perceived or changed security threats;
- 3.4.1.4 any reasonable request by the Customer.

3.4.2 The Supplier will provide the Customer with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no

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additional cost to the Customer. The results of the review should include, without limitation:

- 3.4.2.1 suggested improvements to the effectiveness of the ISMS;
  - 3.4.2.2 updates to the risk assessments;
  - 3.4.2.3 proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and
  - 3.4.2.4 suggested improvements in measuring the effectiveness of controls.
- 3.4.3 On receipt of the results of such reviews, the Customer will approve any amendments or revisions to the ISMS or Security Management Plan in accordance with the process set out at paragraph 3.2.2.
- 3.4.4 Any change or amendment which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a Customer request or change to the requirement set out in paragraph 2.7 of the Order Form or otherwise) shall be subject to the Variation Procedure and shall not be implemented until approved in writing by the Customer.

#### **4. TESTING**

- 4.1 The Supplier shall conduct tests of the ISMS ("**Security Tests**") on an [annual] basis or as otherwise agreed by the parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Customer.
- 4.2 The Customer shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Customer with the results of such tests (in a form approved by the Customer in advance) as soon as practicable after completion of each Security Test.
- 4.3 Without prejudice to any other right of audit or access granted to the Customer pursuant to this Contract, the Customer and/or its authorised representatives shall be entitled, at any time and without giving notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Customer may notify the Supplier of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the Services. If such tests adversely affect the Supplier's ability to deliver the Services to the agreed Service Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the tests.
- 4.4 Where any Security Test carried out pursuant to paragraphs 4.2 or 4.3 **Error! Reference source not found.** above reveals any actual or potential Breach

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of Security, the Supplier shall promptly notify the Customer of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Customer's approval in accordance with paragraph 3.4.4, the Supplier shall implement such changes to the ISMS and the Security Management Plan in accordance with the timetable agreed with the Customer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan to address a non-compliance with the Security Policy or security requirements (as set out in paragraph 2.7 of the Order Form), the change to the ISMS or Security Management Plan shall be at no cost to the Customer.

**5. COMPLIANCE WITH ISO/IEC 27001**

- 5.1 [The Supplier shall obtain independent certification of the ISMS to ISO/IEC 27001 within [12] months of the Commencement Date and shall maintain such certification for the duration of the Contract.]
- 5.2 [If certain parts of the ISMS do not conform to good industry practice, or controls as described in ISO/IEC 27002 are not consistent with the Security Policy, and, as a result, the Supplier reasonably believes that it is not compliant with ISO/IEC 27001, the Supplier shall promptly notify the Customer of this and the Customer in its absolute discretion may waive the requirement for certification in respect of the relevant parts.]
- 5.3 The Customer shall be entitled to carry out such regular security audits as may be required, and in accordance with Good Industry Practice, in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001.
- 5.4 If, on the basis of evidence provided by such audits, it is the Customer's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 is not being achieved by the Supplier, then the Customer shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001. If the Supplier does not become compliant within the required time then the Customer has the right to obtain an independent audit against these standards in whole or in part.
- 5.5 If, as a result of any such independent audit as described in paragraph 5.4 the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Customer in obtaining such audit.

**6. BREACH OF SECURITY**

- 6.1 Either party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.

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6.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 6.1, the Supplier shall:

6.2.1 immediately take all reasonable steps necessary to:

6.2.1.1 remedy such breach or protect the integrity of the ISMS against any such potential or attempted breach or threat; and

6.2.1.2 prevent an equivalent breach in the future.

Such steps shall include any action or changes reasonably required by the Customer. In the event that such action is taken in response to a breach that is determined by the Customer acting reasonably not to be covered by the obligations of the Supplier under this Contract, then the Supplier shall be entitled to refer the matter to the Variation Procedure; and

6.2.2 as soon as reasonably practicable provide to the Customer full details (using such reporting mechanism as defined by the ISMS) of the Breach of Security or the potential or attempted Breach of Security.

**SCHEDULE 3**

Not Used

## **SCHEDULE 4**

### **TESTING**

#### **1. INTRODUCTION**

This schedule sets out the approach to Testing and the different Testing activities to be undertaken, including the preparation and agreement of the Test Strategy and Test Plans.

#### **2. TESTING OVERVIEW**

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

2.2 Any disputes between the Supplier and the Customer regarding this Testing shall be referred to the Dispute Resolution Procedure.

#### **3. TEST STRATEGY**

3.1 The Supplier shall develop the final Test Strategy as soon as practicable but in any case no later than 60 Working Days (or such other period as the parties may agree) after the Commencement Date.

3.2 The final Test Strategy shall include:

3.2.1 an overview of how Testing will be conducted in relation to the Implementation Plan;

3.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;

3.2.3 the procedure to be followed should a Deliverable fail a Test or where a Deliverable produces unexpected results, including a procedure for the resolution of Test Issues;

3.2.4 the procedure to be followed to sign off each Test; and

3.2.5 the process for the production and maintenance of reports relating to Tests.

#### **4. TEST PLANS**

4.1 The Supplier shall develop Test Plans for the approval of the Customer as soon as practicable but in any case no later than 60 Working Days (or such other period as the parties may agree in the Test Strategy or otherwise) prior to the start date for the relevant Testing as specified in the Implementation Plan.

4.2 Each Test Plan shall include as a minimum:

4.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested;

- 4.2.2 a detailed procedure for the Tests to be carried out, including:
  - 4.2.2.1 the timetable for the Tests including start and end dates;
  - 4.2.2.2 the Testing mechanism;
  - 4.2.2.3 dates and methods by which the Customer can inspect Test results;
  - 4.2.2.4 the mechanism for ensuring the quality, completeness and relevance of the Tests;
  - 4.2.2.5 the process with which the Customer will review Test Issues and progress on a timely basis; and
  - 4.2.2.6 the re-Test procedure, the timetable and the resources which would be required for re-Testing.
- 4.3 The Customer shall not unreasonably withhold or delay its approval of the Test Plans and the Supplier shall implement any reasonable requirements of the Customer in the Test Plans.

## **5. TESTING**

- 5.1 When the Supplier has completed the Services in respect of a Milestone it shall submit any Deliverables relating to that Milestone for Testing.
- 5.2 Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved the Customer shall be entitled to recover from the Supplier, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.
- 5.3 If the Supplier successfully completes the requisite Tests, the Customer shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that the Services are implemented and Goods provided in accordance with this Contract.

## **6. TEST ISSUES**

Where a Test Issue is identified by the Supplier, the parties shall agree how such Test Issue shall be dealt with and any failure to agree by the Parties shall be resolved in accordance with the Dispute Resolution Procedure.

## **7. TEST QUALITY AUDIT**

- 7.1 Without prejudice to its rights pursuant to clause 31, the Customer or an agent or contractor appointed by the Customer may perform on-going quality audits in respect of any part of the Testing.
- 7.2 If the Customer has any concerns following an audit in accordance with paragraph 7.1 above the Customer will discuss such concerns with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities, and subsequently prepare a written report for the Supplier

detailing the same to which the Supplier shall, within a reasonable timeframe, respond in writing.

- 7.3 In the event of an inadequate response to the written report from the Supplier, the Customer (acting reasonably) may withhold a Satisfaction Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Customer.

## **8. OUTCOME OF TESTING**

- 8.1 The Customer will issue a Satisfaction Certificate when it is satisfied that a Milestone has been Achieved.
- 8.2 If any Milestones (or any relevant part thereof) do not pass the Test in respect thereof then:
- 8.2.1 the Supplier shall rectify the cause of the failure and re-submit the Deliverables (or the relevant part) to Testing, provided that the Parties agree that there is sufficient time for that action prior to the relevant Milestone Date; or
- 8.2.2 the parties shall treat the failure as a Supplier Default.

## APPENDIX

### Satisfaction Certificate

To: HP Inc UK Limited

FROM: [Customer]

[Date]

Dear Sirs,

#### SATISFACTION CERTIFICATE

Milestones: **[Guidance: Insert description of the relevant Deliverables/Milestones]**

We refer to the agreement ("**Contract**") relating to the provision of the [ ] Goods and Services between the **[Guidance: Insert Customer's details]** ("**Customer**") and HP Inc UK Limited of Cain Road, Bracknell, Berkshire, RG12 1HN **[Guidance: Insert the date of the Contract]** ("**Supplier**") dated [  ].

The definitions for terms capitalised in this certificate are set out in the Contract.

We confirm that all of the Milestones have been successfully Achieved by the Supplier in accordance with the Test relevant to those Milestones.

Yours faithfully

[Name]

[Position]

acting on behalf of [Customer]

## SCHEDULE 5

### DISASTER RECOVERY AND BUSINESS CONTINUITY

#### 1. PURPOSE OF THIS SCHEDULE

- 1.1 This schedule sets out the Customer's requirements for ensuring continuity of the business processes and operations supported by the Services in circumstances of Service disruption or failure and for restoring the Services through business continuity and as necessary disaster recovery procedures. It also includes the requirement on the Supplier to develop, review, test, change and maintain a BCDR Plan in respect of the Services.
- 1.2 The BCDR Plan shall be divided into three parts:
  - 1.2.1 Part A which shall set out general principles applicable to the BCDR Plan ("**General Principles**").
  - 1.2.2 Part B which shall relate to business continuity ("**Business Continuity Plan**"); and
  - 1.2.3 Part C which shall relate to disaster recovery ("**Disaster Recovery Plan**"); and
- 1.3 The BCDR Plan shall detail the processes and arrangements which the Supplier shall follow to ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services and the recovery of the Services in the event of a Disaster.

#### 2. DEVELOPMENT OF BCDR PLAN

- 2.1 The BCDR Plan shall unless otherwise required by the Customer in writing, be based upon and be consistent with the provisions of paragraphs 3 and 5 of this schedule 5 (Business Continuity and Disaster Recovery Provisions).
- 2.2 The Supplier shall ensure that its Sub-contractors' disaster recovery and business continuity plans are integrated with the BCDR Plan.

#### 3. PART A - GENERAL PRINCIPLES AND REQUIREMENTS

- 3.1 The BCDR Plan shall:
  - 3.1.1 set out how its business continuity and disaster recovery elements link to each other;
  - 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the Services;
  - 3.1.3 contain an obligation upon the Supplier to liaise with the Customer and (at the Customer's request) any Related Supplier with respect to issues concerning business continuity and disaster recovery where applicable;

- 3.1.4 detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Customer and any of its other Related Suppliers as notified to the Supplier by the Customer from time to time;
  - 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Customer;
  - 3.1.6 contain a risk analysis, including:
    - 3.1.6.1 failure or disruption scenarios and assessments and estimates of frequency of occurrence;
    - 3.1.6.2 identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
    - 3.1.6.3 identification of risks arising from the interaction of the Services with the services provided by a Related Supplier ; and
    - 3.1.6.4 a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
  - 3.1.7 provide for documentation of processes, including business processes, and procedures;
  - 3.1.8 set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Customer;
  - 3.1.9 identify the procedures for reverting to "normal service";
  - 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than [ ] of data loss and to preserve data integrity;
  - 3.1.11 identify the responsibilities (if any) that the Customer has agreed it will assume in the event of the invocation of the BCDR Plan; and
  - 3.1.12 provide for the provision of technical advice and assistance to key contacts at the Customer as notified by the Customer from time to time to inform decisions in support of the Customer's business continuity plans.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
- 3.2.1 the Services are provided in accordance with the Contract at all times during and after the invocation of the BCDR Plan;

- 3.2.2 the adverse impact of any Disaster, service failure, or disruption on the operations of the Customer is minimal as far as reasonably possible;
  - 3.2.3 it aligns with the relevant provisions of ISO/IEC17799:2000, BS15000 (as amended) and all other industry standards from time to time in force; and
  - 3.2.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
- 3.3 The BCDR Plan must be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Service Levels or to any increase in the Contract Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.

#### **4. PART B - BUSINESS CONTINUITY ELEMENT - PRINCIPLES AND CONTENTS**

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including but not limited to and unless the Customer expressly states otherwise in writing:
- 4.1.1 the alternative processes, (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
  - 4.1.2 the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 4.2 The Business Continuity Plan shall address the various possible levels of failures of or disruptions to the Services and the services to be provided and the steps to be taken to remedy the different levels of failure and disruption. The Business Continuity Plan shall also clearly set out the conditions and/or circumstances under which the Disaster Recovery Plan is invoked.

#### **5. PART C - DISASTER RECOVERY ELEMENT - PRINCIPLES AND CONTENTS**

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Customer supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Disaster Recovery Plan shall only be invoked upon the occurrence of a Disaster.

- 5.3 The Disaster Recovery Plan shall include the following:
  - 5.3.1 the technical design and build specification of the Disaster Recovery System;
  - 5.3.2 details of the procedures and processes to be put in place by the Supplier and any Sub-contractor in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
    - 5.3.2.1 data centre and disaster recovery site audits;
    - 5.3.2.2 backup methodology and details of the Supplier's approach to data back-up and data verification;
    - 5.3.2.3 identification of all potential disaster scenarios;
    - 5.3.2.4 risk analysis;
    - 5.3.2.5 documentation of processes and procedures;
    - 5.3.2.6 hardware configuration details;
    - 5.3.2.7 network planning including details of all relevant data networks and communication links;
    - 5.3.2.8 invocation rules;
    - 5.3.2.9 Service recovery procedures;
    - 5.3.2.10 steps to be taken upon Service resumption to address any prevailing effect of the Service failure or disruption;
  - 5.3.3 any applicable Service Levels with respect to the provision of Disaster Recovery Services and details of any agreed relaxation upon the Service Levels during any period of invocation of the Disaster Recovery Plan;
  - 5.3.4 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
  - 5.3.5 access controls (to any disaster recovery sites used by the Supplier or any Sub-contractor in relation to its obligations pursuant to this schedule 5); and
  - 5.3.6 testing and management arrangements.

## 6. PROVISION, REVIEW AND AMENDMENT OF THE BCDR PLAN

- 6.1 The Supplier shall provide a draft of the BCDR Plan within 20 Working Days following the Commencement Date.
- 6.2 The Supplier shall review part or all of the BCDR Plan (and the risk analysis on which it is based):
- 6.2.1 on a regular basis and as a minimum once every six calendar months;
  - 6.2.2 within three calendar months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 8 of this schedule; and
  - 6.2.3 where the Customer requests any additional reviews (over and above those provided for in paragraphs 6.2.1 and 6.2.2 of this schedule) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Customer's written requirements. The costs of both parties for any such additional reviews will be met by the Customer.
- 6.3 Each review pursuant to paragraph 6.1 of the BCDR Plan shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to the occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within the period required by the BCDR Plan or if no such period is required within such period as the Customer shall reasonably require. The Supplier shall, within 20 Working Days of the conclusion of each such review of the BCDR Plan, provide to the Customer a report ("**Review Report**") setting out:
- 6.3.1 the findings of the review;
  - 6.3.2 any changes in the risk profile associated with the Services; and
  - 6.3.3 the Supplier's proposals ("**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.
- 6.4 The Supplier shall as soon as is reasonably practicable after receiving the Customer's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the project's risk profile.

## 7. TESTING OF THE BCDR PLAN

- 7.1 The Supplier shall test the BCDR Plan on a regular basis (and in any event not less than once in every year during the Contract Period). Subject to paragraph 7.2, the Customer may require the Supplier to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Customer considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
- 7.2 If the Customer requires an additional test of the BCDR Plan it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Customer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Customer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 7.3 Following each test, the Supplier shall send to the Customer a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the Customer considers to be necessary as a result of those tests.
- 7.4 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with the Customer and shall liaise with the Customer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Customer in this regard. Each test shall be carried out under the supervision of the Customer or its nominee.
- 7.5 The Supplier shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Customer. Copies of live test data used in any such testing shall be (if so required by the Customer) destroyed or returned to the Customer on completion of the test.
- 7.6 The Supplier shall, within 20 Working Days of the conclusion of each test, provide to the Customer a report setting out:
- 7.6.1 the outcome of the test;
  - 7.6.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
  - 7.6.3 the Supplier's proposals for remedying any such failures.
- 7.7 Following each test, the Supplier shall take all measures requested by the Customer, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Customer, by the date reasonably required by the Customer and set out in such notice.
- 7.8 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Supplier of any of its obligations under this schedule 5 or otherwise.

7.9 The Supplier shall also perform a test of the BCDR Plan as part of the commissioning of the Services.

**8. INVOCATION OF THE BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN**

In the event of a complete loss of service or in the event of a Disaster, the Supplier shall immediately invoke the BCDR Plan (and shall inform the Customer promptly of such invocation). In all other instances the Supplier shall only invoke or test the BCDR Plan with the prior consent of the Customer.

## **SCHEDULE 6**

### **SERVICE LEVELS AND SERVICE CREDITS**

#### **1. SCOPE**

This schedule 6 sets out the Service Levels which the Supplier is required to achieve when delivering the Services, the mechanism by which Service Failures will be managed and the method by which the Supplier's performance of the Services by the Supplier will be monitored. This schedule comprises:

- Part A: Service Levels;
- Appendix to Part A - Service Levels and Service Credits; and
- Part B: Performance Monitoring.

#### **PART A**

##### **Service Levels**

#### **2. PRINCIPAL POINTS**

2.1 The objectives of the Service Levels and Service Credits are to:

- 2.1.1 ensure that the Services are of a consistently high quality and meet the requirements of the Customer;
- 2.1.2 provide a mechanism whereby the Customer can attain meaningful recognition of inconvenience and/or loss resulting from the Supplier's failure to deliver the level of Service for which it has contracted to deliver; and
- 2.1.3 incentivise the Supplier to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously.

#### **3. SERVICE LEVELS**

- 3.1 The Appendix to this Part A of this schedule sets out Service Levels the performance of which the parties have agreed to measure.
- 3.2 The Supplier shall monitor its performance of each of the Services referred to in Appendix A by reference to the Service Level(s) for that part of the Service and shall send the Customer a report detailing the level of service which was achieved in accordance with the provisions of part B of this schedule 6.
- 3.3 If the level of performance of the Supplier of any element of the Services during Contract Period:

- 3.3.1 fails to achieve a Service Level in respect of each element of the Service, then the Customer shall make a deduction from the Contract Charges in accordance with Appendix A to this schedule 6 Part A; or
- 3.3.2 constitutes a Critical Service Failure, the Customer shall be entitled to terminate this Contract pursuant to clause 5.8.

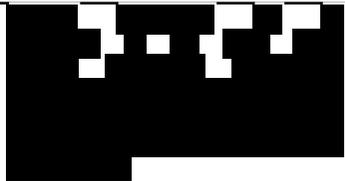
**APPENDIX TO PART A**

**Service Levels and Severity Levels**

**7. SERVICE LEVEL AGREEMENTS (SLAS) / KEY PERFORMANCE INDICATORS (KPIs)**

Ref.	Service Area	Service Level	Description	Measurement	Service Level Target Threshold	Service Level Failure Threshold (triggered automatically)	Minimum Service Credit	Maximum Service Credit	Relevant Hours (i.e. hours over which performance is measured)	Can be Met YES / NO (if No, please state in comment field the acceptable SLA)	Comment
SLA01	Incident Resolution	Severity 1	All printers on a floor are not operational. Includes estate wide outages and infrastructure failures	Break to fix of Severity 1 Incidents within two (2) hours of the Incident being assigned or alert generated	99.9%	97%	0%	3%	24 x 7	YES  YES	[REDACTED]
SLA02	Incident Resolution	Severity 2	50% to 99% of printers on a floor are not operational and any loss of infrastructure residency	Break to fix of Severity 2 Incidents within four (4) hours of the Incident being assigned or alert generated	99.9%	97%	0%	3%	24 x 7	YES  YES	
SLA03	Incident Resolution	Severity 3	49% or less of printers on a floor are not operational.	Break to fix of Severity 3 Incidents within six (6) hours of the Incident being assigned or alert generated.	99.9%	97%	0%	3%	08:00 to 18:00 Monday - Friday	YES	

Ref.	Service Area	Service Level	Description	Measurement	Service Level Target Threshold	Service Level Failure Threshold (triggered automatically)	Minimum Service Credit	Maximum Service Credit	Relevant Hours (i.e. hours over which performance is measured)	Can be Met YES / NO (if No, please state in comment field the acceptable SLA)	Comment
SLA04	Proactive Alert Resolution	Severity 4	Resolution of non customer impact alerts	Non customer impact alerts (such as consumable replacement) should be resolved within 2 business days AND before customer impact is seen (which may be less than 2 business days)	99%	99%	0%	3%	08:00 to 18:00 Monday - Friday	YES	[REDACTED]
SLA05	Device Provision or Move request	Device Provision	Provision of new devices Or Movement of existing device to new location	Within 8 working days from receipt of a request.	95%	90%	0%	1%	Monday – Friday	YES	[REDACTED]
SLA06	Print Service Availability	Availability	Total Availability of print service	Overall Availability of Print service. Calculated : <b>Uptime</b> of all available devices as a percentage of <b>Total Available Hours</b> Uptime : Full print and scan functionality available within the print efficiency targets (SLA09)	99.99%	99.5%	0%	4%	24 x 7	YES	[REDACTED]

Ref.	Service Area	Service Level	Description	Measurement	Service Level Target Threshold	Service Level Failure Threshold (triggered automatically)	Minimum Service Credit	Maximum Service Credit	Relevant Hours (i.e. hours over which performance is measured)	Can be Met YES / NO (if No, please state in comment field the acceptable SLA)	Comment
				Available devices : Total devices in support within the reporting period Total Available Hours : Calculated as number of devices multiplied by available hours							
SLA07	Print Service Availability Per Site	Availability	Availability of Print Service per Site	Availability of Print service per site & reported per site : <b>Uptime</b> of available devices on a site as a percentage of <b>Total Available Hours</b> Uptime : Full print and scan functionality available within the print efficiency targets (SLA09) Available devices : Total devices in support on a site within the reporting period	No individual site should have an Availability below 99%	No individual site should have an Availability below 98%	0%	4%	24 x 7	YES	

Ref.	Service Area	Service Level	Description	Measurement	Service Level Target Threshold	Service Level Failure Threshold (triggered automatically)	Minimum Service Credit	Maximum Service Credit	Relevant Hours (i.e. hours over which performance is measured)	Can be Met YES / NO (if No, please state in comment field the acceptable SLA)	Comment
				Total Available Hours : Calculated as number of devices multiplied by available hours (08-18:00)							
SLA08	Print Speed	Print Speed	First page should print within 5 seconds from user authentication	On a sample of at least 3 different printers per period to cover all printers through the contract life. Using an agreed test document measuring the time from user authentication to release the first page: First page should be printed within 5 seconds. No printer should Printer	100%	100%	0%	2%	N/a	YES	
SLA09	Service Administration	User Administration	User administration (such as creation of new users, removal of users)	Completion of user administration request within 1 business day	99%	95%	0%	1%	08:00 to 18:00 Monday - Friday	YES	

Ref.	Service Area	Service Level	Description	Measurement	Service Level Target Threshold	Service Level Failure Threshold (triggered automatically)	Minimum Service Credit	Maximum Service Credit	Relevant Hours (i.e. hours over which performance is measured)	Can be Met YES / NO (if No, please state in comment field the acceptable SLA)	Comment
SLA10	Help Desk	Help Desk	Answer time	Incidents will be logged from customers to TFLs Primary Service Desk (PSD). Where the PSD logs calls to the Print supplier via telephone, calls should be answered within 45 seconds	75%	70%	0%	2%	24 x 7	YES	[REDACTED]
SLA11	Help Desk	Help Desk	Response Time	From incident / request being logged (via telephone or email) or customer impacting alert being generated supplier should acknowledge and provide reference within 30 minutes to TFLs Primary Service Desk	95%	90%	0%	2%	24 x 7	YES	[REDACTED]
SL12	Customer Satisfaction	Customer Satisfaction Achievement	For each completed survey the % of users who have a satisfactory or above experience.	TFL Measures customer satisfaction on a % of incidents and requests raised by customers. On the customer	75%	70%	0%	2%	24 X 7	YES	[REDACTED]

Ref.	Service Area	Service Level	Description	Measurement	Service Level Target Threshold	Service Level Failure Threshold (triggered automatically)	Minimum Service Credit	Maximum Service Credit	Relevant Hours (i.e. hours over which performance is measured)	Can be Met YES / NO (if No, please state in comment field the acceptable SLA)	Comment
				satisfaction responses returned in relation to incidents and requests on the Print service the supplier shall obtain a customer satisfaction score of 'Satisfied' or above							

## Key Performance Indicators

Ref.	Service Area	KPI	Description	Measurement	KPI Target Threshold	Relevant Hours (i.e. hours over which performance is measured)	Can be Met YES / NO (if No, please state in comment field the acceptable SLA)	Comment
K01	Customer Satisfaction	Addressing "Less than satisfied" customer feedback	Address any customer feedback from the Customer Satisfaction Survey responses where the Supplier's Service has scored less than 'satisfied'.	Within three (3) Working Days of receipt of the feedback.	For less than 10 instances, 0 failures. For more than 10 instances, one failure.	Core Hours 08:00 - 18:00 Monday to Friday	YES	
K02	Customer Satisfaction	Respond to the customer and IM on "Less than Satisfied" customer feedback within 4 hours	Address any customer feedback from the Customer Satisfaction Survey responses where the Supplier's Service has scored less than 'satisfied'.	Within three (3) Working Days of receipt of the feedback.	For less than 10 instances, 0 failures. For more than 10 instances, one failure.	Core Hours 08:00 - 18:00 Monday to Friday	YES	
K03	Service Management	Timely reporting	Provide 4 weekly period report on incidents logged.	4 week period.	Received 5 business days following the end of a period	08:00 to 18:00	YES	
K04	Equipment	Timely Quote requests	Request for a quote	Number of quotes received within 5 days.	100%	08:00 to 18:00	YES	
K05	Service Management	Timely reporting	Provide Severity 1 & 2 incident reports on incidents logged & resolution.	Reports within 2 working days of Severity 1 & Severity 2 incidents	Received 2 business days following the reported incident time	08:00 to 18:00	YES	

## 7.1 Definition of Severity Levels

Severity Level	Definition
<b>Severity 1</b>	<ul style="list-style-type: none"> <li>All or any part of the service is unavailable resulting in failure of business critical activities. <b>“Business critical activities”</b> include client services which cannot be mitigated (mitigation shall include the use of other available services); and/or</li> <li>The incident affects the overall security of the TfL estate; and/or</li> <li>The incident has a detrimental impact on the IM operations of TfL declared by designated individuals within TfL IM (IM Duty Managers (IMLT), Major Incident Managers, the IM Service Delivery Manager or the IM Security Manager); and/or</li> <li>The incident affects users at a critical site or more than 50% of users across all sites.</li> </ul>
<b>Severity 2</b>	<p>Business activities are adversely affected resulting in some impact on business operations where:</p> <ul style="list-style-type: none"> <li>The incident prevents at least one department from effectively performing key business activities; or</li> <li>The incident causes a failure to redundant services that increases the risk to business critical activities.</li> </ul>
<b>Severity 3</b>	<p>Business activities are adversely affected resulting in some impact on business operations where:</p> <ul style="list-style-type: none"> <li>The incident prevents users from effectively performing non key business activities; and/or</li> <li>The Incident is limited in scope and scale. This includes equipment failures where due to redundancy and resilience, non-critical services are unaffected.</li> </ul>
<b>Severity 4</b>	<ul style="list-style-type: none"> <li>The service is not affected, e.g. queries; or</li> <li>The incident affects a service component that has a dependency on support parties that are not managed by TfL IM; and/or</li> <li>The incident affects a service component that cannot be fully supported.</li> </ul>

## 7.2 Definition of ‘Restoration’ and ‘Restore’

7.2.1 For the purposes of this Schedule, Restoration will be deemed to have occurred when the Supplier issues confirmation of the same to the TfL Representative.

7.2.2 If, following confirmation of Restoration by the Supplier to the TfL Representative, the TfL Representative reasonably considers that Restoration has, in fact, not been achieved, the Supplier shall re-open the Incident and the Incident resolution time will be calculated as a continuous period from the first report of the Incident until finally resolved to the TfL Representative’s reasonable satisfaction.

### 7.3 Service Credit Calculations

7.3.1 Accrual of Service Credits: Service Credits are expressed as a percentage of the total Service Charges in a Period and are incurred if the Service Level Target Threshold is not achieved. They accrue on a linear basis up to the relevant Maximum Service Credit figure (subject to any applicable Repeat Failure Multiplier described in Section 7.4 below). The Maximum Service Credit figure is reached when actual performance falls to the Service Failure Threshold.

For example, in the table below, if, the Service Level Target Threshold is 75%, the Service Failure Threshold 70% and the maximum Service Credits that will apply are 2.5%, for every 1% that actual performance falls below 75%, a Service Credit deduction of 0.5% shall accrue (i.e. 2.5% maximum Service Credits divided by the 5% range between the Service Level Target Threshold and the Service Failure Threshold)

Service Level Target Threshold	Service Level Failure Threshold (triggered automatically)	Minimum Service Credit	Maximum Service Credit	Relevant Hours (i.e. hours over which performance is measured)
75%  Service Credit Range = 75%-70% = 5%	70%	0%	2.5% Maximum Service Credit = 2.5%	24 x 7 Therefore the amount of service Credit payable if the performance is 74% is $(1\% \div 5\%) \times 2.5\% = 0.5\%$

7.3.2 Caps on Service Credits: the Supplier's aggregate liability for Service Credits shall be limited:

- (a) in each Period, to [REDACTED] of the aggregate Service Charges payable to the Supplier that Period; and
- (b) in any rolling thirteen (13) Periods, to [REDACTED] of the aggregate Service Charges payable to the Supplier in regards to that rolling period

7.3.3 Reduction of Charged: Service Credits are a reduction of the Charges payable in respect of the Services and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice.

**7.3.4 Definition of a 'Critical Service Failure':** a Critical Service Failure shall be deemed to have occurred in any of the following circumstances:

- a. one or more Service Failure Thresholds for any of the Service Levels are breached in three (3) consecutive Periods (i.e. each breach can relate to the same or a different Service Level);
- b. total Service Credits equal to the cap described in Section 7.3.2 (a) above accrue in three (3) consecutive Periods, or any four Periods within any rolling thirteen (13) Periods; or
- c. total Service Credits equal to the cap described in Section 7.3.2(b) above accrue within a rolling 13 (thirteen) Periods.

**7.4.5 Definition of a 'Severe KPI Failure':** a Severe KPI Failure shall be deemed to have occurred in any of the following circumstances:

- a) one or more KPI Target Thresholds for any of the KPIs are breached in four (4) consecutive Periods (i.e. each breach can relate to the same or a different KPI);
- b) the KPI Target Threshold is breached for four or more KPIs in the same Period.

**7.4.6 Critical Service Failures, Severe KPI Failures and Rectification Plans:** in the event that a Critical Service Failure or a Severe KPI Failure, Customer shall be entitled to treat the event as a notifiable Default, requiring the Supplier to provide a Rectification Plan. In the event of a Critical SLA Failure, the Rectification Plan should be presented on Customer site by the Supplier Services Director and updates to be provided on site or via conference call, as agreed by the Parties, every 2 weeks until the service issues and SLA performance is rectified.

**7.4.7 Critical Service Failures, Severe KPI Failures and Supplier Defaults and Rectification Plans:** a Critical Service Failure or Severe KPI Failure shall only constitute a Default if Customer designates such event a notifiable Default and;

- a) the Supplier fails to comply with the process for agreeing an associated Rectification Plan; or
- b) the associated Rectification Plan does not remedy the notifiable Default; or
- c) the Critical Service Failure or Severe KPI Failure results from the recurrence of an earlier problem which previously resulted in a similar Critical Service Failure or Severe KPI Failure and which the Supplier advised had been resolved by a previous Rectification Plan.

**7.4.8 Critical Levels and KPIs with small populations:** the following Service Levels are expressed as percentages, however, the number of actual events in any single Period will be low (i.e. below 100):

SL 01	Severity Level 1 Incident Response.
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SL 02	Severity Level 2 Incident Response.
SL 03	Severity Level 3 Incident Response.

The calculation of actual performance against these Service Levels and KPIs shall reflect the following:

- (a) In each Period following the Operational Commencement Date:
- (i) performance will be calculated on the basis of the number of Incidents in the relevant Period only:
  - (ii) however, if the population is 100 or fewer, the relevant Service Level Target Threshold, Service Failure Threshold or KPI Target Threshold shall be deemed failed in that Period if the instances of failure meet or exceed the following thresholds:

Population in Period	For Service Level Target Thresholds and KPI Target Thresholds	For Service Failure Thresholds
	Number of instances equating to Failure	Number of instances equating to Failure
0-20	2	3 or more
21-40	3	5 or more
41-70	4	7 or more
70-100	5	9 or more

In the event of extremely low populations i.e. averaging less than one instance per period, should the supplier fail to meet an SLA with volumes below the thresholds set out above more than once in a rolling three periods; the minimum population calculation will no longer apply and the 'Service Failure Threshold' process and penalties incurred on that SLA

**7.4.9** Subject to the Parties first following the processes set out in Clauses 7.4.6, 7.4.7 and 7.4.8 Schedule 6 Appendix A above, if Customer wishes to terminate the Contract in accordance with Clause 26.4, as a result of Critical Service Failures, Customer shall not incur the Early Termination Fees as a result of such Supplier Default.

**7.5** Repeat Failures To Meet Service Level Agreements

7.5.1 If the Supplier fails to achieve a Service Level Target in a Period and then fails to achieve the same Service Level Target in a subsequent Period, the failure in the subsequent Period shall be a "Repeat Failure". The Repeat Failure count shall increment by one (1) for each additional failure.

7.5.2 Repeat Failures shall apply to all Service Levels.

7.5.3 The Repeat Failure count applicable to a particular Service Level shall be reset to zero (0) after the Service Level Target Threshold has been met or exceeded for the relevant Multiplier Exit Period (comprising consecutive Periods of successfully achieving the Service Level Target Threshold) described in section 7.4.4 below.

7.4.4 For any failure to meet Service Level Targets which is a Repeat Failure, the Service Credit applicable shall be increased as follows (a "Repeat Failure Multiplier"):

<b>Repeat Failure count applicable to the Period</b>	<b>Repeat Failure Multiplier</b>	<b>Multiplier Exit Period</b> <i>i.e. consecutive Periods of performance at or above the Service Target Threshold</i>
0	1	n/a
1	1.25	1
2	1.5	2
3 and above	2	3

## **PART B**

### **Performance Monitoring**

#### **1. PRINCIPAL POINTS**

- 1.1 This Part B provides the methodology for monitoring the Services:
  - 1.1.1 to ensure that the Supplier is complying with the Service Levels; and
  - 1.1.2 for identifying any failures to achieve Service Levels in the performance of the Supplier and/or delivery of the Services ("Performance **Monitoring System**").
- 1.2 Within 20 Working Days of the Commencement Date the Supplier shall provide the Customer with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.

#### **2. REPORTING OF SERVICE FAILURES**

The Supplier shall report all failures to achieve Service Levels and any Critical Service Failure to the Customer in accordance with the processes agreed in paragraph 1.2 above.

#### **3. PERFORMANCE MONITORING AND PERFORMANCE REVIEW**

- 3.1 The Supplier shall provide the Customer with reports in accordance with the process and timescales agreed pursuant to paragraph 1.2 above which shall contain, as a minimum, the following information in respect of the relevant period just ended:
    - 3.1.1 for each Service Level, the actual performance achieved over the Service Level for the relevant period;
    - 3.1.2 a summary of all failures to achieve Service Levels that occurred during that period;
    - 3.1.3 any Critical Service Failures and details in relation thereto;
    - 3.1.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
    - 3.1.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
    - 3.1.6 such other details as the Customer may reasonably require from time to time.
  - 3.2 The parties shall attend meetings to discuss Service Level reports ("Performance Review Meetings") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and the Customer of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
    - 3.2.1 take place within one (1) week of the reports being issued by the Supplier;
    - 3.2.2 take place at such location and time (within normal business hours) as the Customer shall reasonably require unless otherwise agreed in advance;
    - 3.2.3 be attended by the Supplier's Representative and the Customer's Representative; and
    - 3.2.4 be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Customer's
-

representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier's representative and the Customer's Representative at each meeting.

- 3.3 The Customer shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.
- 3.4 The Supplier shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified period.

#### **4. SATISFACTION SURVEYS**

- 4.1 In order to assess the level of performance of the Supplier, the Customer may undertake satisfaction surveys in respect of the Supplier's provision of the Services.
- 4.2 The Customer shall be entitled to notify the Supplier of any aspects of their performance of the Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with the Contract.
- 4.3 All other suggestions for improvements to the Services shall be dealt with as part of the continuous improvement programme pursuant to clause 8.

## SCHEDULE 7

### SOFTWARE TERMS

**1. BRONZE LICENCE TERMS – Not applicable**

**2. SILVER LICENCE TERMS**

2.1 Each licence granted under the Silver Licence Terms pursuant to clause shall be on the same terms as paragraph 1 above (with the appropriate changes) as supplemented and amended by the following provisions:

2.1.1 the term of the licence shall be perpetual and shall include the right for any Replacement Supplier to Use the software;

2.1.2 the right to grant sub-licenses shall include the right to sub-licence to any Replacement Supplier; and

2.1.3 the licence shall survive the termination or expiry of the Contract.

**3. GOLD LICENCE TERMS – Not applicable**

**4. COTS LICENCE TERMS**

Each licence granted under the COTS Licence Terms pursuant to paragraph shall be on the same terms as paragraph 2 above (with the appropriate changes) as supplemented and amended by the following provisions:

4.1 if so requested by the Customer, the Supplier shall procure that the third party licensor in respect of the COTS Software directly grants to the Customer and each Replacement Supplier a direct licence of the COTS software on the same terms as Silver Licence Terms.

**5. ASSIGNED SOFTWARE TERMS – not applicable**

## SCHEDULE 8

### EXIT PLANNING AND SERVICE TRANSFER ARRANGEMENTS

#### 1. INTRODUCTION

- 1.1. This Schedule describes provisions that should be included in the Exit Plan, the duties and responsibilities of the Supplier to the Customer leading up to and covering the expiry or termination (howsoever arising) (including partial termination) of this Contract and the transfer of service provision to a Replacement Supplier.
- 1.2. The objectives of the Exit Planning and Service Transfer Arrangements are to ensure a smooth transition of the availability of the Goods and Services from the Supplier to a Replacement Supplier at the termination (howsoever arising) (including partial termination) or expiry of this Contract.

#### 2. EXIT PLANNING AND SERVICE TRANSFER ARRANGEMENTS

- 2.1. The Supplier agrees to indemnify and keep the Customer fully indemnified for itself and on behalf of any Replacement Supplier in respect of any claims, costs (including reasonable legal costs), demands, and liabilities arising from the provision of incorrect information provided to the Customer by the Supplier, to the extent that any such claim, cost, demand or liability directly and unavoidably arises from the use of the incorrect information in a manner that can reasonably be assumed to be proper in bidding for or providing services similar to the Goods and Services.

#### 3. EXIT PLAN

- 3.1. Further to clause 5.9, the Customer shall review the Exit Plan within twenty (20) Working Days of receipt from the Supplier and shall notify the Supplier of any suggested revisions to the Exit Plan. In this respect, the Customer will act neither unreasonably, capriciously nor vexatiously. Such suggested revisions shall be discussed and resolved within ten (10) Working Days. The agreed Exit Plan shall be signed as approved by each party.
- 3.2. The Exit Plan shall provide comprehensive proposals for the activities and the associated liaison and assistance that will be required for the successful transfer of the Goods and Services. The Supplier shall ensure that the Exit Plan shall include as a minimum:
  - 3.1.1 a detailed description of how the Services will be ceased and transferred to the Customer and/or the Replacement Supplier as the case may be;
  - 3.1.2 details of the management structure to be employed by the Supplier to effectively transfer the Services to the Customer and/or Replacement Supplier as the case may be;
  - 3.1.3 details of how relevant knowledge will be transferred to the Customer and/or the Replacement Supplier; and
  - 3.1.4 details of Licensed Goods and contracts (if any) which will be available for transfer to the Customer and/or the Replacement Supplier upon expiry or termination of the Contract together with any reasonable costs required to effect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Services will be available for such transfer);
  - 3.1.5 proposals for the training of key members of the Replacement Supplier's personnel in connection with the continuation of the provision of the Goods and Services following the expiry or termination (howsoever arising) of this Contract charged at rates agreed between the parties at that time;
  - 3.1.6 proposals for providing the Customer or a Replacement Supplier copies of all documentation;

3.1.6.1 used in the provision of the Goods and Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and

3.1.6.2 relating to the use and operation of the Goods and Services;

3.1.7 proposals for the methods of transfer of the Goods and Services to the Customer or a Replacement Supplier;

3.1.8 proposals for the assignment or novation of all Goods and Services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the Goods and Services;

3.1.9 proposals for the identification and return of all Property in the possession of and/or control of the Supplier or any third party (including any Sub-contractor);

3.1.10 proposals for the disposal of any redundant Goods and Services and materials; and

3.1.11 proposals for the supply of any other information or assistance reasonably required by the Customer or a Replacement Supplier in order to effect an orderly hand over of the provision of the Goods and Services.

3.3. in the event that any Licensed Goods are to be transferred to the Replacement Supplier, the Supplier shall ensure that such transfer occurs seamlessly and in an orderly manner without causing any disruption to the provision of the Services to the Customer and that any such transfer is effected by the Supplier and Replacement Supplier in accordance with Law (together with any applicable regulations);

3.4. where a Replacement Supplier determines that any Licensed Goods must be replaced to enable it to perform the Services, the Supplier shall liaise with the Replacement Supplier to co-ordinate the removal of the Licensed Goods with the Replacement Supplier's installation of replacement goods and in such circumstances the Supplier shall ensure that the removal and replacement of the Licensed Goods:

3.4.1 does not cause any damage to the Premises or any of the Customer's equipment (as set out in paragraph 6.2 of the Order Form) or other property of the Customer to the fullest extent that the Supplier is able;

3.4.2 occurs seamlessly and in an orderly manner without causing any disruption to the provision of the Services to the Customer; and

3.4.3 is effected by the Supplier and Replacement Supplier in accordance with Law and any applicable regulations.

3.5. The Exit Plan shall be reviewed and updated by the Supplier. In this regard, the Supplier shall provide a revised version of the Exit Plan to the Customer on or before 31 July and 31st January each year (or more frequently as may be agreed between the Parties). The revised Exit Plan shall be reviewed and agreed in accordance with the provisions of paragraph 3.1 of this Schedule.

#### **4. ASSISTANCE ON EXPIRY OR TERMINATION**

4.1. In the event that this Contract expires or is terminated the Supplier shall, where so requested by the Customer, provide assistance to the Customer to migrate the provision of the Goods and Services to a Replacement Supplier including as set out in the Exit Plan.

#### **5. PRE-EXIT OBLIGATIONS**

5.1. The Supplier agrees that, subject to compliance with the Data Protection Legislation:

5.1.1. within twenty (20) Working Days of the earliest of:

5.1.1.1. receipt of a notification from the Customer of a Service Transfer or intended Service Transfer; or

5.1.1.2. receipt of the giving of notice of early termination of this Contract or any part thereof; or

5.1.1.3. the date which is six (6) Months before the due expiry date of this Contract,

it shall provide a list of those of its, its Personnel, or its Sub-Contractors', who are wholly or mainly assigned to the provision of the Goods and Services which the Supplier believes will transfer to the Customer or the Replacement Supplier (as the case may be), together with Staffing Information in relation to such employees;

5.1.2. at least ten (10) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Customer for itself or on behalf of any Replacement Supplier (as the case may be) a final list of employees which shall transfer under TUPE (the "**Transferring Supplier Employees**") and any updated Staffing Information in relation to such Transferring Supplier Employees; and

5.1.3. the Customer shall be permitted to use and disclose information provided by the Supplier under paragraph 5 of this Schedule for informing any tenderer or other prospective Replacement Supplier.

5.2. The Supplier warrants, for the benefit of the Customer and any Replacement Supplier, that the information provided under paragraph 5 of this Schedule shall be complete, true and accurate.

5.3. From the date of the earliest event referred to in paragraphs 5.1.1.1 to 5.1.1.3 of this Schedule, the Supplier agrees that it shall not, and agrees to procure that its Sub-Contractors shall not without the prior Approval of the Customer in respect of those employees engaged in the provision of the Goods and Services:

5.3.1. increase or reduce the total number of employees so engaged, or give notice to terminate the employment of any such employees; or

5.3.2. replace or re-deploy any such employee other than where any replacement is of equivalent grade, skills, experience and expertise; or

5.3.3. make, promise, propose or permit any changes to their terms and conditions of employment (including any payments connected with the termination of employment).

5.4. Within seven (7) Working Days following the subsequent Service Transfer Date, the Supplier will provide to the Customer or any Replacement Supplier, in respect of each person on the Final Staff List who is a Transferring Supplier Employee:

5.4.1. the most recent Month's copy pay slip data;

5.4.2. details of cumulative pay for tax and pension purposes;

5.4.3. details of cumulative tax paid;

5.4.4. tax code;

5.4.5. details of any voluntary deductions from pay; and

5.4.6. bank/building society account details for payroll purposes.

## 6. APPLICATION OF TUPE ON A SERVICE TRANSFER

6.1. The Customer shall determine whether or not based upon a reasonable assessment of the facts a Service Transfer is a situation to which TUPE and/or the Acquired Rights Directive may apply. In

circumstances where it is so reasonably determined, it is agreed the Customer or a Replacement Supplier would inherit liabilities in respect of employees of the Supplier or any Sub-Contractor engaged in the provision of the Goods and Services and, accordingly, the provisions in paragraphs 7 to 18.1 of this Schedule shall apply.

## 7. TUPE INDEMNITIES

- 7.1. The Supplier shall, and shall procure that any Sub-Contractor shall, perform and discharge all its obligations in respect of all the Transferring Supplier Employees up to and including the Service Transfer Date. The Supplier shall indemnify the Customer in full for itself and on behalf of any Replacement Supplier for and against all losses, compensation payments, fines, penalties, disbursements, awards, liabilities, damages, costs and expenses incurred, payments made by way of settlement and any legal costs and other professional fees (together with any VAT thereon) incurred or suffered by the Customer and/or any Replacement Supplier arising from, in connection with or as a result of all Employee Liabilities arising from the Supplier's, or any Sub-Contractor's, failure to perform and discharge any such obligation.
- 7.2. The Supplier shall indemnify the Customer in full for itself and on behalf of any Replacement Supplier for and against all losses, compensation payments, fines, penalties, disbursements, awards, liabilities, damages, costs and expenses incurred, payments made by way of settlement and any legal costs and other professional fees (together with any VAT thereon) incurred or suffered by the Customer and/or any Replacement Supplier in connection with or as a result of arising from or as a result of:
- 7.2.1. any Employee Liabilities whatsoever and howsoever arising on or before the Service Transfer Date or any other matter, event or circumstance occurring or having its origin before the Service Transfer Date save simply for accrual of service before that date;
  - 7.2.2. any and all acts or omissions by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date or any other matter, event or circumstance occurring or having its origin before the Service Transfer Date (other than an act or omission of the Customer or any Replacement Supplier);
  - 7.2.3. any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee for which it is alleged that the Customer or any Replacement Supplier may be liable by virtue of this Contract and/or TUPE and/or the Acquired Rights Directive;
  - 7.2.4. all and any losses in respect of all emoluments and outgoings in relation to the Employees (including without limitation all wages, bonuses, PAYE, national insurance contributions, pension contributions and otherwise) payable in respect of any period on or before the Subsequent Service Transfer Date; and
  - 7.2.5. any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its or their obligations under Regulation 13 of TUPE and in respect of an award of compensation under Regulation 15 of TUPE except to the extent that the liability arises from the Customer's or any Replacement Supplier's failure to comply with Regulation 13(4) of TUPE;
  - 7.2.6. any claim arising out of the provision of, or proposal by the Supplier to offer any change to any benefit, term or condition or working condition of any Transferring Supplier Employee arising on or before the Service Transfer Date;
  - 7.2.7. any statement communicated to or action undertaken by the Supplier to, or in respect of, any Transferring Supplier Employee on or before the Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the Customer in writing.
- 7.3. If any person who is not a Transferring Supplier Employee claims, or it is determined, that his contract of employment has been transferred from the Supplier or any Sub-Contractor to the

Customer or any Replacement Supplier pursuant to TUPE or the Acquired Rights Directive, then:

7.3.1. the Customer will and shall use its reasonable endeavours to procure that the Replacement Supplier will, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and

7.3.2. the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Customer or the Replacement Supplier or take such other steps as it considers appropriate to deal with the matter.

7.4. If such offer is accepted, or if the situation has otherwise been resolved by the Supplier, the Customer shall and shall use its reasonable endeavours to procure that the Replacement Supplier shall immediately release the person from his employment.

7.5. If, after the fifteen (15) Working Day period specified in paragraph 7.3.2 of this Schedule has elapsed:

7.5.1. no such offer of employment has been made; or

7.5.2. such offer has been made but not accepted; or

7.5.3. the situation has not otherwise been resolved,

the Customer may and shall advise the Replacement Supplier that it may within five (5) Working Days give notice to terminate the employment of such person.

7.6. Subject to the Customer or the Replacement Supplier acting in accordance with the provisions of paragraph 7 of this Schedule, the Supplier shall indemnify the Customer in full for itself and on behalf of the Replacement Supplier for and against all losses, compensation payments, fines, penalties, disbursements, awards, liabilities, damages, costs and expenses incurred, payments made by way of settlement and any legal costs and other professional fees (together with any VAT thereon) incurred or suffered by the Customer and any Replacement Supplier in respect of all Employee Liabilities arising out of termination pursuant to the provisions of paragraph 7.5 of this Schedule any direct employment costs (if any) associated with the employment of such person by the Customer or the Replacement Supplier up to the date of termination of such persons employment.

7.7. If any such person as is described in paragraph 7.3 of this Schedule is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Customer or Replacement Supplier within the time scales set out in this paragraph 7 of this Schedule, such person will be treated as a Transferring Supplier Employee.

7.8. The Customer shall, and shall use its reasonable endeavours to procure that the Replacement Supplier shall indemnify the Supplier against all Employee Liabilities arising from the Customer's or a Replacement Supplier's failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Transferring Supplier Employee arising from or as a result of any act or omission by the Customer or a Replacement Supplier relating to a Transferring Supplier Employee occurring before the Service Transfer Date which would give rise to a substantial change in working conditions to the material detriment of a Transferring Supplier Employee or on or after the Service Transfer Date or any other matter, event or circumstance occurring or having its origin after the Service Transfer Date.

7.9. The Parties will co-operate to ensure that any requirement to inform and consult with the Transferring Supplier Employees and or employee representatives in relation to a Service Transfer will be fulfilled.

7.10. The Customer will assume (or will procure that the Replacement Supplier, as the case may be, will assume) the outstanding obligations of the Supplier in relation to the Transferring Supplier Employees in respect of accrued holiday entitlements and accrued holiday remuneration to the

Service Transfer Date. In consideration, the Supplier will or will procure that any Sub-Contractor will pay to the Customer (or the Replacement Supplier as the case may be) within fourteen (14) Working Days of the Service Transfer Date the full amount necessary to enable the Customer or the Replacement Supplier to meet the cost of providing any such untaken holiday entitlements and remuneration accruing as at the Service Transfer Date. The Customer or the Replacement Supplier, as the case may be, will reimburse the Supplier and any Sub-Contractor any amount paid by the Supplier or the Sub-Contractor before the Service Transfer Date in respect of holidays taken in excess of any Transferring Supplier Employee's entitlement to paid holiday in respect of the period ending on the Service Transfer Date.

## **8. PROVISIONS WHERE TUPE DOES NOT APPLY**

If, in the event of a Service Transfer to which TUPE or the Acquired Rights Directive do not apply the following provisions shall apply:

- 8.1. the Customer can and shall advise the Replacement Supplier that it can, in its discretion, make to any of the employees identified on the list provided by the Supplier under paragraph 5.1.1 of this Schedule, an offer, in writing, to employ that employee under a new contract of employment to take effect on the Day after the termination referred to in paragraph 8.2 of this Schedule.
- 8.2. When the offer has been made by the Customer or Replacement Supplier and accepted by any employee or worker, the Supplier shall and shall procure that any Sub-Contractor shall permit the employee or worker to leave its employment, as soon as practicable,, which could be without the employee or worker having worked his full notice period, if the employee so requests.
- 8.3. If the employee does not accept an offer of employment made by the Customer or Replacement Supplier, or no such offer is made, the employee shall remain employed by the Supplier (or the relevant Sub-Contractor, as the case may be) and all Employee Liabilities in relation to the employee shall remain with the Supplier or the relevant Sub-Contractor and the Supplier shall indemnify the Customer in full for itself and on behalf of any Replacement Supplier for and against all losses, compensation payments, fines, penalties, disbursements, awards, liabilities, damages, costs and expenses incurred, payments made by way of settlement and any legal costs and other professional fees (together with any VAT thereon) incurred or suffered by the Customer and any Replacement Supplier in respect of any Employment Liabilities that either of them may incur in respect of any such employees of the Supplier or the relevant Sub-Contractor.

## SCHEDULE 9

### ALTERNATIVE AND/OR ADDITIONAL CLAUSES

#### 1. INTRODUCTION

1.1. This schedule 8 specifies the Alternative Clauses and Additional Clauses that were requested in the Order Form and that shall apply to this Contract.

#### 2. CLAUSES SELECTED

2.1. The Customer, in the Order Form, requested that the following Alternative Clauses should apply:

2.1.1. Law and Jurisdiction:

2.1.1.1. [\*\*\* [English Law (default)]

2.1.2. [\*\*\* Non-Crown Bodies \*\*\*]; and

2.1.3. [\*\*\* Private Authorities \*\*\*].

2.2. The Customer, in the Order Form, requested that the following Additional Clauses should apply:

2.2.1. [\*\*\* Security Measures \*\*\*];

#### 3. IMPLEMENTATION

The appropriate changes have been made in this Contract to implement the Alternative Clauses specified in paragraph 2.1 and the Additional Clauses specified in paragraph 2.2 shall be deemed to be incorporated into this Contract.

#### 4. ALTERNATIVE CLAUSES

##### NON-CROWN BODIES

4.1. Where the Customer is not a Crown Body, the following changes should be made:

4.1.1. Delete the following wording in the definition of Staff Vetting Procedures:

" , including but not limited to, the provisions of the Official Secrets Act 1911 to 1989".

4.1.2. Official Secrets Act

Delete clause 22.7.1.1 and insert "Not used"

##### PRIVATE AUTHORITIES

4.2. For Contracts formed with Private Authorities make the following changes:

##### FREEDOM OF INFORMATION

**[Guidance: Where the Customer is exempt from the FOIA, and notifies the Supplier accordingly in the Order Form, the following should be inserted to replace clauses 22.8.1, 22.8.2 and 22.8.3]**

"22.8.1 The Customer has notified the Supplier that the Customer is exempt from the provisions of FOIA."

#### 5. ADDITIONAL CLAUSES

## SECURITY MEASURES

**[Guidance: number given as example. Insert as next available contract clause number]**

- 46.1 In this clause 46:
  - 46.1.1 "secret matter" means any matter connected with or arising out of the performance of this Contract which has been, or may hereafter be, by a notice in writing given by the Customer to the Supplier be designated 'top secret', 'secret', or 'confidential';
  - 46.1.2 "document" includes specifications, plans, drawings, photographs and books;
  - 46.1.3 references to a person employed by the Supplier shall be construed as references to any person employed or engaged by the Supplier to do anything in connection with this Contract, whether under a contract of service with the Supplier or under any other contract or arrangement whatsoever; and
  - 46.1.4 "servant" where the Supplier is a body corporate shall include a director of that body and any person occupying in relation to that body the position of director by whatever name called.
- 46.2 The Supplier shall not, either before or after the completion or termination of this Contract, do or permit to be done anything which it knows or ought reasonably to know may result in information about a secret matter being:
  - 46.2.1 without the prior consent in writing of the Customer, disclosed to or acquired by a person who is an alien or who is a British subject by virtue only of a certificate of naturalisation in which his name was included;
  - 46.2.2 disclosed to or acquired by a person as respects whom the Customer has given to the Supplier a notice in writing which has not been cancelled stating that the Customer requires that secret matters shall not be disclosed to that person;
  - 46.2.3 without the prior consent in writing of the Customer, disclosed to or acquired by any person who is not a servant of the Supplier; or
  - 46.2.4 disclosed to or acquired by a person who is an employee of the Supplier except in a case where it is necessary for the proper performance of this Contract that such person shall have the information.
- 46.3 Without prejudice to the provisions of clause 46.2, the Supplier shall, both before and after the completion or termination of this Contract, take all reasonable steps to ensure:
  - 46.3.1 that no such person as is mentioned in clauses 46.2.1, 46.2.2 or 46.2.3 hereof shall have access to any item or document under the control of the Supplier containing information about a secret matter except with the prior consent in writing of the Customer;
  - 46.3.2 that no visitor to any premises in which there is any item to be supplied under this Contract or where Goods and Services are being supplied shall see or discuss with the Supplier or any person employed by him any secret matter unless the visitor is authorised in writing by the Customer so to do;
  - 46.3.3 that no photograph of any item to be supplied under this Contract or any portions of the Goods and Services shall be taken except insofar as may be necessary for the proper performance of this Contract or with the prior consent in writing of the Customer, and that no such photograph shall, without such consent, be published or otherwise circulated;

- 46.3.4 that all information about any secret matter and every document model or other item which contains or may reveal any such information is at all times strictly safeguarded, and that, except insofar as may be necessary for the proper performance of this Contract or with the prior consent in writing of the Customer, no copies of or extracts from any such document, model or item shall be made or used and no designation of description which may reveal information about the nature or contents of any such document, model or item shall be placed thereon; and
- 46.3.5 that if the Customer gives notice in writing to the Supplier at any time requiring the delivery to the Customer of any such document, model or item as is mentioned in clause 46.3.4, that document, model or item (including all copies of or extracts therefrom) shall forthwith be delivered to the Customer who shall be deemed to be the owner thereof and accordingly entitled to retain the same.
- 46.4 The decision of the Customer on the question whether the Supplier has taken or is taking all reasonable steps as required by the foregoing provisions of this clause 46.3 shall be final and conclusive.
- 46.5 If and when directed by the Customer, the Supplier shall furnish full particulars of all people who are at any time concerned with any secret matter.
- 46.6 If and when directed by the Customer, the Supplier shall secure that any person employed by it who is specified in the direction, or is one of a class of people who may be so specified, shall sign a statement that he understands that the Official Secrets Act, 1911 to 1989 and, where applicable, the Atomic Energy Act, 1946, apply to the person signing the statement both during the carrying out and after expiry or termination of a Contract.
- 46.6 If at any time either before or after the expiry or termination of this Contract it comes to the notice of the Supplier that any person acting without lawful authority is seeking or has sought to obtain information concerning this Contract or any thing done or to be done in pursuance thereof, the matter shall be forthwith reported by the Supplier to the Customer and the report shall, in each case, be accompanied by a statement of the facts, including, if possible, the name, address and occupation of that person, and the Supplier shall be responsible for making all such arrangements as it may consider appropriate to ensure that if any such occurrence comes to the knowledge of any person employed by it, that person shall forthwith report the matter to the Supplier with a statement of the facts as aforesaid.
- 46.7 The Supplier shall place every person employed by it, other than a Sub-contractor, who in its opinion has or will have such knowledge of any secret matter as to appreciate its significance, under a duty to the Supplier to observe the same obligations in relation to that matter as are imposed on the Supplier by clauses 36.2 and 36.3, and shall, if directed by the Customer, place every person who is specified in the direction or is one of a class of people so specified, under the like duty in relation to any secret matter which may be specified in the direction, and shall at all times use its best endeavours to ensure that every person upon whom obligations are imposed by virtue of this clause 36.7 observes the said obligations, and the Supplier shall give such instructions and information to every such person as may be necessary for that purpose, and shall, immediately upon becoming aware of any act or omission which is or would be a breach of the said obligations, report the facts to the Supplier with all necessary particulars.
- 46.8 The Supplier shall, if directed by the Customer, include in the Sub-Contract provisions in such terms as the Customer may consider appropriate for placing the Sub-contractor under obligations in relation to secrecy and security corresponding to those placed on the Supplier by this clause 46, but with such variations (if any) as the Customer may consider necessary. Further the Supplier shall:
- 46.8.1 give such notices, directions, requirements and decisions to its Sub-contractors as may be necessary to bring the provisions relating to secrecy and security which are included in Sub-Contracts under this clause 46.8 into operation in such cases and to such extent as the Customer may direct;

- 46.8.2 if there comes to its notice any breach by the Sub-contractor of the obligations of secrecy and security included in their Sub-Contracts in pursuance of this clause 46, notify such breach forthwith to the Customer; and
- 4.7.8.3 if and when so required by the Customer, exercise its power to determine the Sub-Contract under the provision in that Sub-Contract which corresponds to clause 46.11.
- 46.9 The Supplier shall give the Customer such information and particulars as the Customer may from time to time require for the purposes of satisfying the Customer that the obligations imposed by or under the foregoing provisions of this clause 46 have been and are being observed and as to what the Supplier has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof, and the Supplier shall secure that a representative of the Customer duly authorised in writing shall be entitled at reasonable times to enter and inspect any premises in which any thing is being done or is to be done under this Contract or in which there is or will be any item to be supplied under this Contract, and also to inspect any document or item in any such premises or which is being made or used for the purposes of this Contract and that any such representative shall be given all such information as he may require on the occasion of, or arising out of, any such inspection.
- 46.10 Nothing in this clause 46 shall prevent any person from giving any information or doing any thing on any occasion when it is, by virtue of any enactment, the duty of that person to give that information or do that thing.
- 46.11 If the Customer shall consider that any of the following events has occurred:
- 46.11.1 that the Supplier has committed a breach of, or failed to comply with any of, the foregoing provisions of this clause 46; or
- 46.11.2 that the Supplier has committed a breach of any obligations in relation to secrecy or security imposed upon it by any other contract with the Customer, or with any department or person acting on behalf of the Crown; or
- 46.11.3 that by reason of an act or omission on the part of the Supplier, or of a person employed by the Supplier, which does not constitute such a breach or failure as is mentioned in clause 46.11.1, information about a secret matter has been or is likely to be acquired by a person who, in the opinion of the Customer, ought not to have such information,
- and shall also decide that the interests of the State require the termination of this Contract, the Customer may by notice in writing terminate this Contract forthwith.
- 46.12 A decision of the Customer to terminate this Contract in accordance with the provisions of clause 36.11 shall be final and conclusive and it shall not be necessary for any notice of such termination to specify or refer in any way to the event or considerations upon which the Customer's decision is based.
- 46.13
- 46.13.1 The Supplier may within five (5) Working Days of the termination of this Contract in accordance with the provisions of clause 46.11, give the Customer notice in writing requesting the Customer to state whether the event upon which the Customer's decision to terminate was based is an event mentioned in clauses 46.11.1, 46.11.2 or 46.11.3 and to give particulars of that event; and
- 46.13.2 the Customer shall within ten (10) Working Days of the receipt of such a request give notice in writing to the Supplier containing such a statement and particulars as are required by the request.

46.14

- 46.14.1 The termination of this Contract pursuant to clause 46.11 shall be without prejudice to any rights of either party which shall have accrued before the date of such termination;
- 46.14.2 the Supplier shall be entitled to be paid for any work or thing done under this Contract and accepted but not paid for by the Customer at the date of such termination either at the price which would have been payable under this Contract if the Contract had not been terminated, or at a reasonable price;
- 46.14.3 the Customer may take over any work or thing done or made under this Contract (whether completed or not) and not accepted at the date of such termination which the Customer may by notice in writing to the Supplier given within thirty (30) Days from the time when the provisions of this clause 46 shall have effect, elect to take over, and the Supplier shall be entitled to be paid for any work or thing so taken over a price which, having regard to the stage which that work or thing has reached and its condition at the time it is taken over, is reasonable. The Supplier shall in accordance with directions given by the Customer, deliver any work or thing taken over under this clause 46.14.3, and take all such other steps as may be reasonably necessary to enable the Customer to have the full benefit of any work or thing taken over under this clause 46.14.3; and
- 46.14.4 save as aforesaid, the Supplier shall not be entitled to any payment from the Customer after the termination of this Contract.

46.15 If, after notice of termination of this Contract pursuant to the provisions of clause 46.11:

- 46.15.1 the Customer shall not within ten (10) Working Days of the receipt of a request from the Supplier, furnish such a statement and particulars as are detailed in clause 46.13.1; or
- 46.15.2 the Customer shall state in the statement and particulars detailed in clause 46.13.2 that the event upon which the Customer's decision to terminate this Contract was based is an event mentioned in clause 46.11.3,

the respective rights and obligations of the Supplier and the Customer shall be terminated in accordance with the following provisions:

- 46.15.3 the Customer shall take over from the Supplier at a fair and reasonable price all unused and undamaged materials, bought-out parts and components and articles in course of manufacture in the possession of the Supplier upon the termination of this Contract under the provisions of clause 46.11 and properly provided by or supplied to the Supplier for the performance of this Contract, except such materials, bought-out parts and components and articles in course of manufacture as the Supplier shall, with the concurrence of the Customer, elect to retain;
- 46.15.4 the Supplier shall prepare and deliver to the Customer within an agreed period or in default of agreement within such period as the Customer may specify, a list of all such unused and undamaged materials, bought-out parts and components and articles in course of manufacture liable to be taken over by or previously belonging to the Customer and shall deliver such materials and items in accordance with the directions of the Customer who shall pay to the Supplier fair and reasonable handling and delivery charges incurred in complying with such directions;
- 46.15.5 the Customer shall indemnify the Supplier against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Supplier in connection with this Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Contract;

- 46.15.6 if hardship to the Supplier should arise from the operation of this clause 46.15 it shall be open to the Supplier to refer the circumstances to the Customer who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable and the decision of the Customer on any matter arising out of this clause 46.15.6 shall be final and conclusive; and
- 46.15.7 subject to the operation of clauses 46.15.3, 46.15.4, 46.15.5, and 46.15.6, termination of this Contract shall be without prejudice to any rights of either party that may have accrued before the date of such termination.

***[Guidance: If clause 36 is used, ensure that the termination right under clause 46.11 and clause 46.15 is included in clause 26 of the Contract.]***

## SCHEDULE 10

### MANAGED SERVICES STATEMENT OF WORK

#### 1. INTRODUCTION

- 1.1. This schedule 10 sets out the specific service description details of the Managed Print Service referred to in section 2.1 of the Order Form.

##### **Part A**

Response to Transport for London's for Request for Proposal (RfP) for Managed Print and Associated Services from Hewlett-Packard Limited

(Commercial Response for MPS)

##### **Part B**

Response to Transport for London's for Request for Proposal (RfP) for Managed Print and Associated Services from Hewlett-Packard Limited

(G1131 Volume 2 Technical Specification for MPS)

##### **Part C**

STATEMENT OF WORK

##### **Part D**

Buy back of current TfL MPF assets

**PART A – COMMERCIAL RESPONSE**

# Response to Transport for London's Request for Proposal (RfP) for Managed Print and Associated Services from Hewlett-Packard Limited

1.

26<sup>th</sup> August 2015

2.



3.  
4.

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25<sup>th</sup> August 2015

[REDACTED]  
Commercial Manager, Information and Communications Technology  
Transport for London  
Windsor House  
42-50 Victoria Street  
London  
SW1H 0TL

[REDACTED]  
+ [REDACTED]

Dear [REDACTED],

Re – ITC 11681 – Request for Proposal for Managed Print and Associated Services

Hewlett-Packard Limited greatly appreciates the opportunity to present its compliant proposal for the Managed Print and Associated Services Project.

Hewlett-Packard believes it is well positioned, using a coordinated approach, to offer Transport for London a complete solution and hopes that you will find this approach interesting and attractive.

The content of this response, especially the Pricing Schedules, contains highly Confidential Information to HP and in the event of any FOIA request, disclosure of such commercial information would detrimentally affect our ability as a company to compete in this market and would provide competitors with an unfair advantage over HP for future opportunities in perpetuity. We would therefore kindly request such highly Confidential Information to be redacted prior to disclosure or HP is provided the opportunity to legally protect its commercial interests prior to such disclosure.

I look forward to discussing Hewlett-Packard's proposal further with you. If you have any questions in the meantime, please do not hesitate to contact me on [REDACTED].

Thank you for considering Hewlett-Packard as a potential provider of your new managed print service.

[REDACTED]  
[REDACTED]

[REDACTED]

Enterprise Account [REDACTED] Sector

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This proposal does not constitute an offer capable of acceptance by Transport for London and is subject to agreement of a formal contract specifying terms and conditions. No contractual relationship shall arise until a formal contract has been signed by both parties. Hewlett-Packard will not commence work under this proposal without formal written agreement signed by both parties.

The term "solution" in the context of this document is defined as the products and services proposed herein. Since additional information may be required from Transport for London in order to develop the appropriate configuration for a specific project, the term "solution" does not imply that those products or services as proposed are guaranteed to, or will, meet any mandated or implied requirements or integrate or inter-operate with any other products, processes or systems.

The use of the terms "partner" or "partnership" in this proposal does not imply a formal, legal, or contractual partnership, but rather a mutually beneficial relationship arising from the teamwork between the parties.

Unless otherwise agreed in writing, pricing estimates are valid for 30 days from date of submission of this document or from the date of any individual proposal from HP.

When HP's proposal is submitted via electronic format and hard copy, ONLY the content of the hard copy will be binding on Hewlett-Packard if the content differs.

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## Glossary

<b>ADM</b>	Account Delivery Manager
<b>API</b>	Application Programming Interface
<b>CHS</b>	Call Handling System
<b>CSC</b>	Customer Support Consortium
<b>CSI</b>	continual service improvement
<b>CSV</b>	Comma Separated Value
<b>DMTF</b>	Distributed Management Task Force
<b>FIS</b>	Fleet Information Sheet
<b>GSEM</b>	Global Service Event Management
<b>HTML</b>	Hypertext Markup Language
<b>KPI</b>	Key Performance Indicators
<b>MDM</b>	mobile device management
<b>MoC</b>	Management of Change
<b>MPS</b>	Managed Print Service
<b>MV MAI</b>	Multi-Vendor Manage as Is
<b>PDF</b>	Portable Document Format
<b>PMO</b>	Project Management Office
<b>RMS</b>	Remote Management Services
<b>RMS</b>	Remote Monitoring Server
<b>SIP</b>	service improvement plan
<b>SIS</b>	Service Incident exchange Standard
<b>SLA</b>	Service Level Agreement
<b>T&amp;T</b>	Transition and Transformation
<b>TC</b>	Technical Consultant
<b>TCE</b>	Total Customer Experience
<b>VMO</b>	Value Management Office



## HP's Response to Section B: Specification

This request is to seek a supplier to replace the current print contracts with Ricoh and Apogee that are due to expire in October 2015 and to provide a fully managed print service across the TfL estate.

TfL will be using the Managed Print Services of Crown Commercial Service Framework Agreement, Contract Ref: RM1599, for Multifunctional Devices (MFD) and Services as the route to market.

TfL has a number of tender requirements that must be met and are detailed in Section B1 below.

### B1. Tender Requirements

1. Confirmation that the Bidder will provide a seamless transition (including TUPE) and maintain continuity of service for the current 345 MFD estate and ensure there is no reduction in quality of service during the Transition Phase.

Please confirm Yes or No that you can meet this requirement.

**HP's Response:**

Yes

2. Please confirm Yes or No that your organisation has the capability to begin the transition phase within one week following contract signature

**HP's Response:**

Yes

3. The Bidder must have the capability to supply TfL with all of the following requirements shown in attachment in section B2 below.

Note: Failure to supply any of the above mandatory requirements could result in a failed bid.



## B2. Technical Requirements Specification & Bidders Response Spreadsheet

The following attachment is the Technical Requirements Specification and the Bidders Response Spreadsheet for the TfL Managed Print Service. Please provide your response to the Technical element of the tender in the Bidders Response Spreadsheet provided. TfL will not accept bids in any other format.

Please respond to the Yes / No questions and columns highlighted green. A word limit has been provided for the weighted questions.

Note, TfL are willing to accept a bid for a hosted and non hosted managed print service in the Bidder technical response for each scenario. Please clearly detail the benefits of both or either solution.

### ***HP's Response:***

Please see "TfL Bidders Response Spreadsheet HP.xls" included as part of HP's response.

For an MS Word version of the spreadsheet responses, please see "HP Response to G1131 Volume 2 Technical Specification for MPS.doc" also included as part of HP's response. An MS Word version has been provided to add clarity to certain responses by using graphics. When a graphic has been used, this is clearly indicated in the Excel version.



# HP's Response to Section C: Commercial Capability Response

## C1. Commercial

TfL is seeking a solution which represents best value and has therefore awarded this tender a 40% weighting for the Commercial element of the tender. The high level commercial breakdown is as follows:

- Cost 25%
- Commercial Approach 15%

TfL expect the costs per print will be fixed for the period of the contract with the exception where market prices show a downward trend and would expect the Bidder to vary prices to reflect this trend. Please confirm Yes / No that you can meet this requirement

**HP's Response:**

Yes

HP is able to fully meet this requirement. HP will require the additional clarifications set out below added to Section 5.6 of the Call-Off Order form:

- Any Benchmarking activity will be subject to the Customer and the Supplier agreeing the scope of benchmarking activity (Service Levels and/or Pricing) in addition to the identity of the benchmarker ("Benchmarker"), who shall only carry out such benchmarking activity after agreeing a non-disclosure agreement. The parties shall share the cost of the Benchmarker equally.
- For the avoidance of doubt, the parties may only undertake a benchmarking exercise after minimum periods of 12 months and subject always to agreement of the number (minimum of five) and identity of the comparative third parties.
- Supplier will be measured against the median quartile in Benchmarker's report. Once the results have been mutually agreed with Supplier, Supplier shall implement such revised Service Levels and/or pricing from an agreed future date, to apply prospectively therefrom. Such revised Service Levels and or Pricing shall not apply retrospectively.

As detailed above, 25% of the tender weighting is associated directly to the Pay Per Click response. In Section C1.1. below, please confirm what service TfL will receive in return for the "Per Click option".

Ref.	Table 1. Response
C1.1	<p><b>Table 2. Pay Per Click –</b></p> <p><b>Table 3. Note:</b> This section will not be scored but used for information only, but will be included in the final contract.</p>
<b>Table 4. Bidder Response</b>	
<p>Within the Pay Per Click charges the following components of the Managed print Service are included:</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	





## C2. Commercial Approach

Bidders must present well documented evidence of the approach the Bidder takes in the following components of the Managed Print Service.

Ref.	Description
C2.1	<p><b>Table 5. Cost Savings</b> – The Bidder must demonstrate an approach that is able to deliver significant cost savings to TfL. This can be delivered through the elimination of unnecessary or duplicated effort and by assisting in keeping all administration costs to a minimum, consistent with providing service excellence and assuring quality.</p> <p><b>Table 6.</b> The Bidder will be responsible for ensuring that all print production is undertaken in the most cost-efficient way.</p> <p>Please provide details on how you intend to reduce the over all cost of printing for TfL over the term of the contract?</p> <p><b>Table 7.</b> <i>Please no more than 1000 words.</i></p>

**Table 8.** Bidder Response

A key TfL objective for this RFP is to identify a single supplier to provide a cost effective, flexible and market leading Managed Print Service (MPS) rather than managing the overhead of the two existing contracts with Ricoh and Apogee. The new single supplier MPS is to provide a refreshed fleet and solution infrastructure to deliver an end-to-end printing environment through a seamless transition away from the current contracts. The solution proposed by HP will provide technology which is cost effective, incorporating a balanced deployment with the latest technology ink devices to reduce the overall costs of the current incumbent suppliers. The components of this New MPS will incorporate state of the art Multifunction devices, secure printing, mobile printing capability and the provision of automated consumable delivery and proactive monitoring tools.

Through the consolidation of multiple supplier contracts TfL will benefit from significant cost savings, not only in the print infrastructure costs but in other areas such as consumables due to automated delivery and lower contract management costs due to having just one Supplier to manage. The detailed HP MPS Management Information reports will not only provide TfL with complete transparency of the service costs but will also assist TfL and HP to identify where heavy printing is being carried out, whether that be by a department or individual, and initiate measures to manage the costs down.

The delivery of the MPS has the potential to deliver significant cost savings and improvements across the printing service for TfL. HP understands printing and that its associated cost is a key concern to the Information Management Leadership Team, as the cost and quality of service may come to the attention of senior management, ultimately having a negative impact on Information Management reputation. While some tactical changes are being made, this project addresses TfL's overall strategic changes to move with the ever-changing Business demands whilst driving costs down.

The current situation is that TfL have an aging fleet with complex multiple contracts incorporating various SLA's, resulting in increased management overhead. This can be prone to instability and will not be easy to manage moving forward when the Business needs to be flexible, reacting quickly to changing demands, as with any long-term strategic business requirements and costs improvement programmes.



The MPS will support print consumption as a service, thus greater ability to influence user behaviour by introducing a charge per click for mono and colour pages across all print devices. This is measurable, provides accountability and can be charged down to a User level

Costs that can be measured as tangible benefits are:

- Removal of Photocopier costs by deploying multi-functional devices.
- Common Software solutions embedded within devices providing a common interface and simplifying utilisation of the devices
- Reduction in the number of devices required by implementing balanced deployment methods, print policy design criteria and a bespoke service delivery model.
- Paper costs would be reduced to show a potential saving of approx. 25% with the deployment of SafeCom pull printing solution.
- Reduction in incidents raised due to self-help problem resolution at the device
- Reduction in print servers at £3,500 each per annum (source for costs - EP cost tool).
- Reduction in capital expenditure on new devices through the cost per Print mechanism.
- Consumables being ordered automatically and delivered to the location before the device runs out of toner rather than being purchased through separate contracts, with purchase order costs involved in raising all the requests. Pricing stability as pricing is fixed for the term of the contract.
- No requirement to stock pile consumables within the offices on TfL estate.
- Power savings through automated sleep modes on devices and optimisation of the fleet
- Mobile printing through handheld devices, and accessibility of printing on the move.
- Management information to provide a constant view of the reporting required to manage the return of investment through internal billing (if required)
- Training for TfL employees and also ease of use with a standard control panel and interface across all devices.

In order to achieve TfL's objective of delivering a highly available, flexible and secure printer infrastructure whilst reducing costs, HP strongly advises that the parties jointly create a Print Policy.

The Print Policy will be a dynamic document subject to continuous improvement, and will be reviewed regularly at the Service Reviews to ensure elements such as user adherence and the benefits achieved are acceptable.

Some of the benefits achievable by deployment of a Print Policy include:

- Clear definition of Corporate standards for imaging and printing hardware, software and related functionality to allow optimisation of the infrastructure, management of the environment and improvement of workflows
- Definition of output defaults, such as duplex printing and colour usage
- Ensure optimisation of printers
- Colour printing as a minimum
- Use of Pull Printing to ensure secure printing for the document owner, whilst reducing wastage of consumables and paper, and supporting the objective of cost reduction.



Definition of device placement strategies, such as user:device ratio, recommended distance between users and printing capabilities, minimum device specifications and numbers per location

Increased end user satisfaction through improved service availability

A Customer Satisfaction process, including definition of user surveys and a process for distributing and measurement.

Improved business operations through standardised of enterprise wide functionality and settings

Reduced total cost of printing services by economies of scale, standardisation, reduced waste, centralised contract management, and a controlled technical environment with proactive monitoring and reporting

Transparency of imaging and printing services costs

Compliance with TfL security requirements

Support for Green initiatives, reducing the environmental impact of imaging and printing

HP understands the potential requirement to incorporate Future Options or Phase 2 under the Terms or Statement of Work of this RFP. HP has a very broad portfolio within the print services arena and a recognised Multi-Vendor capability, this will enable HP to seamlessly incorporate the future requirement options within the scope of this RFP. TfL will benefit from economies of scale, HP's network of proven service providers whilst maintaining the quality, flexibility and cost effective services from a single service provider.

C2.2	<p><b>Table 9. Resource Savings</b> – The Bidder must demonstrate an approach that is able to deliver significant resource savings to TfL. These savings can be delivered by taking all routine management tasks away from TfL and therefore reduce the resource required by TfL business clients to manage print. This saving should not just be in terms of time and/or headcount, but by improving processes, aimed at actually decreasing the overall resource needed to produce any single job.</p> <p><b>Table 10.</b> <i>Please no more than 750 words.</i></p>
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**Table 11. Bidder Response**

One of the key benefits of contracting with HP for the delivery of a Managed Print Service is that TfL can be confident the print environment will be managed with minimum involvement of TfL resources.

From the commencement of the MPS deployment HP will lead the implementation of the Service only calling on TfL resources for key decisions and internal communication of the change. The implementation of the services will be led by an experienced Project Manager and a Project Management Office will be aligned. The HP PMO will consist of:

- An experienced empowered Project Manager who will be responsible for driving the planning and implementation
- Account Delivery Manager: will be responsible for the on-going management and support activities
- Pre-Contract Technical Consultant: responsible for the build of the infrastructure and technical solution
- BAU Technical Consultant: responsible for the ongoing support of the technical solution for the life of the MPS
- Installation Team: responsibility for staging, installation and deployment activities



PMO facilitator: responsible for supporting the PMO organisation

HP has identified some key roles and responsibilities that TfL may want to consider when establishing the project team to support the HP MPS rollout.

Sponsor—an influential leader who guides all aspects of the MPS deployment and related MoC program to ensure HP MPS delivers the defined business goals and benefits to the organisation

Project Team—Typically IT champions responsible for managing the end-to-end delivery of the HP MPS solution,

Change Manager—the individual who develops and leads the MoC programme and ensures all levels of the organisation are ready for the change to HP MPS

Communications Manager—the individual who builds and manages the MoC communications plan to drive end-user awareness and engagement in the change to HP MPS

Business Champions—Influential business managers who will reinforce and support the MoC program to HP MPS.

End Users—All the employees who will be impacted by the change to HP MPS and who will look for guidance and support to help them maintain productivity and satisfaction.

Following the successful implementation of the MPS service the aligned ADM will take ownership of the Business as Usual delivery and manage the service going forward. The main TfL interface for the ADM will be the Contract Manager and an IT representative. These individuals will be expected to attend the regular service reviews and be available should a service exception occur. TfL will be provided with detailed reports on the services at the regular reviews so the performance to ensure the service is running in line with the required SLA's.

With TfL having a single MPS provider the current contract management overhead will be reduced enabling resources to be available to focus on other core business requirements.

The ADM will be supported by a skilled Technical Consultant (TC) to manage any issues with the technical solutions and roadmap update meetings. The TC will be the main contact for TfL for technical issues. In addition to the TC HP will be deploying a remote monitoring and management system which will enable proactive identification of potential device or service issues meaning HP can notify TfL of issues before they happen and where possible resolve the issues before they impact the business.

A number of processes will be deployed to manage the service, a key process will be how the consumables are ordered, delivered and installed. The ordering process will be automated, when a toner reaches a predefined threshold the device will remotely notify HP and toner will be mailed to the TfL location for installation by a named person. This will ensure there is no downtime due to lack of toner. There may be exceptions where additional toner is required in these situation HP will provide the capability for named employees to order via the web based service portal. This will

The deployment of the new devices will ensure reliability of the fleet and therefore fewer calls being raised with the Helpdesk, freeing up some Helpdesk resources, improving end-user satisfaction resulting in less management intervention and business disruption.

In summary the deployment of HP's MPS as the single supplier for print will enable TfL to release some resources to focus on their core business rather than being concerned about the stability, availability and effectiveness of the print infrastructure on which the business is reliant.

C2.3 — **Changing Customer Requirements and Innovation** – TfL expect a



	<p>scalable Managed Print Service. The Bidder must demonstrate a flexible approach to accommodate constantly changing TfL print environment. Bidders are required to clearly explain how they are able to meet TfL's continually changing requirements. Moreover, TfL would like an approach that could potentially reduce the number of MFD's estate.</p> <p><i>Please no more than 500 words.</i></p>
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**Table 12.** Bidder Response

Digital transformation is inevitable and fully supported by the UK Government. Stated in the UK Government Digital Strategy: December 2013 – "...the Government will become digital by default" – fulfilling the commitment made in the Civil Service Reform plan – "we mean digital services that are so straightforward that all those who can use them will chose to do so whilst those who can't are not excluded".

HP Research & Development and digitisation strategies have been working towards these goals for a number of years producing devices, monitoring technologies, software, methodologies and deliverable capability that enables our Customers to move on the journey from MPS 1 & 2 (fleet optimisation and cost management) through MPS 3 (Risk management & Compliance) to MPS 4 – Improved productivity & digitisation. These innovations allow HP to deliver a fully flexible service built to address the changing requirements of TfL.

Simple, reliable and user-friendly Digitisation & process automation of workflows are key to this capability as are the abilities to print from anywhere to any devices – using mobile technologies. HP's has the capability to deliver these requirements from simple digitisation & routing of documents to fully workflow and digital sign-off, archival and retrieval while providing auditability & legislative compliance. TfL will experience increase staff productivity and be able to potentially further reduce the fleet, by taking the adage – The best page is the page you don't print (or fax).

To help TfL achieve this goal HP offers TfL regular technology reviews and insight into our roadmaps and innovations. In addition, HP commits to conducting Art of the Possible and Workflow workshops with the key TfL stakeholders. The output of these workshops will allow HP to fully understand the TfL document environment, touch points and processes, future Business requirement in order to formulate a Digital Strategy and make recommendations and proposals to achieve efficiencies, further optimisation and cost reduction within the TfL environment.

The assigned Account Delivery Manager will constantly monitor all aspects of the service and chair regular Service Reviews to assessed and discuss the service performance with TfL Stakeholders. During the reviews the ADM will present a series of slides which will include over- and under-utilised devices, and recommend a fleet balancing programme is initiated

HP will work with TfL on a programme of continuous improvement of the enterprise output fleet throughout the life of the contract, and as advances in HP technology are made the parties will determine whether existing installed devices should be replaced with newer technology. This would be managed under change control. In addition to advances in HP technology the ADM will work with our Solution partners to ensure new releases and features within the deployed software solutions are discussed and deployed as required.

Processes implemented within the service will be constantly reviewed with TfL to ensure the process are still effective. If shortfalls are identified within a process and improvements can be made both Parties will discuss, propose, agree and implement process improvements.

<b>C2.4</b>	<p><b>Commercial Transition –</b></p> <p>The Apogee and Ricoh contracts expire 31st October 2015 and TfL expect</p>
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there to be zero impact to the quality of service whilst ensuring a seamless transition phase takes place. The Bidder must explain their recommended approach to transition and demonstrate there is no commercial impact to TfL whilst ensuring TfL customers do not experience a reduction in the quality of print service that is currently provided.

Please confirm what your intentions will be to ensure a smooth transition of service in relation to 146 Apogee leased devices and 199 Ricoh owned Assets to provide a smooth continuous service?

Please also confirm what your intentions would be around the TUPE element of the RM1599 Framework and the 4 onsite engineers that are currently based at TfL head office locations.

*Please no more than 1000 words.*

Table 13. Bidder Response

HP recognises the importance of Transition and Transformation (T&T) in any service that could have impact on the Business and end-user satisfaction.

To ensure a successful service T&T lifecycle HP will align a Project Management Office (PMO). The HPPMO will work with TfL and Incumbent Suppliers to develop a roles and responsibilities matrix incorporating activities across the project lifecycle for Core Project team.

HP would require a point of contact for TfL incumbent suppliers and request TfL facilitate the introduction and approval of HP direct contact in relation to the deployment of the new MPS.

**Managing and Mitigating Transition Risk**

HP has experience in performing print environment transitions and deployments for many global customers. During the Project kick-off meeting and subsequent workshops the core Project team will aim to identify any potential risks and see how the identified risks might be mitigated, avoided and if necessary accept.

Some issues and risks that always need to be considered when managing a transition to a MPS include:

- Gaps in department/organisational buy-in, support and readiness
- Lack of defined roles and responsibilities that will be assumed by Parties involved in the implementation
- Lack of understanding of who has authority, within all Parties, to request and approve changes to service and/or financial components.
- Critical processes uncovered during discovery that were not identified during the initial design process or contract negotiations
- Difficulty establishing and implementing a company-wide print policy
- Print policies that are incomplete or weakly documented, or adherence to print policies is not enforced, therefore allowing end users the ability to deviate from corporate standards, policies and processes without following a documented and approved exception process
- Delayed future state design approvals causing delays in ordering new equipment and possible higher costs
- Delays in scheduling device installations and training at sites due to limited availability of resources
- Unclear or constantly changing output requirements and scope creep such as addition of sites, products, business groups or services post contract signing



Deviations from planned future state designs to meet short-term needs.

HP's approach to manage the risks associated with MPS implementation includes:

Assigning a focused Project Management Office as explained above

Beginning work once a mutually agreed, detailed Statement of Work has been developed and signed off on by both parties

Developing a clear and agreed definition of the roles and responsibilities for by both HP and TfL

Customer aligned project teams, procurement, facilities, and IT representatives working closely with HP.

Verifying assignment of customer business-unit representatives with decision-making authority

Defining, documenting, and communicating a company print policy that defines the company's policy for governance and ongoing operations.

Holding regularly scheduled status meetings with action, issue and risk logs to ensure identified issues and decisions are documented, assigning owners for resolution and monitoring progress to closure

Utilising HP's proven and structured Management of Change (MoC) methodology process to support the deployment. This process is explained in some more detail below.

### **Management of Change**

From a business point of view there will be a number of benefits, not least from a financial, security and environmental perspective, however the end-users might not identify the benefits to their every day job and find it difficult to embrace change.

HP's approach to overcome this perception of interference and painful change is to keep the end-users involved. This is achieved by including end-user representatives in the Project teams and various communication medium such as:

Executive e-mails

Desk drops

Posters

### **Training**

HP will provide green button training to ensure the end-users experience of change is as least painful as possible. On completion device installations the engineer will provide a Green button training period. The scope of the training will include:

Functionality of the printer and MFPs

Safecom overview

Toner & Maintenance drum location & replacement

Basic fault diagnostics – paper jam; network outage

Floor walkers will also be available.

### **Deployment Challenges**

HP has experience in deploying MPS's to building of all sizes.

Recognised challenges and risks are detailed below:

#### **Site Survey:**

Carry out a basic survey of the buildings to ensure the devices can be wheeled to



and from their locations or if specialised moving equipment is required.

Confirm access to the required floors is available via people or trade lifts

Understand sensitive and secure areas where engineers need to be accompanied

Communication and planning with local facilities management.

**Device Deliveries/Collection:**

The size of the building driving the number of devices that can be deployed and remove in a day.

Ensure a network team representative is available during the deployment to address any networking / patching issues.

Ensure there are no constraints on the loading bay

Storage facilities on site to allow the engineers to off load from the vehicle.

Storage requirements for the legacy devices before they are pickup by the owner.

If no loading bay is available, a plan will be developed to ensure deliveries don't clash with rush hour foot traffic or access is limited due to parking restrictions.

Busy loading bays will only allow deliveries and removals within set time slots.

**Technical Considerations:**

Ensure a technical IT resource is aligned to the project to own any IT environment, network; PC configurations; Firewalls issues

Test network connectivity prior to the commencement of the deployment

**Service Desk:**

Ensure that the service desk is aware of the Deployment schedule

Update the call management processes

Ensure all parties know their Roles & Responsibilities and have the contact details for direct communication

Perform test calls to ensure the correct data is transferred to the parties to aid prompt resolution

**White Glove Service:**

[Redacted content]



- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

In addition to the above services the OSA's will

- Perform preventative maintenance on devices as directed by the ADM
- Provide adhoc end-user training as requested by TfL and agreed with the ADM

These services will be provided Monday to Friday 07:00 to 19:00 (excluding UK Public Holidays) at the following TfL locations;

- Albany House (Victoria)
- 55 Broadway (Victoria)
- 172 and 200 Buckingham Palace Road (Victoria)
- 100 Petty France (Victoria)
- Townsend House (Victoria)
- Victoria Station House (Victoria)
- Victoria Coach Station (Victoria)
- Business Exchange Rm 309 3rd floor 10 Grey Coat Place
- Windsor House (Victoria)
- Palestra House (Southwark)
- 230 Blackfriars Road (Southwark)
- 14 Pier Walk
- West Ferry Circus (C Wharf/West Ferry Circus)
- Templar House
- King William Street (Bank)
- West Ham Lane (Stratford)

HP have assumed the 4 existing Onsite Ricoh Engineers will be transferred under TUPE to HP to deliver this service.

The costs considered for these Onsite Engineers have been calculated based on the spreadsheet titled 'Ricoch Staff Data 07.08.15' provided by TfL. HP will work with TfL and Ricoh to ensure the appropriate consideration is given to these individuals and will undertake a full due diligence to confirm directly with Ricoh that the staff data provide is correct. Incorrect data may result in +/- change to the pricing.

Please note the RM1599 contract framework already makes provisions for the required legal indemnities required on an incoming and outgoing transfer of staff as set out in Clauses 16-18 inclusive.



C2.5	<p><b>Table 14. Data transparency:</b> The Bidder needs to describe how costs incurred during the contract period, usage and disposal of all devices, supplies and other costs associated with printing, will be clear, predictable and auditable. The Bidder will support total accountability in order to support TfL in reducing its own administration costs.</p> <p><b>Table 15.</b> <i>Please no more than 500 words.</i></p>
------	---

**Table 16. Bidder Response**

TfL has requested a cost per click billing model which provides a simple way of managing contract costs. Within the Pay Per Click charges the following components of the Managed print Service are included:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Please note: excluded from this list but are required in order for the MPS to function are the Servers required to run the solutions and the associated system management and application support.

The charges set out in the pricing schedule are fixed for the term and therefore predicable.

HP will provide detailed reports to the TfL contract manager on a monthly basis for review so subsequent invoices for the next billing period are predictable and can be forecast. The Management Information reports can be heavily customised but as standard the reports will provide:

• <b>Summary</b>	<b>Executive</b>	<ul style="list-style-type: none"> <li>• Summary of reporting period.</li> </ul>
• <b>Performance</b>	<b>Service</b>	<ul style="list-style-type: none"> <li>• Service Availability</li> <li>• Devices Availability</li> <li>• Device usage</li> </ul>
•	<b>Break Fix</b>	<ul style="list-style-type: none"> <li>• Incident Summary Broken Down By Incident Type</li> <li>• Correlation Of Device Count With Critical Cases</li> <li>• Specific Events By Model</li> <li>• Usage Trends By Model</li> <li>• Total Tickets By Location</li> <li>• Call Type By Month</li> <li>• Breakfix Comparing Quarter Over Quarter</li> <li>• Breakfix Best And Worst By Month</li> </ul>
•	<b>Usage</b>	<ul style="list-style-type: none"> <li>• Utilisation – Device Count By Range (e.g. 0-25%)</li> <li>• Operational Reporting</li> <li>• Current Activities</li> <li>• Domestic Interactive Map To Track MPS Activities</li> </ul>



	<p>Utilisation – Trends By Model</p> <ul style="list-style-type: none"> <li>• Device-Level Summaries For Exceptions (e.g. All Devices &lt; 10% Utilised)</li> <li>• EOSL Device Summary</li> <li>• Providing Overall Metrics For The Quarter</li> <li>• Usage Year Over Year</li> </ul>
• <b>Costs</b>	<ul style="list-style-type: none"> <li>• ARCs/RCCs Forecasting</li> <li>• Comparing Quarter Over Quarter For The Key Metrics</li> </ul>
• <b>Savings</b>	<ul style="list-style-type: none"> <li>• Change Order Tracking</li> <li>• Program Savings Using Year-Over-Year Analysis</li> <li>• CPP Savings</li> </ul>
• <b>Carbon Footprint</b>	<ul style="list-style-type: none"> <li>• Sustainability Impact Of MPS</li> </ul>

Any services provided by HP to TfL during the term of this agreement will only be undertaken following receipt of a completed and approved change control notice. Service change requirements will be discussed at service review meetings and subsequently planned by both parties.

HP has provided a rate card in Table 7.0 for some key job roles which will enable TfL to estimate the costs of specific activities, again being able to predict costs going forward.

### C3. Total Cost of Managed Print Service

Bidders must present well documented evidence of the principles behind the calculation of their costs in the following Section for TfL's consideration and remain valid for a minimum of 60 days.

A commercial proposal for two bids- for a non hosted and hosted managed print service will be accepted. Please recommend the most appropriate model for TfL and clearly explain the commercial benefits.

Ref.	Description
C3.1	<p><b>Pricing Schedule</b></p> <p>Bidders are required to complete the pricing schedule, Table 4.0.</p> <p>TfL expectation is that Bidders will demonstrate on- going competitiveness and delivery of significant cost savings. This will be scored (25%).</p>



## Table 4.0 Pricing Schedule

TfL current print volume are in the region of 56 Million sheets per year across the 345 MFD's, this is broken down:

- 38 Million Sheets – Mono
- 18 Million Sheets – Colour

Please use the information in Appendix A, B and D, to assist in providing a cost per click fee. Please respond using the volumetric table below. A percentage weighting for each scenario is provided in row one. The overall percentage score will be calculated by the combined score of the Mono (70%) and Colour (30%) response.

•	1	•	•	5	•	5	•	5	•	10
•	2	•	•	Le	•	>	•	>2	•	>3
•	2	•	•	Le	•	>	•	>2	•	>3
•	3	•	•	Le	•	>	•	>2	•	>3
•	1	•	•	Le	•	>	•	>2	•	>3
•	2	•	•	Le	•	>	•	>2	•	>3
•	3	•	•	Le	•	>	•	>2	•	>3



Ref.	Description
C3.2	<p><b>Commercial Model:</b> TfL require a price per print commercial model. Please provide in</p> <ul style="list-style-type: none"> <li>Table 5.0 – Please provide yearly breakdown of costs in full of the proposed MPS over 4 years, based on the baseline print volumes of 56 million prints annually (38 Million Mono, 18 Million Colour). Note this will not be scored.</li> <li>Table 6.0 – the total cost of ownership for a fully Managed Print Service. This should match with the total figure supplied in the Form of Tender. Note this will not be scored.</li> </ul> <p>Bidders need to clearly demonstrate the total cost of ownership to TfL and how the bidder will measure this throughout the duration of the contract.</p>

## Table 5.0 – Breakdown of Total Cost of Assignment

Note this is for TfL information purposes only.

Description	Cost Year 1	Cost Year 2	Cost Year 3	Cost Year 4
Managed Print Cost	██████████	██████████	██████████	██████████

## Table 6.0

Note this is for TfL information purposes only.

Total Cost of Ownership over 4 year contract	██████████
--	------------

## C4. Rate Card

Ref.	Description
C4.1	<p>Bidders are required to provide a <u>Maximum</u> Daily Rate Card for all Job roles that could be called off under this contract in Table 7.0. The rate card should clearly indicate the discounts available to TfL for long term engagement. The rate cards shall be used if any additional time and material work is required, outside the scope of the standard terms and conditions of Crown Commercial Service Framework Agreement, Contract Ref: RM1599.</p> <p>— Please note: This section will not be scored but will be added to the final contract.</p>

## Table 7.0

Role	Maximum Day rate (1-30 man days)	Maximum Day Rate (30+ Man Days)
Consultant	██████████	30+ Man days would typically be quoted separately.
Project Manager	██████████	30+ Man days would typically be quoted separately
Technical Consultant	██████████	30+ Man days would typically be quoted separately



5.

The Contract rates per day (unless stated otherwise in your response) shall be 8 hour day, excluding meal breaks. These rates per day shall be inclusive of all costs and charges (including without limitation expenses).

## C5. Sub-Contractor Usage

Ref.	Description
C6.1	— TfL request that all bidders must state their intention to use sub contractors for any part of this contract. (This section will not be scored and considered for information only)
<b>Bidder Response</b>	
HP will utilise a number of sub-contractors to deliver the most effective service to TfL. Areas where contractors will be used include some of the Discovery activity, some of the installation and the provision of break/fix.	

## C6. Assumptions, Risks and Caveats

Ref.	Description
C7.1	— Bidders must ensure that a full list of assumptions, risks and caveats is provided in support of the pricing tables. Any assumptions which are not included will not be considered at a later stage.  — TfL reserves the right to challenge the validity of any assumptions, risks or caveats.

6.

Ref.	Description
C7.2	<b>Assumptions</b> Bidding companies should provide a full list of their assumptions and for each assumption state: 1. Assumption 2. Section and page appearing 3. Impact on response
<b>Bidder Response</b>	
<p><b>Solution Assumptions</b> – Variation to the assumptions stated below could mean a change to the solution and therefore changes to the Pricing (up or down).</p> <p>The fleet metrics provided by TfL showed actual measured volumes where available, and where these were not available a volume estimate or an overall fleet average volume per device was supplied. HP has utilised this data as follows:</p> <ul style="list-style-type: none"> <li>○ Where no colour split on a device is shown, HP has assumed 50% of the total device volume is colour (based on overall average across the fleet)</li> <li>○ Where actual volumes have not been provided HP has used the estimate provided</li> <li>○ Where no estimate has been provided HP has used the average of similar device types (not fleet average)</li> </ul> <p>HP has introduced 22 devices for floors and sites with a single device to reduce the risk</p>	



of Severity level 1 calls and associated service credits, therefore the total HP baseline fleet consists of 368 devices.

In designing the fleet HP has balanced A4 and A3 devices based on the information provided and the stated requirements, resulting in a balanced fleet rather than a like for like capability replacement

HP has included an A3 colour device on all floors

All devices are duplex capable

All devices have fax capability

All devices are multifunctional devices

The core devices proposed have been selected based on data and requirements supplied – other devices from HP's portfolio may be selected and deployed following Discovery and further discussions with TfL

HP is assuming a high level of sponsorship for the project. Lack of appropriate sponsorship may impact user acceptance and transition

HP is assuming a full Discovery and Design exercise will be completed, allowing accurate validation of the initial fleet

HP assumes that existing TfL communications media (intranet, email, delivery) can be used to support the communications programme required to inform and engage end-users

TfL will provide the required data centre space to house the MPS server infrastructure and the list of requirements as stated in response to Question 28.

HP will have access to integrate HP ePrint with TfL's e-mail system for mobile print.

TfL will open certain network ports for the solution to function.

HP will have access to TfL IT team to discuss all aspects of the implementation.

HP will be granted secure remote access to TfL's solution servers and devices for remote trouble shooting.

### **Pricing Assumptions**

The charges are for a 48 month contract

Changing between the Charging bands will be discussed and agreed at the Service reviews

Charges exclude VAT

Upon reduction of printed volumes to an annual total printed mono pages of 25 million and 10 million colour pages HP will work with TfL to redesign the fleet which may potentially result in a reduced CPP.

Lower Volumes would imply a requirement for HP and TfL to work together to optimise the fleet design as the currently mandated levels of hardware would result in an unrealistic CPP and would not be in TfL's interests.

TUPE has been considered and the resources packages included within HP's solution. HP and Ricoh will undertake a full due diligence to confirm the staff data provide is correct. Incorrect data may result in +/- change to the pricing.

7.

8.

Ref.	Description
------	-------------



<b>C7.3</b>	<p><b>Risks</b></p> <p>Bidding companies should provide a full list of their risk and for each risk state:</p> <ol style="list-style-type: none"> <li>1. Risk</li> <li>2. Section and page appearing</li> <li>3. Severity categorised as 1-5 (1 being the least likely and 5 being the most)</li> <li>4. Impact on response</li> </ol>
<b>Bidder Response</b>	
<p>— Risk: Onsite people takeover – Charges calculated based on data provided from 3<sup>rd</sup>, due diligence will be required.</p> <p>— Section and page: C2.4. p17</p> <p>— Severity: 5</p> <p>— Impact: Incorrect data may result in +/- change to the pricing.</p> <p>—</p> <p>— Risk: SLA12 – Customer Satisfaction Achievement, based on the survey results – due to subjectivity of survey results</p> <p>— Section and page: SLA</p> <p>— Severity: 2</p> <p>— Impact: Mutually agree on the survey scope, content and data analysis and interpretation.</p> <p>—</p> <p>— Risk: Lack of Sponsorship</p> <p>— Section and page: Various sections, including C2.4 Commercial Transition, Reference 103, Reference 105</p> <p>— Severity: 4</p> <p>— Description: End-user acceptance is essential if maximum value from an MPS is to be achieved. A high-level sponsor is essential to support the project</p>	

9.

Ref.	Description
<b>C7.4</b>	<p><b>Caveats</b></p> <p>Bidding companies should provide a full list of their caveats and for each caveat state:</p> <ol style="list-style-type: none"> <li>1. Caveat</li> <li>2. Section and page appearing</li> <li>3. Impact on response</li> </ol>
<b>Bidder Response</b>	
<p>— Solution sign-off</p> <p style="padding-left: 20px;">The final solution design will require sign off by both Parties</p> <p style="padding-left: 20px;">The assumptions in C7.2 will be verified by both Parties</p> <p>— Failure to complete these actions will result in a delayed service deployment.</p> <p>— SLA credits:</p> <p style="padding-left: 20px;">HP can only be penalised once for a single event/device failure and not compounded into</p>	



multiple payments for the same failure.

HP cannot be penalised for SLA failure due to service elements outside of HP's control  
i.e. network or server failure.

## C7. Payment Profile

TfL is seeking a price per print page copy structure that will be agreed with the successful bidder prior to project start date. Payment for service will be made on a quarterly basis.

### ***HP's Response:***

Agreed. HP is compliant with this requirement.

## C8. TfL Framework Call off Contract – Terms and Conditions

The standard Terms and Conditions Associated with the Crown Commercial Service Framework Agreement, Contract Ref: RM1599 will be used. TfL will use the Framework Call off Contract for a term of 4 years with the option to extend for one plus one plus one for a maximum duration of seven years.

Following contract award the contract will be managed operationally by TfL IM Supplier Performance Assurance, who will monitor all contract details with support when required from the Commercial ICT Team.



# HP's Response to Section D: Guidance to Bidders on TfL's Policy for Access to Information

## D1. Background

The Freedom of Information Act 2000 (**FOIA**) gives the public a legal right of access to information held by public authorities. The public now have a right to know about our work and it is our duty to operate with openness and transparency.

A person making a FOIA request is entitled to two things, unless an exemption applies. These are:

- a) to be informed whether we hold information of the description requested; and
- b) if so, to have that information communicated to him or her.

## D2. How Does This Affect You?

**All** information held by TfL is caught by the FOIA. The rules about disclosure apply regardless of where the information originated. This means that all the following types of information **may** be subject to disclosure:

- a) information in any bid submitted to us;
- b) information in any contract to which we are a party (including information generated under a contract or in the course of its performance);
- c) information about costs, including invoices submitted to us;
- d) correspondence and other papers generated in any dealing with the private sector whether before or after contract award.

This means TfL will be obliged by law to disclose such information unless an exemption applies.

The legal obligation to respond to requests from the public under the FOIA rests with TfL. TfL must therefore respond to requests as we see fit in our sole discretion. This Guidance explains our policy on the disclosure to the public of information about our private sector suppliers.

## D3. General Rules on Disclosure

In the absence of special circumstances:

- a) all Requests for Proposals published by TfL will be available to the public on request;
- b) responses to bids will be held in confidence until contract award;
- c) information about the total value of bids will be made available to the public on request, but only in response to requests made after contract award.

Any person tendering for or contracting with TfL must notify TfL during the tendering or negotiating process of information which they consider to be eligible for exemption from disclosure under the FOIA. Such notification must be made in the form of the Appendix to this Guidance Note. Such information must be referred to as **reserved information**.



Information not identified as reserved information in the way described above is likely to be made available by TfL on request.

## D4. Reserved Information

Information which you wish to put forward as reserved information must clearly describe, with supporting detail:

- a) the information itself, or the class(es) of information; and
- b) why, in your opinion, that information is exempt from disclosure. Grounds for exemption may be one or more of the following:
  - i. the information is a trade secret:
  - ii. the disclosure of the information would prejudice the commercial interests of any person or organisation:
  - iii. the information will be disclosed by you to TfL, *and* the nature of the information, or the circumstances of its disclosure, or other circumstances, justify the acceptance by TfL of an obligation of confidence in relation to that information:
  - iv. the information is personal data or otherwise relates to the private life of an individual and is therefore appropriate for protection; or
  - v. any other specific exemption under the FOIA.

All decisions about disclosure of information will be made at the sole discretion of TfL. The exemption that applies to trade secrets and to information that would prejudice commercial interests if disclosed is a 'qualified' exemption under the FOIA. This means that TfL is required to consider whether, in all the circumstances prevailing at the time a request is received, the public interest in disclosure outweighs the public interest in upholding the exemption.

Information which is submitted to TfL as reserved information will be listed in a document that will also:

- a) specify which exemption(s) may apply to each piece or class of information; and
- b) indicate when it is likely information can be made available, or (if this is the case) that it is unlikely ever to be made available.

TfL may disclose your justification for classifying information as reserved information.

Information which is exempt under the rules governing commercial matters will not normally be withheld for more than seven years after completion of the contract supply.

Information relating to the overall value, performance or completion of a contract will not be accepted as reserved information, although TfL may choose to withhold such information in appropriate cases, at its sole discretion.

You may designate unit prices or more detailed pricing information as reserved information.

## D5. Transparency Commitment

- a) The UK government is committed to enable the public to hold politicians and public bodies to account; to reduce the deficit and deliver better value for money in public spending; and to realise significant economic benefits by enabling businesses and non-profit organisations to build innovative applications and websites using public data. Accordingly TfL is required to publish its contracts, tender documents and data from invoices received.



- b) As part of this transparency commitment, TfL has published this RfP to the general public.
- c) Further, TfL will publish the contract in its entirety (including from time to time agreed changes to the contract) and data extracted from the invoices submitted under the contract, to the general public. Currently, it is our intention that all contracts with a value greater than £10,000 will be published within 20 days of the end of the standstill period and that details from invoices over £500 will be published.
- d) TfL may in its absolute discretion redact all or part of the contract and/or the information extracted from invoices prior to publication and in so doing and in its absolute discretion it may take account of exemptions that would be available in relation to information requested under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. (Please refer to the above paragraphs in this Section E of this Request for Proposal for further information in relation to Freedom of Information.)
- e) TfL may in its absolute discretion consult with the service provider regarding any redactions to the contract and/or the information extracted from invoices to be published however TfL will make the final decision regarding publication and/or redaction.

## D6. Other Guidance

Although TfL is not under any obligation to consult you in relation to requests for information made under the FOIA, we will endeavour to inform you of requests wherever it is reasonably practicable to do so.

Contracts with TfL may require you to supply information to us, or provide other assistance, pursuant to any FOIA request received by TfL.

You should be aware that TfL's decision on applying an exemption and, therefore, refusing a request for information by a member of the public may be challenged by way of appeal to the Information Commissioner. The Information Commissioner has the statutory power to direct that the information be disclosed.

## D7. Freedom of Information Appendix: Reserved Information

Contract/Tender/Document Reference Number: **ITC11681**

<b>Figure 1. Information Class / Type available</b>	<b>Figure 2. Grounds for Exemption</b>	<b>Figure 3. Date can be made available</b>
Pricing – C3. Total Cost of Managed Print Services	Commercially Sensitive	3yrs following end of Agreement.



# HP's Response to Section E: Essential Documents for Return

## E1. Form of Tender

To: [REDACTED]

**Re: ITC11681 – TfL Managed Print Service for a 4 year term (with the option to extend on a one, plus one, plus one basis up to a maximum of seven years).**

Having examined the Request for Proposal we, the undersigned, hereby offer to provide the solution in accordance with the RfP and Framework 'Call Off' Conditions for the sum of:

[REDACTED] (in words)

£ [REDACTED] exclusive of VAT and any other applicable tax for a 4 year agreement.

**The Tender Sum should include the total cost of all services detailed, for a four year term.**

We certify that this is a bona fide tender that we have not communicated to any person other than Transport for London the amount or approximate amount of the tender price and that such price has not been fixed or adjusted by arrangement or in collusion with any third party. We also undertake that we will not make any such communication or enter into any collusive arrangement with any third party whether in relation to this tender or a tender submitted or to be submitted by such third party.

Unless and until a formal agreement is prepared and executed, this tender, together with your written acceptance thereof, shall not constitute a binding contract between us.

We understand that Transport for London reserves the right not to accept the lowest or any tender that may be received.

We agree to keep the contents of the Request for Proposal confidential.

Yours [REDACTED]

[REDACTED]

[REDACTED] Date: 25<sup>th</sup> August 2015

Name: [REDACTED] Tel No: [REDACTED]



## E2. Disclaimer

I the undersigned, on behalf of **Hewlett-Packard Limited** accept that:

- TfL has prepared this RFP in good faith. However, TfL, its agents and its servants do not warrant its accuracy, completeness or relevance, nor that it has been independently verified. To the extent that TfL is permitted by law, it excludes any liability (whether in contract, negligence or otherwise), for any incorrect or misleading information contained in this RFP, or any inadequacies, inaccuracies or incompleteness of the RFP, and makes no representations or warranty, express or implied, with respect to the information contained in the RFP documents or on which such documents are based or with respect to any written or oral information made or to be made available to an interested Bidder or its professional advisors and any liability therefore is excluded. This RFP is a request for a proposal and not an offer document; answers to it must not be construed as acceptance of an offer or imply the existence of a contract between the parties.
- Any asset lists, current costs, staff numbers and other related information provided as part of the RFP documentation may not be totally representative of the current environment because of the complex nature of the current environment and ongoing information collection process. Any resulting caveats and assumptions should be clearly stated by Bidders in their proposals.
- Nothing in the RFP documents or provided subsequently has been relied on as a promise or representation as to the future. TfL reserves the right, without prior notice, to supplement or amend any of the terms of this RFP, or any of the documents contained or referred to therein, or to terminate discussions and the delivery of information at any time during the tender process. Some of the provisions of the draft Conditions of contract have been left undrafted or drafted in outline only. Definitive drafting of most of these will follow in due course after discussions have been held with Bidders.
- In no circumstance will TfL, their agents or servants be liable for any bid costs incurred by the Bidder in responding to the RFP.

Signed: \_\_\_\_\_ Date: 25<sup>th</sup> August 2015

Name: \_\_\_\_\_



- **PART B – TECHNICAL RESPONSE**



# Response to Transport for London's for Request for Proposal (RfP) for Managed Print and Associated Services from Hewlett-Packard Limited



## G1131 Volume 2 Technical Specification for MPS

7<sup>th</sup> July 2015

1.



12.

## Important Notice

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This proposal does not constitute an offer capable of acceptance by Transport for London and is subject to agreement of a formal contract specifying terms and conditions. No contractual relationship shall arise until a formal contract has been signed by both parties. Hewlett-Packard will not commence work under this proposal without formal written agreement signed by both parties.

The term "solution" in the context of this document is defined as the products and services proposed herein. Since additional information may be required from Transport for London in order to develop the appropriate configuration for a specific project, the term "solution" does not imply that those products or services as proposed are guaranteed to, or will, meet any mandated or implied requirements or integrate or inter-operate with any other products, processes or systems.

The use of the terms "partner" or "partnership" in this proposal does not imply a formal, legal, or contractual partnership, but rather a mutually beneficial relationship arising from the teamwork between the parties.

Unless otherwise agreed in writing, pricing estimates are valid for 30 days from date of submission of this document or from the date of any individual proposal from HP.

When HP's proposal is submitted via electronic format and hard copy, ONLY the content of the hard copy will be binding on Hewlett-Packard if the content differs.

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# G1131 Volume 2 Technical Specification for MPS

## HP's Response to Section 5: Requirements

### 5.1 Transition

A key requirement for TfL is for a successful transition to the new service, as defined in section 2.1 Business Objectives.

Specifically, in order to evaluate a provider's ability to transition successfully, TfL will examine bidder responses by scoring the following requirement questions.

Please add your response in Section 5.2 Requirements.

<b>Evaluation category</b>	<b>Detail requirement question</b>	<b>Max score</b>
<b>Resources</b>	Please confirm that you have the resources and capability to take ownership of this new and existing service for transition on 31/10/15 if contract is signed by 31/07/15	<b>Yes or No</b>
<b>Additional capabilities for future phase</b>	Please confirm that you can offer a full reprographics centre service and a plotter service	<b>Yes or No</b>
<b>Device grouping by location</b>	TfL have grouped staff site locations into "Tiers" as follows: T1= Hub, T2=Large office, Tier 3 = Small office, Depot, Station. Where T1 is >400,000 prints per quarter T2 is >40,000 per Qtr T3 is <40,000 per Qtr. Potential providers are to make recommendations for delivering the service to these differing groups (Tiers) of locations. TfL require options for more than one model if there are constraints on space in specific locations, the constraint on space may override the requirement for capacity and therefore alternative models or additional devices at nearby locations may be considered.	<b>2.66%</b>
<b>Transitioning</b>	Describe your transition plan which should include – Time plan for installation of new devices, liaison plan for working with outgoing provider, Transport & storage plan for each building, Familiarisation plan for new support staff ( field staff & provider site based staff), explanation of how you will measure a successful implementation.	<b>1.66%</b>
<b>Installation &amp; Transition</b>	Describe how your organisation would implement a "pull" print and Multi Function Device service rollout in an organisation of comparable size and complexity to TfL. Please give detail of the transition from current set up to the new service proposed with strong emphasis on project management, disruption expectations, user support, implementation schedule and how you would plan for the varied locations across the TfL estate. The proposal should provide for support of currently installed devices until complete transition to the new service is complete.	<b>6%</b>
<b>Device location</b>	No TfL user shall be required to move between floors to access a MFD. Please describe how you propose to distribute devices at	<b>1.33%</b>



	locations in order to meet usage demand (see appendix A )	
<b>Transition resources</b>	Provide a list of what you will require from TfL during the implementation and transition stage, including (but not limited to ) manpower resources, desks, storage, access	<b>Yes or No</b>
<b>Transition Support</b>	There will be a requirement for the chosen supplier to provide support to some of the existing mixed estate before the completion of full migration to any new service (at phase 1 or phase 2). Please describe the level of service which would be offered during this period, including: SLAs relative to the new service SLAs in this document, provision of new / replacement devices and any other aspects that would help in understanding how you would manage a mixed manufacturer scenario.	<b>1.66%</b>
<b>Future phase</b>	Describe how you would implement a future phase for Push printers, plotters and a reprographics centre managed service	<b>1.66%</b>



## 5.2 Functional Requirements – Service & Technical

Evaluation Criteria scoring – Commercial = 40% (see Volume 1) Transition = 15% Service = 45%.

Reference	Evaluation Criteria Commercial = 40% Transition = 15% Service = 45%	Category	Detail requirement question	Max % score	Yes / No question	Bidder's Response (alternative solutions should be described if requirement cannot be provided as stated)
			<i>Bidders are requested to restrict descriptive answers to word count as stated</i>			
1	Service	<b>Asset tagging</b>	Provider to identify each MPS asset with tag or label and to record the asset on an appropriate register, shared with TfL dependent on ownership model		Yes	
2	Service	<b>Monthly billing</b>	Invoices to be submitted 4 weeks in arrears to TfL IM Supplier Performance & Assurance prior to submission to TfL Accounts Payable, with the periodic report provided as backing data. The invoice should be set out as follows: - <i>Total click charges</i> – <i>Additional costs (where applicable)</i> – <i>Additional lines for any optional services TfL may take up.</i> Any		Yes	Compliant





			requirements for additional devices, installation costs or project work will need to be invoiced separately from the 'core services' invoice. Any additional click charges or management fees for additional devices should be included in the response			
3	Service	<b>Contract Management meeting</b>	Provider's Account Manager to meet representatives of TfL IM Supplier Performance & Assurance and any other relevant TfL team (TfL are in the process of appointing a SIAM supplier) on a periodic basis at a location to be specified by TfL. Topics to be covered will include: – <i>Supplier performance against SLAs</i> – <i>Any service issues and incidents not met within SLA and proposed remedial work</i> – <i>Any proposed changes to the service</i> – <i>Product roadmaps</i> – <i>Invoice payment</i> – <i>Service credits</i> – <i>Any other issues</i> – <i>Opportunities for Continuous improvement</i>		Yes	[REDACTED]

					Yes	[Redacted]
4	Service	<b>Service Credits</b>	Confirm compliance with Service Credit terms stated in the SLAs as shown in Section 7		Yes	Compliant
5	Service	<b>Installation costs</b>	Service shall include (at the least) all transport, installation & commissioning costs to point of use including insurance, packaging & packaging disposal		Yes	[Redacted]
6	Service	<b>Installation access</b>	The provider shall ensure that all Supplier Personnel who require access to TfL stations, carry out the following: A) obtain and retain the Sentinel accreditation licence; B) Attend and pass the equipment room awareness course; C) complete and submit a QAF request for TfL approval		Yes	[Redacted]
7	Service	<b>Installation management</b>	Provider should co-ordinate the delivery, installation, removal and all dependencies of MFP implementation moves and changes		Yes	[Redacted]
8	Service	<b>Service Management</b>	Users will contact the main TfL IM Service Desk to report incidents with the print service. TfL Service	3.40		[Redacted]





			<p>Desk will regularly liaise with the service provider help desk to report the incident and to expedite the resolution undertaken by the service provider. The service provider shall continuously monitor, notify and update the TfL Service Desk of any errors that are automatically generated. Incidents will be tracked using the TfL Remedy help desk system until resolved and TfL confirms incident is closed. Provide detail of how you propose to deliver this service including your ability to integrate with the TfL Remedy system.</p> <p>In less than 750 words</p>		<p>[Redacted content]</p>
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						[REDACTED]
9	Service	<b>Incident</b>	Any server infrastructure located in TfL premises provided to deliver		Yes	Acknowledged – Please refer to Question 28 for

		<b>management</b>	the MPS should be managed as part of the MPS by the provider. Refer also to access requirements		Yes	full details on HP's Black Box offering.
10	Service	<b>Incident management</b>	Service provider shall ensure that their staff have access to manufacturer's recommended spares for the model of device with a reported incident such that the incident can be resolved within the SLAs.		Yes	[REDACTED]
11	Service	<b>Incident management</b>	Ability for provider to work with the TfL IM Service Desk to prepare help desk scripts to resolve basic incidents that can be resolved remotely		Yes	[REDACTED]
12	Service	<b>Maintenance</b>	Supplier shall provide and undertake a full maintenance plan for all device types. Specified by location, device and date. Maintenance plan shall be to manufacturer's recommendations and agreed with TfL.		Yes	[REDACTED]
13	Service	<b>Provider's</b>	Service provider's staff to be		Yes	[REDACTED]



		<b>Staff</b>	recognisable by uniform			
14	Service	<b>Monitoring</b>	Automated alerts shall be delivered to MPS Provider and TfL IM Service Desk		Yes	Compliant
15	Service	<b>Monitoring</b>	TfL to have access to any Managed Print Service web portal, detailing all alerts with ability to drill down to individual print device and backend components to view status. Describe this service or your method of providing TfL access to alerts  In less than 500 words	<b>1.33</b>		[Redacted]





						[REDACTED]
16	Service	<b>Monitoring</b>	Proactively monitor in real time, identify and resolve potential printing problems and replenish supplies before employees are affected. Describe how this would be accomplished with automated pro-active tools and how you would measure their effectiveness. In less than 1250 words	5.33		[REDACTED]



						[Redacted]
17	Service	<b>Print queue</b>	Purge all documents in queue if not collected within 8 hours default, configurable by administrator		Yes	[Redacted]
18	Service	<b>Reporting (email to TfL)</b>	Monthly uptime & downtime by device, Incidents logged by TfL staff and by provider's proactive system, Reason code, summary of overall TfL uptime, failure types, actions taken, and performance against SLA see Section 7		Yes	[Redacted]



						[REDACTED]
19	Service	<b>Reporting (email to TfL)</b>	Report on Monthly usage statistics by device/cost centre (with ability to report by individual user on request) – Print/scan type, Single/Duplex output, Colour/Mono output, click charge by cost centre, paper consumption by cost centre by value, mono/colour consumables consumption by cost centre, Trend analysis		Yes	[REDACTED]





						[REDACTED]
20	Service	<b>Reporting (email to Tfl)</b>	Monthly service charge breakdown by month, year to date, full year projected charge, with print per click costs per device. Recommendations for cost reduction. Please provide evidence of this from your customer case studies.		Yes	[REDACTED]
21	Service	<b>Reporting (email to Tfl)</b>	Major incident report following Severity 1 incident within 2 working days of incident resolution.		Yes	Compliant

22	Service	<b>Reporting (email to TfL)</b>	Ad-hoc reporting when required		Yes	[Redacted]
23	Service	<b>Equipment Movements</b>	Describe your proposed service for movement of equipment on request by TfL (with 5 working day's notice) at the appropriate rate card cost as agreed in advance. Include rate card costs in response In Less than 500 Words	2.00		[Redacted]



						[REDACTED]
24	Service	<b>Consumable replenishment</b>	Describe the replenishment service you propose to provide at the locations specified by TFL (Optional within contract) In Less than 750 Words	3.33		[REDACTED]





						[Redacted]
25	Service	<b>Incident Management</b>	Technical specialist to be directly available at any TfL location or via remote access in support of incidents (rather than account manager)		Yes	[Redacted]



						[Redacted]
26	Service	<b>TfL Training</b>	Describe a feasible training plan and examples of training materials for TfL staff, including any necessary training for administration of the service In Less than 750 Words	<b>3.00</b>		[Redacted]

						<ul style="list-style-type: none"><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li><li>• [REDACTED]</li></ul> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
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						[Redacted]
27	Service	<b>Support hours</b>	Confirm acceptance of SLA terms in Technical Specification Vol 2, Section 7		Yes	[Redacted]
28	Service	<b>Service provision</b>	Describe your proposed options for an off-site Hosted and a Non Hosted architecture for delivery of a high availability service. Please recommend the most appropriate model for TfL, explaining reasons for your recommendation In less than 1000 words	4.00		[Redacted]



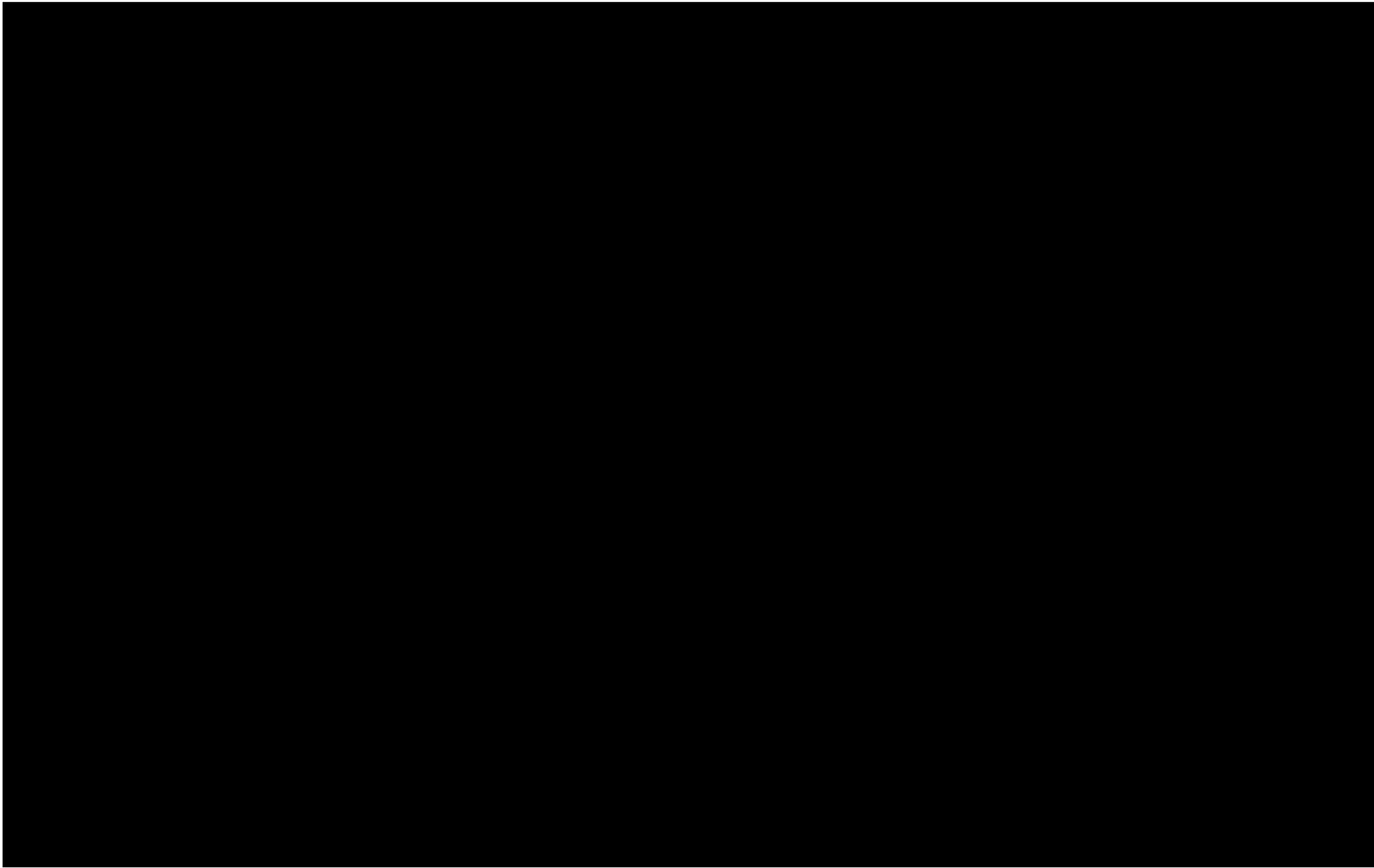
						<p>[REDACTED]</p> <ul style="list-style-type: none"><li>[REDACTED]</li><li>[REDACTED]</li><li>[REDACTED]</li><li>[REDACTED]</li><li>[REDACTED]</li><li>[REDACTED]</li><li>[REDACTED]</li></ul>
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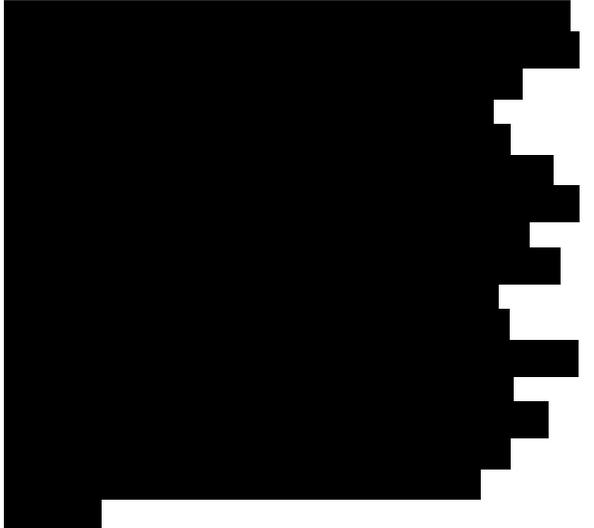


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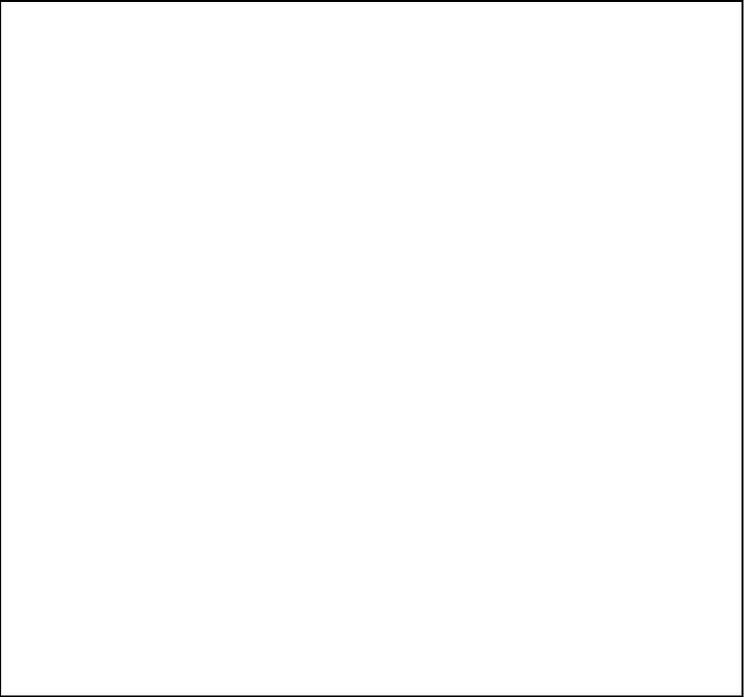
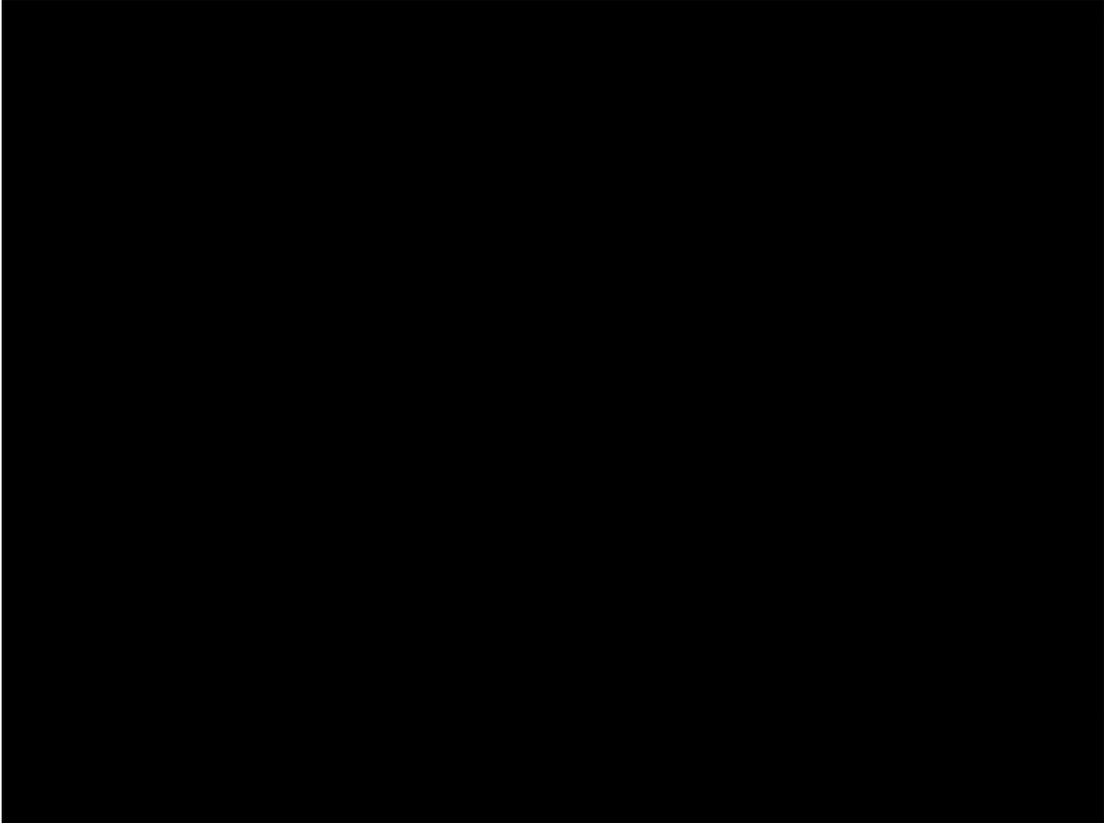


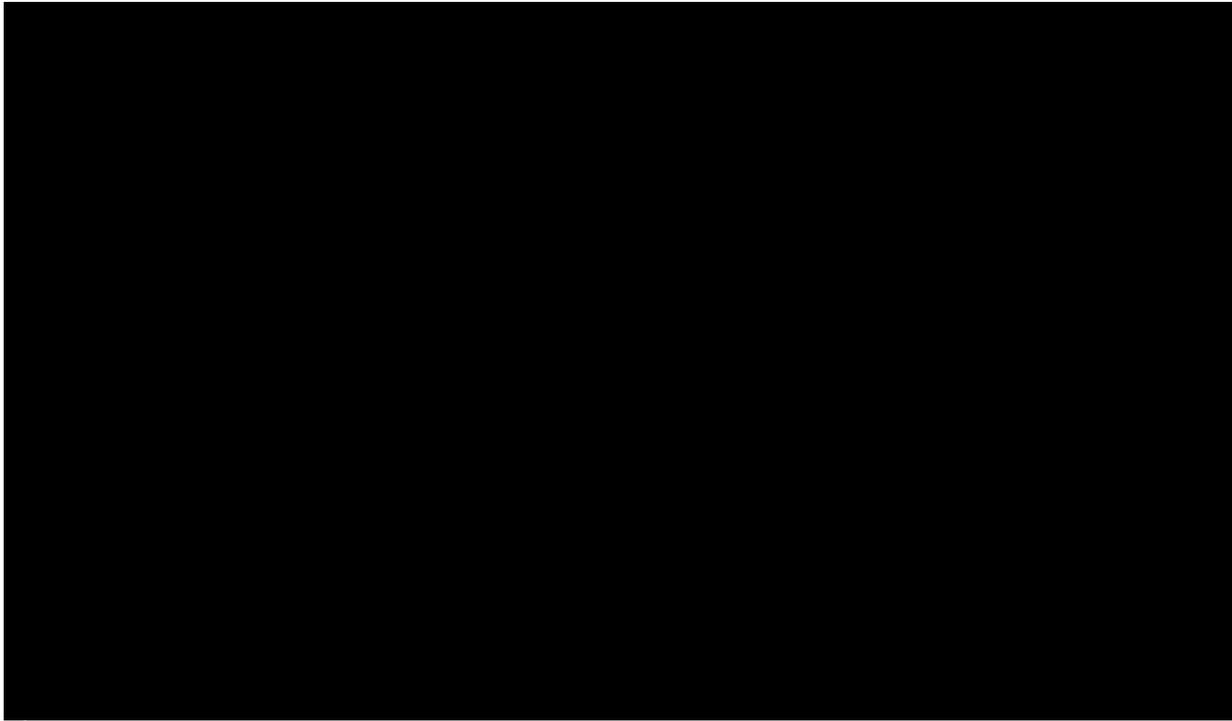




			solution has capability for this			
30	Service	<b>Usability – MFD user interface</b>	<p>All devices shall utilise an easily accessible and consistent user interface to facilitate ease of use and reduce training requirement. Describe the User Interface proposed</p> <p>In less than 1000 words</p>	<b>4.00</b>		







**Control Panel Display and Customisation**

31	Service	<b>Accessibility</b>	Provider shall confirm what provisions will be made for use of MFDs to comply (with reasonable adjustment) with BS8300 and additionally for the following disabilities: Mobility impaired – Visually impaired – Hearing impaired or deaf – Dyslexia In less than 500 words	<b>2.00</b>	
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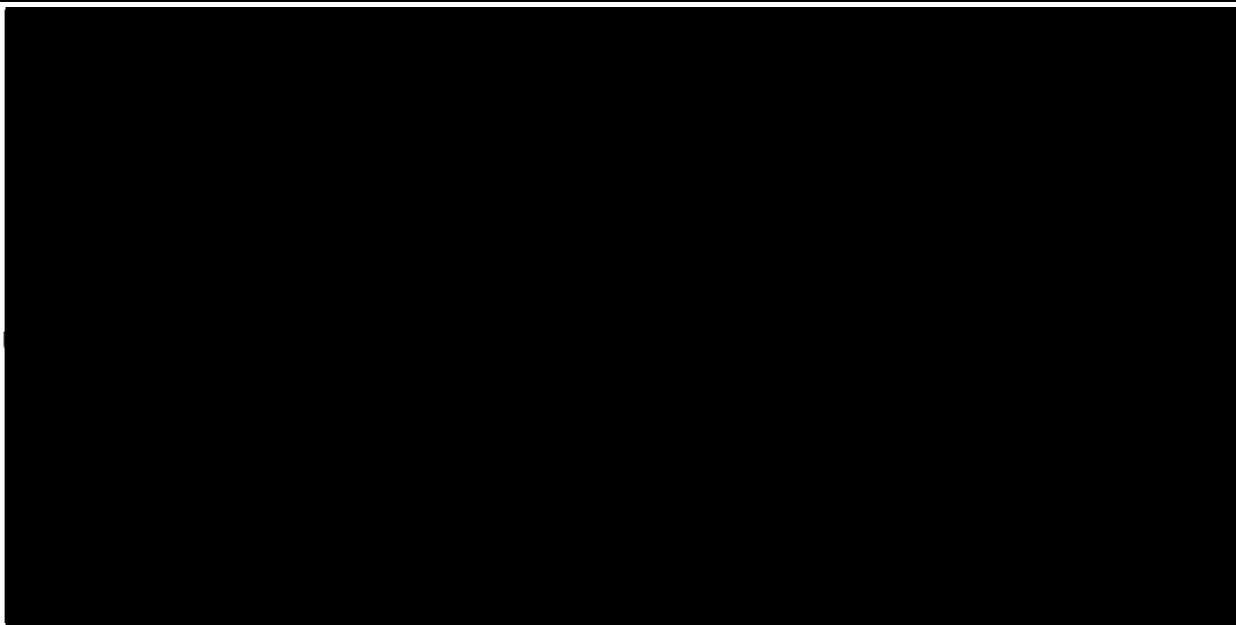


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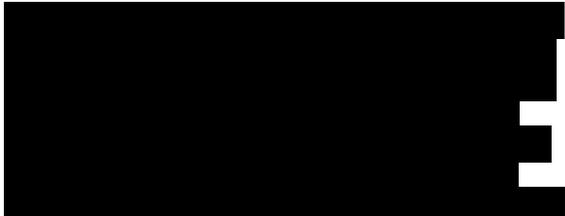


## Accessibility





**Enhance Productivity for all Users**

32	Service	<b>Replacement at End of Life</b>	Service to include plan for replacement of end of life devices and their disposal, both at no cost to TfL. This shall be done in accordance with the TfL Environmental policy covering equipment disposal and must include all storage media, including hard drives		Yes	Compliant
33	Service	<b>Future Road Map</b>	Provide a Road Map for the service for at least 12 month forward, to include device & software strategies  In less than 500 words	2.66		



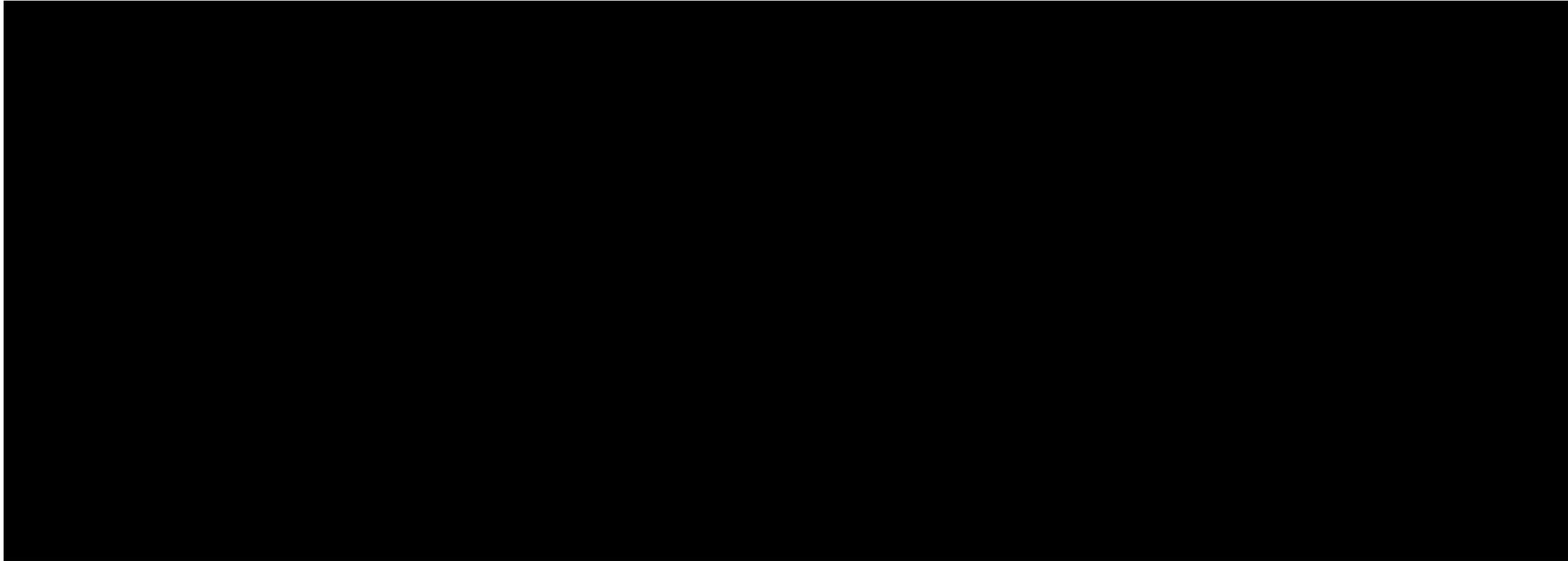


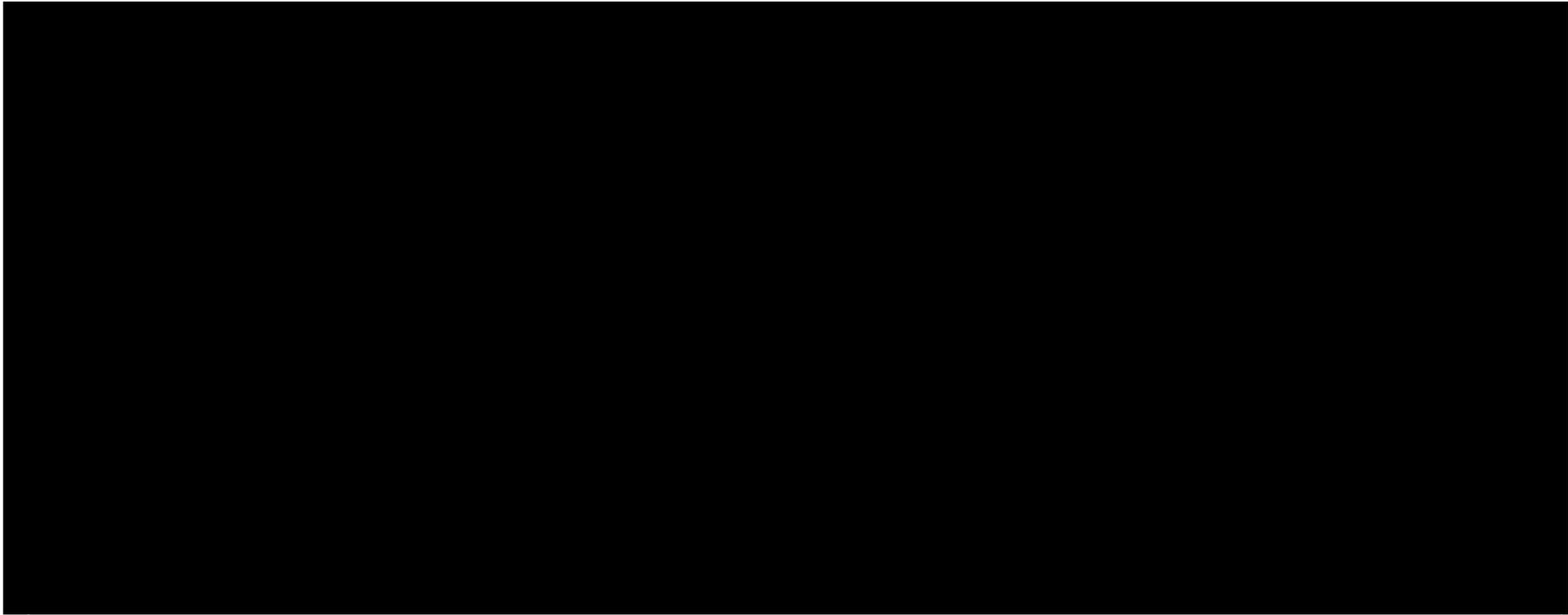
						[REDACTED]
34	Service	<b>Continuing Service Improvement</b>	Supplier to include the following operational outputs to inform TfL of continual service improvement (CSI) initiatives – including but not limited to: A) continual service improvement ideas through the Contract Management meeting; B) trend analysis of Incidents C) Service reporting and data not contained in the monthly Contract Management meeting		Yes	[REDACTED]



35	Service	<b>Mobile User Experience (UX) and secure access</b>	The mobile printing solution shall provide a user interface software app that is intuitive and easy to use, access will be managed via TfL Active Directory Permissions. Describe how you proposal will satisfy this requirement In less than 500 words	2.66		



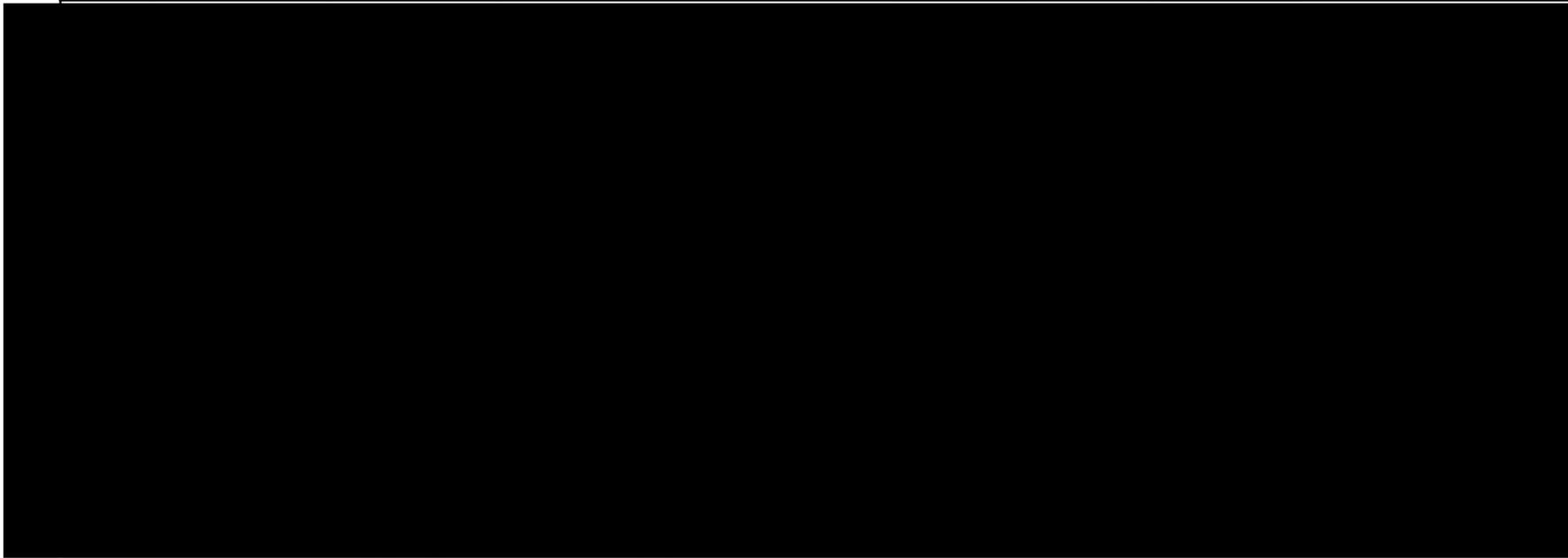




36	Service	<b>Mobile Application Management</b>	Describe how TfL could manage the available apps that a user can install on a corporate mobile device and/or access from a personal device so they can protect corporate data against malware and prevent sharing of data outside the trusted network . The mobile printing software application shall be maintained and supported via a mobile application store to ensure that the latest software version is maintained to provide good user performance, eliminate software bugs and upgrade the mobile	<b>2.00</b>		
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			software application. In less than 500 words			
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**HP ePrint Enterprise Mobile Iron Integration**

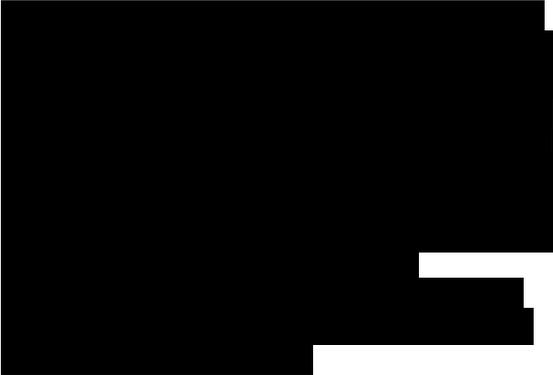
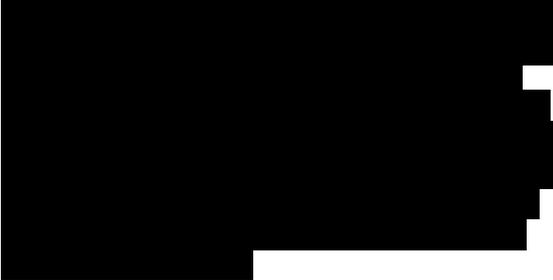
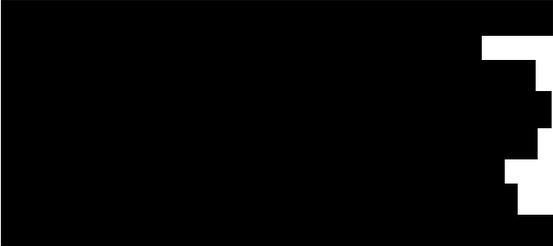
37	Service	<b>Log creation</b>	Management Information shall be generated from log and event data to allow TfL administrators to see how much is printed, copied and/or scanned from mobile devices. Cost by user/department/ directorate should be easy to report on.		Yes	
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38	Service	<b>Mobile logs</b>	These logs will be able to be viewed by authorised TfL persons.		Yes	[Redacted]
39	Service	<b>Report generation for mobile devices</b>	Access data reports will be generated by authorised TfL persons – reports to be available as ad-hoc requests or scheduled (weekly/ 4 weekly/periodic) reports.		Yes	[Redacted]
40	Service	<b>Incident Management</b>	Please describe how your organisation intends to meet the service and SLAs described within this tender. Aspects to include resource provision, proactive management, handling of peak demand, logistics and customer satisfaction. Explain how the	6.66		[Redacted]

to the



			<p>proposal sets you apart from competitors? In less than 1250 words</p>			   
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						[REDACTED]
41	Service	<b>Asset lifecycle</b>	Please describe your approach to asset lifecycle management to ensure the devices provided to TFL continue to meet the service requirements and remain reliable In less than 500 words	2.66		[REDACTED]

42	Service	<b>Service Catalogue</b>	Provide a catalogue of the devices that will be provided to TFL to meet the varying demands of large office hubs to smaller station environments.		Yes	[REDACTED]
43	Technical	<b>Pull</b>	User shall be able to initiate a job from any OneLondon network location and "pull" the output as a generic queue to be delivered to any device covered by the MPS on the OneLondon network		Yes	[REDACTED]
44	Technical	<b>New Devices</b>	Service shall include flexibility for provision of new devices to additional locations as requested by TfL. Time from order to commissioning for new devices to be < 5 working days.		Yes	Compliant
45	Technical	<b>Scalability</b>	Service must be scalable and capable of increase or decrease in print volumes		Yes	[REDACTED]
46	Technical	<b>Colour</b>	Monochrome (default) or Colour (selectable) at job submission stage		Yes	[REDACTED]



47	Technical	<b>Duplex</b>	Duplex printing to be default = Yes but selectable		Yes	[REDACTED]
48	Technical	<b>Quantity</b>	Quantity to be one by default, selectable up to 99		Yes	[REDACTED]
49	Technical	<b>Collation</b>	Collation of sets to be <b>default = Yes</b> but selectable		Yes	[REDACTED]
50	Technical	<b>Stapling</b>	Optional stapling (at corner) of sets to be <b>default = No</b> but selectable		Yes	[REDACTED]
51	Technical	<b>Stapling</b>	Stapling (middle for booklet) of sets to be <b>default = No</b> but selectable		Yes	[REDACTED]
52	Technical	<b>Booklet format</b>	Booklet format as a selectable option		Yes	[REDACTED]
53	Technical	<b>Print medium</b>	Paper stock options to include envelope sizes DL, C6/C5, C5, C4		Yes	[REDACTED]
54	Technical	<b>Device administration</b>	Defaults, all to be configurable		Yes	[REDACTED]
55	Technical	<b>Print medium –</b>	Printed output to be on A5, A4, A3 size paper stock to 300 gsm max		Yes	[REDACTED]



		<b>envelopes</b>	weight			
56	Technical	<b>Print medium – headed paper</b>	Solution shall be enabled for printing on headed paper		Yes	
57	Technical	<b>Print medium – labels</b>	Printed output to be enabled for A4 label stock		Yes	
58	Technical	<b>Print medium – bypass</b>	Ability to print single or multiple sheets by feeding supported media manually via a bypass tray		Yes	
59	Technical	<b>Job management</b>	MFDs to have ability for user job hold/resume and cancel. MFDs need to be integrated with MS Active Directory		Yes	
60	Technical	<b>Scan</b>	Optional creation of file name (as a type pdf, TIF, JPEG) at device and		Yes	



			distribution by email, to shared drive, or to Sharepoint. Distribution shall be identifiable to the user creating the file, MFDs need to be integrated with MS Active Directory and Exchange Mail			
61	Technical	<b>Copy/Scan</b>	Resize (enlarge or reduce) to be selectable		Yes	
62	Technical	<b>Copy</b>	Photocopying to be provided as part of the MFD capability with user authentication.		Yes	
63	Technical	<b>Copy/Scan</b>	Scan or copy of multiple paged documents will be facilitated by providing automated paper feed		Yes	
64	Technical	<b>Fax</b>	Ability to send and receive fax transmissions at selected locations ( but not all). Optional and may be for limited devices per building/floor.		Yes	
65	Technical	<b>Information security</b>	Network security – for wired & wireless shall meet the TfL standards as provided (see appendix C for TfL Information Security Controls Framework). Fax services shall be appropriately segregated and secured, specifically: <i>Technical measures shall be in place to protect the</i>		Yes	



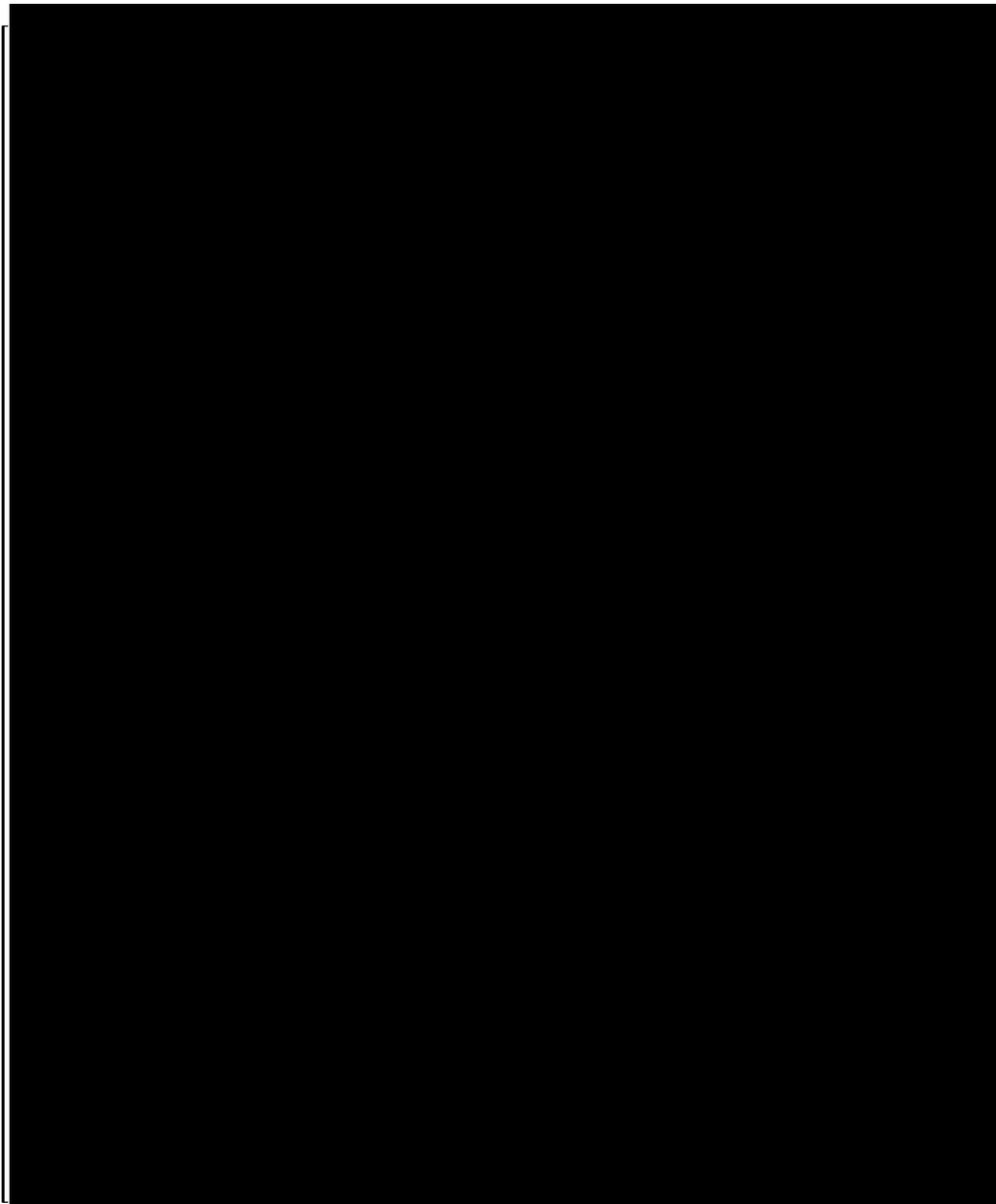
			<i>memory from unauthorized access (encryption, access control). For incoming faxes it shall be ensured that only the intended recipient(s) are able to access or print these from the device. Delivering faxes via email is permissible</i>		Yes	[REDACTED]
66	Technical	<b>Compatibility – Software</b>	Solution to utilise only one Mono & only one Colour driver to ensure best utilisation of 2 queues (mono & colour)		Yes	[REDACTED]
67	Technical	<b>Compatibility – OS</b>	Print driver to be compatible with all supported versions of Windows, Citrix, Apple Mac & Android operating systems		Yes	[REDACTED]
68	Technical	<b>Compatibility – Applications</b>	Solution compatibility shall include (but is not limited to) both SAP & Oracle ERP systems, MS Office (inc Visio), Primavera project planning, AutoCAD, Bentley CAD		Yes	[REDACTED]
69	Technical	<b>Output resolution</b>	Mono copy resolution $\geq 600 \times 600$ dpi		Yes	Compliant
70	Technical	<b>Output resolution</b>	Colour copy $\geq 1200 \times 600$ dpi		Yes	Compliant
71	Technical	<b>Output resolution</b>	Scan resolution $\geq 200 \times 200$ dpi		Yes	Compliant
72	Technical	<b>Output resolution</b>	Mono print resolution $\geq 600 \times 600$ dpi		Yes	Compliant
73	Technical	<b>Output resolution</b>	Colour print $\geq 1200 \times 600$ dpi		Yes	Compliant
74	Technical	<b>Power management</b>	Devices shall be capable of auto power save if idle for period set by administrator		Yes	Compliant
75	Technical	<b>Power management</b>	Devices shall be capable of auto power off if idle for period set by		Yes	Compliant



			administrator			
76	Technical	<b>Compatibility – Software</b>	The MFDs will support PostScript (at v3), Printer Command Language (PCL v5 minimum) and Printer Job Language (PJP) as networked printing control languages .		Yes	Compliant
77	Technical	<b>Performance</b>	MFDs will produce output at or better than – speed of 55ppm mono and colour. Paper capacity must be a minimum of 3,500 sheets		Yes	[REDACTED]
78	Technical	<b>Performance</b>	MFDs on average will be able to print mono pages for a minimum of 1 hours on A4 paper without requiring paper trays to be re-filled.		Yes	[REDACTED]
79	Technical	<b>Performance</b>	MFDs will automatically power-up when a user is authenticated at the device – either by scanning building pass or entering username & password (when using the scan facility)		Yes	Compliant
80	Technical	<b>Performance</b>	MFDs will print from cold within 2 minutes or better and print from warm within 1 minute or better		Yes	Compliant
81	Technical	<b>Performance</b>	General printing response shall be better than 3 seconds from card swipe to first sheet print on A4 mono		Yes	[REDACTED]









SafeCom Print Client					
82	Technical	<b>Hardware, firmware, software updates</b>	All appropriate patches and updates for the complete Service must be provided free of charge throughout the term of the agreement and applied in accordance with agreed TfL processes. The provider shall ensure that any hardware provided must at all times be within manufacturers support		Yes Compliant
83	Technical	<b>Firmware, software updates</b>	Supplier must actively patch and update the firmware on the printers to agreed TfL processes		Yes [Redacted]
84	Technical	<b>Software licensing</b>	The Service Provider shall proactively maintain the portfolio of relevant TfL software, covering areas that include but are not limited to the following: A) Version upgrades B) Technology changes C) Licence models D) Potential cost savings		Yes Compliant
85	Technical	<b>Change control</b>	Any changes to infrastructure, firmware, software has to be aligned with TfL's Change control procedure (see Appendix G)		Yes Compliant
86	Technical	<b>Authentication, Cost centre assignment</b>	Provider to use TfL building or MiFare user cards or be able to provide cards to TfL where alternatives not used. Provider shall manage the cards including, configuration for new users, recording issue and inventory of non TfL cards at Tier 1 locations		Yes [Redacted]
87	Technical	<b>Print queue</b>	Users to see only their own		Yes [Redacted]

			documents in the print queue after successful log in at the device. No jobs to be printable or visible at the device by any user after printing			
88	Technical	<b>Print queue</b>	Users to be able to cancel selected jobs visible to them in their print queue at the device		Yes	
89	Technical	<b>Cancel function</b>	Users will be able to cancel spooled print jobs that are printing e.g. in the eventuality that the MFD requires fault fixing and they do not want a confidential job printed when fixed		Yes	
90	Technical	<b>Print from Tfl issued Mobile device</b>	The mobile printing solution shall provide mobile print application software that enables documents to be printed from any Tfl issued mobile device (IOS, Blackberry, Android, Windows) to any office based Multi-Functional Device through corporate or guest Wi-Fi networks.		Yes	Compliant
91	Technical	<b>Scan via Tfl issued Mobile device</b>	The mobile solution shall provide the mobile app software that enables documents to be scanned or pictures taken of Tfl assets via the mobile camera. The mobile app software shall also allow documents to be scanned via office based MFDs.		Yes	Compliant
92	Technical	<b>Mobile Single Sign</b>	The mobile printing application shall support Single Sign On		Yes	Compliant





			colour or black and white.			
98	Technical	<b>Mobile Bluetooth Connection</b>	The mobile device shall connect to a compact portable mobile printer via Bluetooth, the mobile device and compact printer must function reliably whether the mobile device is online or offline.		Yes/No	[REDACTED]
99	Technical	<b>Mobile Account management</b>	Mobile Printing Account(s) can easily be added or removed from TfL corporate mobile devices by a central Administrator.		Yes	[REDACTED]
100	Technical	<b>Manufacturer compatibility with service</b>	Confirm if your service can support existing MFD's from other manufacturers		Yes	[REDACTED]
101	Transition	<b>Device grouping by location</b>	Location tiers proposed T1= Hub, T2=Large office, Tier 3 = Small office, Depot, Station (see matrix) Where T1 is >400,000 prints per quarter T2 is >40,000 per Qtr T3 is <40,000 per Qtr. Potential providers are to make recommendations for delivering the service to these differing groups (Tiers) of locations. TfL require options for more than one device model if there are constraints on space in specific locations, the constraint on space may override the requirement for capacity and therefore alternative models or additional devices at nearby	2.66		[REDACTED]



			locations may be considered. In less than 500 words			[Redacted]
102	Transition	<b>Transitioning</b>	Describe your transition plan which should include – Time plan for installation of new devices, liaison plan for working with outgoing provider, Transport & storage plan for each building, Familiarisation plan for new support staff ( field staff & provider site based staff), explanation of how you will measure a successful implementation	<b>1.66</b>		[Redacted]



			In less than 500 words			[Redacted]
--	--	--	------------------------	--	--	------------





						<p>[REDACTED]</p> <p>[REDACTED]</p> <ul style="list-style-type: none"><li>[REDACTED]</li><li>[REDACTED]</li><li>[REDACTED]</li></ul> <p>[REDACTED]</p> <p>[REDACTED]</p> <ul style="list-style-type: none"><li>[REDACTED]</li><li>[REDACTED]</li><li>[REDACTED]</li></ul> <p>[REDACTED]</p>
--	--	--	--	--	--	---

						[REDACTED]
103	Transition	<b>Installation &amp; Transition</b>	Describe how your organisation would implement a "pull" print service rollout in an organisation of comparable size and complexity to TfL for inventory as stated in Appendix D. Note, there will be a potential second phase rollout for "push" print devices which is described in Appendix E. Please give details of the transition from current set up to the new service proposed with strong emphasis on continuity of service, disruption expectations, user support, implementation schedule and how you would plan for the varied locations across the TfL estate. The proposal should provide for support of currently installed devices until complete transition to the new service is complete.  In less than 1250 words	6.00		[REDACTED]







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						<ul style="list-style-type: none"> <li>■ [REDACTED]</li> <li>■ [REDACTED]</li> <li>■ [REDACTED]</li> <li>■ [REDACTED]</li> <li>■ [REDACTED]</li> </ul>
104	Transition	<b>Device</b>	No TfL user shall be required to	<b>1.33</b>		[REDACTED]



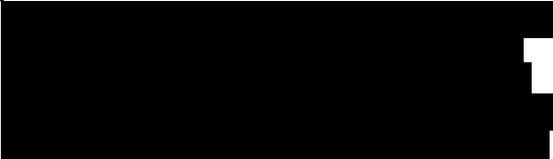
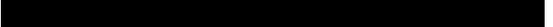
		<b>location</b>	<p>move between floors to access a MFD. Please describe how you propose to distribute devices at locations in order to meet usage demand (see appendix A )</p> <p>In less than 500 words</p>			[Redacted]
105	Transition	<b>Transition resources</b>	<p>Provide a list of what you will require from TfL during the implementation and transition stage, including (but not limited to ) manpower resources, desks,</p>		Yes	[Redacted]





			storage, access			[Redacted]
106	Transition	<b>Transition Support</b>	There will be a requirement for the chosen supplier to provide support	<b>1.66</b>		[Redacted]



			<p>to some of the existing mixed estate before the completion of full migration to any new service (at phase 1 or phase 2). Please describe how you would meet the SLAs stated in this document at Section 7, how you would provision new / replacement devices and any other aspects that would help in understanding how you would manage a mixed manufacturer scenario.</p> <p>In less than 500 words</p>			  
107	Transition	<b>Future phase</b>	<p>Describe how you would implement a future phase for push printers, plotters and a reprographics centre managed service.</p> <p>In less than 500 words</p>	<b>1.66</b>		 

						[Redacted]
108	Transition	<b>Resources</b>	Please confirm that you have the resources and capability to take ownership of this new and existing service for transition on 31/10/15 if contract is signed by 31/07/15		Yes	[Redacted]
109	Transition	<b>Additional capabilities for future phase</b>	Please confirm that you can offer a full reprographics centre service and a plotter service		Yes	[Redacted]



- PART C – STATEMENT OF WORK



# Statement of Work for the Delivery of Managed Print Service to Transport for London 13.

24th November 2015



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### 1. INTRODUCTION

This Statement of Work sets out the details of HP Inc UK Limited's ("Supplier") Managed Print Solution ("MPS") solution for delivery to Transport for London ("Customer").

#### 1.1 In scope services

The services to be provided by the Supplier are listed below and further details documented in Section 2.

- Black Box Service
- White Glove Service
- Provision of Print Devices
- Provision of Services
  - Transition and Deployment
  - Training
  - Incident and Problem management
  - Hardware break fix services
  - Moves, Adds and Changes
  - Consumables Management and Replenishment
  - Service Governance Reviews and Reporting
  - Fleet Management



These services will be delivered in accordance with the Service Levels and KPI's set out in Appendix D of this SOW and Schedule 6 of the Agreement.

The business as usual ("BAU") processes to support these services will be documented by the Supplier Account Delivery Manager ("ADM") in the operations manual ("Operations Manual").

The Operations Manual will be developed during the service transition period and in any case be finalised ninety (90) days post Contract signature.



## 2. Service Description

### 2.1 Black Box Service

The Supplier will provide and manage the server Infrastructure on which the MPS Solutions will be installed (“a Black Box service”).

The Black Box Service (“BBS”) will be hosted in the Customer data centers in Woking and Acton with the Customer being responsible for the availability of the data center and network connectivity.

The detailed configuration of the BBS will be documented in the architecture document and incorporated in the Operations Manual.

The BBS will not only include the provision of the service infrastructure it will also provide the services required to maintain a stable platform for the MPS service to function. These services will include;

- [REDACTED]

The Customer will provide the Supplier with the following services in order for the BBS to be provided and SLA's to be achieved;

- A secure area for MPS server infrastructure within two data centers;
- Racks to house the server infrastructure as requested by the Supplier;
- Electrical power for the server infrastructure as specified by the Supplier;
- Physical network ports with active network connectivity for all servers;
- IP address assigned for all infrastructure components;
- Stable bandwidth from secure DC location to Customer network and between the data centers;
- Open certain logical network ports as reasonable requested by the Supplier;
- Access to Customer AD/LDAP for user imports, live update of user database;
- Access to Customer e-mail servers for integration of HP ePrint;
- Ensure HP are involved in change advisory board meetings to ensure change does not impact the provision of the MPS Service;
- If the Supplier require onsite intervention the Customer will provide a resource to assist remotely (“Hands and Eyes Service”);
- Customer will allow remote connectivity to the MPS server infrastructure and devices;
- Engineer access to the MPS server infrastructure;

Failure by the Supplier to comply with these requirements may result in a degradation of the MPS and impact the Service Levels.

The BBS will provide the server infrastructure for the following solutions;

- SafeCom Pull Printing
- HP ePrint Enterprise



- HP Jet Advantage Security Manager
- HP Remote Management Server

Further details on these solutions can be found in the Suppliers response to the Customers RfP and architecture documentation.

## 2.2 White Glove Service:

The Supplier will provide a 'White Glove Service' as requested by the Customer. The Supplier will initially align four (4) appropriately skilled On-Site Administrators (OSA) to provide the primary services as set out below;

- [REDACTED]

This White Glove services will be provided Monday to Friday 07:00 to 19:00 (excluding UK Public Holidays) at the following Customer locations;

- Albany House (Victoria)
- 55 Broadway (Victoria)
- 172 and 200 Buckingham Palace Road (Victoria)
- 100 Petty France (Victoria)
- Townsend House (Victoria)
- Victoria Station House (Victoria)
- Victoria Coach Station (Victoria)
- Business Exchange Rm 309 3rd floor 10 Grey Coat Place
- Windsor House (Victoria)
- Palestra House (Southwark)
- 230 Blackfriars Road (Southwark)
- 14 Pier Walk, North Greenwich
- West Ferry Circus (C Wharf/West Ferry Circus)
- Templar House, Eagle St, London WC1V 6DF
- King William Street (Bank)
- West Ham Lane (Stratford)
- Croydon Tramlink

The above list of locations may be updated from time to time through the agreed change control procedure.



## 2.3 Provision of Print Devices

At the commencement for this Agreement the Supplier will deploy the devices set out in Appendix A to this SOW to meet the stated requirement of the Customer. This device catalogue may change from time to time, any change will be managed under the agreed change control process.

The selection and proposed deployment of these devices for Phase 1 has been based on the information provided by the Customer during the RFP process. If following a site survey and audit the proposed device is found not to be the correct selection a more appropriate device will be selected and deployed by the Supplier following approval from the Customer.

The proposed device and deployment by location can be found in Appendix B of this SOW.

If the Customer requires additional devices to be added to the Agreement this will be managed with the Supplier ADM and via the agreed change control process.

At the time of signing this Agreement the number of the devices to be deployed will be 368

## 2.4 MPS Governance

The day-to-day management, administration and support for the MPS will be the responsibility of the assigned Account Delivery Manager (ADM).

During the hours of 09:00 to 17:30 Monday to Friday (excluding Public holidays) the ADM will;

- Act as the single point of contact responsible for the Customer relationship, Customer satisfaction, and delivery of the Agreement; and
- Manage the escalation process for all issues that may arise.
- Participate in the activities associated with the account transition, installation and deployment for the Agreement.
- Provide a documented plan designated to promote delivery consistency based on the ADM Service Description and the Print Policy document jointly developed by Supplier and Customer. The Print Policy will be used during strategic reviews and ongoing planning throughout the term of the Agreement.
- Schedule and lead monthly onsite reviews with the Customer. The schedule and agenda of these service reviews will be agreed by both Parties, but in any case the service review meetings will take place no later than the 10<sup>th</sup> working day of each month. A typical agenda for these reviews is;
  - Summary of Supplier's performance against the Agreement;
  - Identify corrective actions and track such corrective actions through to resolution;
  - Print Policy;
  - Summary of Supplier defined Fleet tracking, utilisation, optimisation and Service Level Agreement (SLA);
  - Fleet optimisation analysis and recommendations;
  - Information on best practices, benchmarking, industry standards, and technology roadmaps;
  - Information on Supplier and/or third party solutions included in the Agreement.
- Track and report to Customer the service level commitment performance in Supplier defined format. The ADM will identify corrective actions and track such corrective actions through to resolution.
- Manage the Onsite Administrators delivering the White Glove service.

The Customer will align a Service Manager as the single point of contact ("SPOC") for the Supplier ADM. This Supplier SPOC will attend the regular service reviews.



## 2.5 Provision of Services

### 2.5.1 Deployment Services

The assigned Supplier Project Manager will be responsible for co-ordinating all activities related to initial implementation of the MPS.

Supplier and Customer roles and responsibilities are detailed below.

Supplier will:

- Provide the Supplier Transition Manager who will act as a Single point of contact during the Transition phase.
- Provide the Supplier Technical Consultant;
- Advise and coordinate the implementation of the Black Box and White Glove services;
- Advise and coordinate the installation of Devices and Devices drivers;
- Coordinate and manage the installation of the Remote Monitoring Appliance;
- Develop project and governance plans for the delivery and installation of the Devices;
- Work with the Customer's dedicated project team;
- Host a kickoff meeting;
- Manage the Discovery and Design process including Customer communication and resource planning
- Manage action and risk reviews;
- Provide escalation management for questions related to delivery and installation;
- Manage Pilot sites to test entire solution and rollout procedure with all parties prior to the remaining rollout;
- Set up and communicate Consumables ordering process; and
- Transition ongoing account support to the Account Delivery Manager (ADM) at the completion of implementation.

Supplier will deliver Deployment Management services Monday-Friday 08:00hrs - 17:00hrs local time.

Supplier and Customer will create and approve the Scope and Roles and Responsibilities within the Delivery Schedule.

Customer will

- Assign a Program/Project manager as the single point of contact prior to implementation kick-off;
- Authorise and allocate Customer personnel to participate in the transition activities;
- Actively participate in Design reviews;
- Participate in transition status review meetings;
- Provide feedback within five (5) Working Days from the receipt of any document sent by Supplier. If Supplier does not receive timely feedback, then the document will be deemed as passively approved by the Customer;
- Participate in risk management activities;
- Provide an installation environment that allows reasonable and safe working conditions for the installation team and meets Supplier's or, as may be applicable, any third party manufacturer's recommended Device operating environment;
- Provide a network connection and IP address information for each installed Device/s (Print devices and Servers);
- Provide immediate and unrestricted access to the Device/s as requested by Supplier;
- Provide electrical outlets in compliance with the Device/s specifications in appropriate locations at the installation site;
- Provide Supplier access to the person(s) responsible for managing the network environment during installation;
- Provide a designated area for all packing materials to be delivered post installation;
- Work with Supplier to resolve issues;
- Be the primary interface to the incumbent provider, where applicable;
- Provide a person at the installation site to assist with the positioning of Devices; likely to affect the deployed devices; and
- Provide acceptance of transition completion.



## 2.5.2 Training Services

The Supplier will provide the following training at the time of the devices or Site wide deployment;

- Green Button Training; and
- Floor Walkers
- Service Desk FAQ's and Scripts

These training methods enable the end-users to learn in the work place, ensuring they are not taken away from their day-to-day activities and supporting learning on the devices they are likely to utilise on a regular basis. The Service Desk call management aids will improve the end-user experience when there is a need to contact the service desk.

### 2.5.2.1 Green Button

On completion of single or multiple device installations the installation engineer will provide a Green button training period with the end users who work near the device. The scope of the training will be agreed by both Parties during the Management of Change process but this training would typically include:

- Functionality of the printer and MFPs
- Safecom overview
- Toner & Maintenance drum location & replacement
- Basic fault diagnostics – paper jam; network outage
- Print queue setup & print overview
- Application Testing
- Conflict Management

On completion of the Green Button Training the Installation engineer will require a form to be signed by a Customer employee to confirm the training has been delivered. This activity can be part of the devices installation acceptance form.

### 2.5.2.2 Floor Walkers

The purpose of floor walkers is to complement the green button training and build the end-users confidence in using the new devices and realising increased functionality. Typically the Floor Walkers will be available on the same day and/or the day after the new devices are installed, with actual timing being agreed between the parties and included in the project plan.

The Floor Walkers will be identifiable as they will wear a badge or Floor Walker shirts and the appropriate security ID's. The Supplier will expect the Customer to provide details and training of any health and safety protocols required at specific sites.

### 2.5.2.3 Service Desk FAQ's and Scripts

In addition to the above end-user training the Supplier will provide training, documentation and FAQ's to the Customer Service Desk staff to aid faster Incident resolution on the first communication.

## 2.5.3 Incident and Problem Management

The Supplier will provide Incident and Problem support and liaise directly with the Customers Service Desk to ensure each Incident is resolved within the agreed service levels and KPI's as detailed in Appendix D of the SOW;



- The Supplier will log all incidents within their call management system;
- The Supplier will log alerts within the call management system that may have been raised from the pro-active tools monitoring the overall service;
- Should it be deemed appropriate the Supplier will notify the Customer service desk of a proactive alert to ensure the Supplier service desk are aware of a potential problem in anticipation of an end-user contact the Customer service desk with a related incident;
- The Supplier call management system will be used as the source of SLA measurement and reporting to the Customer.

The Customer requested in the RfP for the call management systems to be integrated. The Supplier is able to accommodate this requirement however the Customer has stated this integration will be delayed due to changes with the Customers call management system and therefore will not be part of the initial service implementation. On completion of such changes and the environment has stabilised the Customer will request the Supplier ADM to commence the call management tool integration project.

The Supplier support will liaise directly with the onsite administrators (White Glove Service) to carry out triage activities and accelerate incident resolution.

If the incident cannot be resolved via the Suppliers remote support teams or the onsite administrators the incident will be referred to the appropriate resolving agent within the Supplier or potentially in some cases within the Customer environment i.e. a network issue.

The detailed call management process and contact details will be discussed during the service transition period and documented in the Operations Manual.

#### 2.5.4 **Hardware break fix services**

The Supplier will provide a six(6) hour call to repair service on the in-scope devices during the hours of 08:00 to 18:00 Monday to Friday excluding Public Holidays.

The Supplier field engineers will be notified of Incident by the Supplier support desk.

The Supplier field engineers will take ownership of the Incident and respond appropriately to ensure a resolution is achieved within the agreed Service Level.

On Resolution of the Incident the Supplier field engineer will update the Supplier support immediately so the status of the Incident can be updated.

#### 2.5.5 **Moves, Add and Changes**

Following completion of the initial deployment, the Supplier will be responsible for movement of the in-scope Devices as a part of any Fleet Optimisation. Additionally, the Customer may request movement of individual Fleet Devices not related to Fleet Optimization.

Instances where the Customer requests a move the Customer will follow the change control process as detailed in the Operations Manual and liaise with the Supplier ADM.

Typical charges for IMAC's are detailed in Schedule 11 – Pricing Schedule of the Agreement.

#### 2.5.6 **Supplies Management and Replenishment**

The Supplies Management Service allows Supplier to acquire, manage, and recycle Consumables for all Devices covered under the Agreement to include:

The Consumables that require regular replenishment in order to maintain the Device's print and reprographic capability; and

The Management Services needed to monitor, order, deliver, install, return and recycle the



---

## Consumables.

The Supplier will provide consumable ordering and delivery to a Customer location for all Devices covered under the Agreement as identified in Appendix A. All Devices supported under MPS have capability of communicating when its Consumable supply is running low. These notifications are displayed in the Device control panel window. As part of the MPS service, Supplier will capture these notifications and proactively order Consumables using Remote Monitoring (RM) combined with Supplier Automated Supplies Management (ASM) process.

### 2.5.6.1 **Automated Supplies Management:**

Automated Supplies Management (ASM) is an automated supplies management process for providing automated Consumables replenishment for all Devices covered under Supplier MPS that are active, networked and functionally capable of communicating with the monitoring tools. ASM is enabled by the RM Solution and is the default supplies management process for all entitled Devices functionally capable within the Agreement.

### 2.5.6.2 **Manual Ordering**

Supplier will provide a process for manually ordering Consumables for Devices covered under the Agreement as an alternative to the Automated Supplies Management process should there be an exception to the ASM. Only Customer authorized employees will be able to utilize this process.

Web: Consumables may be ordered through the Supplier Service Portal included as part of the Technical Support Service for the MPS engagement.

- o Phone: Consumables may be ordered through the Supplier Priority Phone Support Center included as part of the Technical Support Service for the MPS engagement. Ordering via the Priority Phone Support Center can take place from 8:30 a.m. to 6:00 p.m. Customer local time, Monday through Friday, excluding Supplier Holidays.

### 2.5.6.3 **Recycling process**

Supplier provides a returns and recycling process for all Consumables used to support the Devices covered under the Agreement. The process includes returning expended consumables back to Supplier for recycling.

All Consumables provided under the Agreement are the property of Supplier unless otherwise specified.

Customer must return the expended consumables to Supplier by using the Supplier provided take back/ recycling process.

Supplier will discuss the detailed process with the Customer during the deployment process and document in the Operations Manual.

This is a no-cost recycling program that provides a responsible way for Customers to return expended Consumables used in the Devices covered under the Agreement.





## Appendix B – Phase 1 Device Locations



Device and  
Locations Version 1.

## Appendix C – Customer Supplied Equipment

The Customer will provide the Supplier with the Customer Supplied Equipment as listed below;

Server racking in both data centers capable of housing;

- 5u in the primary data center; and
- 4u in the secondary data center.

This list has been detailed at the time of signing this Agreement and is subject to change.





## Appendix D – Service Levels, KPI's and Service Credits

### SERVICE LEVEL AGREEMENTS (SLAS) / KEY PERFORMANCE INDICATORS (KPIs)

Ref.	Service Area	Service Level	Description	Measurement	Service Level Target Threshold	Service Level Failure Threshold (triggered automatically)	Minimum Service Credit	Maximum Service Credit	Relevant Hours (i.e. hours over which performance is measured)	Can be Met YES / NO (if No, please state in comment field the acceptable SLA)	Comment
SLA01	Incident Resolution	Severity 1	All printers on a floor are not operational. Includes estate wide outages and infrastructure failures	Break to fix of Severity 1 Incidents within two (2) hours of the Incident being assigned or alert generated	99.9%	97%	0%	3%	24 x 7	YES	[REDACTED]
										YES	
SLA02	Incident Resolution	Severity 2	50% to 99% of printers on a floor are not operational and any loss of infrastructure residency	Break to fix of Severity 2 Incidents within four (4) hours of the Incident being assigned or alert generated	99.9%	97%	0%	3%	24 x 7	YES	[REDACTED]
										YES	
SLA03	Incident Resolution	Severity 3	49% or less of printers on a floor are not operational.	Break to fix of Severity 3 Incidents within six (6) hours of the Incident being assigned or alert generated.	99.9%	97%	0%	3%	08:00 to 18:00 Monday - Friday	YES	[REDACTED]



Ref.	Service Area	Service Level	Description	Measurement	Service Level Target Threshold	Service Level Failure Threshold (triggered automatically)	Minimum Service Credit	Maximum Service Credit	Relevant Hours (i.e. hours over which performance is measured)	Can be Met YES / NO (if No, please state in comment field the acceptable SLA)	Comment
SLA04	Proactive Alert Resolution	Severity 4	Resolution of non customer impact alerts	Non customer impact alerts (such as consumable replacement) should be resolved within 2 business days AND before customer impact is seen (which may be less than 2 business days)	99%	99%	0%	3%	08:00 to 18:00 Monday - Friday	YES	[REDACTED]
SLA05	Device Provision or Move request	Device Provision	Provision of new devices Or Movement of existing device to new location	Within 8 working days from receipt of a request.	95%	90%	0%	1%	Monday – Friday	YES	[REDACTED]
SLA06	Print Service Availability	Availability	Total Availability of print service	Overall Availability of Print service. Calculated : <b>Uptime</b> of all available devices as a percentage of <b>Total Available Hours</b> Uptime : Full print and scan functionality available within the print efficiency	99.99%	99.5%	0%	4%	24 x 7	YES	[REDACTED]



Ref.	Service Area	Service Level	Description	Measurement	Service Level Target Threshold	Service Level Failure Threshold (triggered automatically)	Minimum Service Credit	Maximum Service Credit	Relevant Hours (i.e. hours over which performance is measured)	Can be Met YES / NO (if No, please state in comment field the acceptable SLA)	Comment
				targets (SLA09) Available devices : Total devices in support within the reporting period Total Available Hours : Calculated as number of devices multiplied by available hours							
SLA07	Print Service Availability Per Site	Availability	Availability of Print Service per Site	Availability of Print service per site Calculated & reported per site : <b>Uptime</b> of available devices on a site as a percentage of <b>Total Available Hours</b> Uptime : Full print and scan functionality available within the print efficiency targets (SLA09) Available devices : Total devices in support on a	No individual site should have an Availability below 99%	No individual site should have an Availability below 98%	0%	4%	24 x 7	YES	



Ref.	Service Area	Service Level	Description	Measurement	Service Level Target Threshold	Service Level Failure Threshold (triggered automatically)	Minimum Service Credit	Maximum Service Credit	Relevant Hours (i.e. hours over which performance is measured)	Can be Met YES / NO (if No, please state in comment field the acceptable SLA)	Comment
				site within the reporting period Total Available Hours : Calculated as number of devices multiplied by available hours (08-18:00)							
SLA08	Print Speed	Print Speed	First page should print within 5 seconds from user authentication	On a sample of at least 3 different printers per period to cover all printers through the contract life. Using an agreed test document measuring the time from user authentication to release the first page: First page should be printed within 5 seconds. No printer should Printer	100%	100%	0%	2%	N/a	YES	



Ref.	Service Area	Service Level	Description	Measurement	Service Level Target Threshold	Service Level Failure Threshold (triggered automatically)	Minimum Service Credit	Maximum Service Credit	Relevant Hours (i.e. hours over which performance is measured)	Can be Met YES / NO (if No, please state in comment field the acceptable SLA)	Comment
SLA09	Service Administration	User Administration	User administration (such as creation of new users, removal of users)	Completion of user administration request within 1 business day	99%	95%	0%	1%	08:00 to 18:00 Monday - Friday	YES	[REDACTED]
SLA10	Help Desk	Help Desk	Answer time	Incidents will be logged from customers to TFLs Primary Service Desk (PSD). Where the PSD logs calls to the Print supplier via telephone, calls should be answered within 45 seconds	75%	70%	0%	2%	24 x 7	YES	[REDACTED]
SLA11	Help Desk	Help Desk	Response Time	From incident / request being logged (via telephone or email) or customer impacting alert being generated supplier should acknowledge and provide reference within 30 minutes to TFLs Primary	95%	90%	0%	2%	24 x 7	YES	[REDACTED]



Ref.	Service Area	Service Level	Description	Measurement	Service Level Target Threshold	Service Level Failure Threshold (triggered automatically)	Minimum Service Credit	Maximum Service Credit	Relevant Hours (i.e. hours over which performance is measured)	Can be Met YES / NO (if No, please state in comment field the acceptable SLA)	Comment
				Service Desk							
SL12	Customer Satisfaction	Customer Satisfaction Achievement	For each completed survey the % of users who have a satisfactory or above experience.	TFL Measures customer satisfaction on a % of incidents and requests raised by customers. On the customer satisfaction responses returned in relation to incidents and requests on the Print service the supplier shall obtain a customer satisfaction score of 'Satisfied' or above	75%	70%	0%	2%	24 X 7	YES	



**Key Performance Indicators**

Ref.	Service Area	KPI	Description	Measurement	KPI Target Threshold	Relevant Hours (i.e. hours over which performance is measured)	Can be Met YES / NO (if No, please state in comment field the acceptable SLA)	Comment
K01	Customer Satisfaction	Addressing "Less than satisfied" customer feedback	Address any customer feedback from the Customer Satisfaction Survey responses where the Supplier's Service has scored less than 'satisfied'.	Within three (3) Working Days of receipt of the feedback.	For less than 10 instances, 0 failures. For more than 10 instances, one failure.	Core Hours 08:00 - 18:00 Monday to Friday	YES	
K02	Customer Satisfaction	Respond to the customer and IM on "Less than Satisfied" customer feedback within 4 hours	Address any customer feedback from the Customer Satisfaction Survey responses where the Supplier's Service has scored less than 'satisfied'.	Within three (3) Working Days of receipt of the feedback.	For less than 10 instances, 0 failures. For more than 10 instances, one failure.	Core Hours 08:00 - 18:00 Monday to Friday	YES	
K03	Service Management	Timely reporting	Provide 4 weekly period report on incidents logged.	4 week period.	Received 5 business days following the end of a period	08:00 to 18:00	YES	
K04	Equipment	Timely Quote requests	Request for a quote	Number of quotes received within 5 days.	100%	08:00 to 18:00	YES	
K05	Service Management	Timely reporting	Provide Severity 1 & 2 incident reports on incidents logged & resolution.	Reports within 2 working days of Severity 1 & Severity 2 incidents	Received 2 business days following the reported incident time	08:00 to 18:00	YES	



7.1 Definition of Severity Levels

Severity Level	Definition
Severity 1	<ul style="list-style-type: none"> <li>All or any part of the service is unavailable resulting in failure of business critical activities. “<b>Business critical activities</b>” include client services which cannot be mitigated (mitigation shall include the use of other available services); and/or</li> <li>The incident affects the overall security of the TfL estate; and/or</li> <li>The incident has a detrimental impact on the IM operations of TfL declared by designated individuals within TfL IM (IM Duty Managers (IMLT), Major Incident Managers, the IM Service Delivery Manager or the IM Security Manager); and/or</li> <li>The incident affects users at a critical site or more than 50% of users across all sites.</li> </ul>
Severity 2	<p>Business activities are adversely affected resulting in some impact on business operations where:</p> <ul style="list-style-type: none"> <li>The incident prevents at least one department from effectively performing key business activities; or</li> <li>The incident causes a failure to redundant services that increases the risk to business critical activities.</li> </ul>
Severity 3	<p>Business activities are adversely affected resulting in some impact on business operations where:</p> <ul style="list-style-type: none"> <li>The incident prevents users from effectively performing non key business activities; and/or</li> <li>The Incident is limited in scope and scale. This includes equipment failures where due to redundancy and resilience, non-critical services are unaffected.</li> </ul>
Severity 4	<ul style="list-style-type: none"> <li>The service is not affected, e.g. queries; or</li> <li>The incident affects a service component that has a dependency on support parties that are not managed by TfL IM; and/or</li> <li>The incident affects a service component that cannot be fully supported.</li> </ul>

7.2 Definition of ‘Restoration’ and ‘Restore’

7.2.1 For the purposes of this Schedule, Restoration will be deemed to have occurred when the Supplier issues confirmation of the same to the TfL Representative.

7.2.2 If, following confirmation of Restoration by the Supplier to the TfL Representative, the TfL Representative reasonably considers that Restoration has, in fact, not been achieved, the Supplier shall re-open the Incident and the Incident resolution time will be calculated as a continuous period from the first report of the Incident until finally resolved to the TfL Representative’s reasonable satisfaction.



**7.3 Service Credit Calculations**

7.3.1 **Accrual of Service Credits:** Service Credits are expressed as a percentage of the total Service Charges in a Period and are incurred if the Service Level Target Threshold is not achieved. They accrue on a linear basis up to the relevant Maximum Service Credit figure (subject to any applicable Repeat Failure Multiplier described in Section 7.4 below). The Maximum Service Credit figure is reached when actual performance falls to the Service Failure Threshold.

For example, in the table below, if, the Service Level Target Threshold is 75%, the Service Failure Threshold 70% and the maximum Service Credits that will apply are 2.5%, for every 1% that actual performance falls below 75%, a Service Credit deduction of 0.5% shall accrue (i.e. 2.5% maximum Service Credits divided by the 5% range between the Service Level Target Threshold and the Service Failure Threshold)

Service Level Target Threshold	Service Level Failure Threshold (triggered automatically)	Minimum Service Credit	Maximum Service Credit	Relevant Hours (i.e. hours over which performance is measured)
75%  Service Credit Range = 75%-70% = 5%	70%	0%	2.5% Maximum Service Credit = 2.5%	24 x 7 Therefore the amount of service Credit payable if the performance is 74% is $(1\% \div 5\%) \times 2.5\% = 0.5\%$

7.3.2 **Caps on Service Credits:** the Supplier’s aggregate liability for Service Credits shall be limited:

- (a) in each Period, to [REDACTED] of the aggregate Service Charges payable to the Supplier that Period; and
- (b) in any rolling thirteen (13) Periods, to [REDACTED] of the aggregate Service Charges payable to the Supplier in regards to that rolling period

7.3.3 **Reduction of Charged:** Service Credits are a reduction of the Charges payable in respect of the Services and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice.



**7.3.4 Definition of a 'Critical Service Failure':** a Critical Service Failure shall be deemed to have occurred in any of the following circumstances:

- d. one or more Service Failure Thresholds for any of the Service Levels are breached in three (3) consecutive Periods (i.e. each breach can relate to the same or a different Service Level);
- e. total Service Credits equal to the cap described in Section 7.3.2 (a) above accrue in three (3) consecutive Periods, or any four Periods within any rolling thirteen (13) Periods; or
- f. total Service Credits equal to the cap described in Section 7.3.2(b) above accrue within a rolling 13 (thirteen) Periods.

**7.4.5 Definition of a 'Severe KPI Failure':** a Severe KPI Failure shall be deemed to have occurred in any of the following circumstances:

- c) one or more KPI Target Thresholds for any of the KPIs are breached in four (4) consecutive Periods (i.e. each breach can relate to the same or a different KPI);
- d) the KPI Target Threshold is breached for four or more KPIs in the same Period.

**7.4.6 Critical Service Failures, Severe KPI Failures and Rectification Plans:** in the event that a Critical Service Failure or a Severe KPI Failure, Customer shall be entitled to treat the event as a notifiable Default, requiring the Supplier to provide a Rectification Plan. In the event of a critical SLA Failure, the Rectification Plan should be presented on Customer site by the Supplier Services Director and updates to be provided on site or via conference call, as agreed by the Parties, every 2 weeks until the service issues and SLA performance is rectified.

**7.4.7 Critical Service Failures, Severe KPI Failures and Supplier Defaults:** a Critical Service Failure or Severe KPI Failure shall only constitute a Supplier Default if Customer designates such event a notifiable Default and:

- d) the Supplier fails to comply with the process for agreeing an associated Rectification Plan; or
- e) the associated Rectification Plan does not remedy the notifiable Default; or
- f) the Critical Service Failure or Severe KPI Failure results from the recurrence of an earlier problem which previously resulted in a similar Critical Service Failure or Severe KPI Failure and which the Supplier advised had been resolved by a previous Rectification Plan.

**7.4.8 Critical Levels and KPIs with small populations:** the following Service Levels are expressed as percentages, however, the number of actual events in any single Period will be low (i.e. below 100):



SL 01	Severity Level 1 Incident Response.
SL 02	Severity Level 2 Incident Response.
SL 03	Severity Level 3 Incident Response.

The calculation of actual performance against these Service Levels and KPIs shall reflect the following:

- (b) In each Period following the Operational Commencement Date:
- (i) performance will be calculated on the basis of the number of Incidents in the relevant Period only:
  - (ii) however, if the population is 100 or fewer, the relevant Service Level Target Threshold, Service Failure Threshold or KPI Target Threshold shall be deemed failed in that Period if the instances of failure meet or exceed the following thresholds:

Population in Period	For Service Level Target Thresholds and KPI Target Thresholds	For Service Failure Thresholds
	Number of instances equating to Failure	Number of instances equating to Failure
0-20	2	3 or more
21-40	3	5 or more
41-70	4	7 or more
70-100	5	9 or more

In the event of extremely low populations i.e. averaging less than one instance per period, should the supplier fail to meet an SLA with volumes below the thresholds set out above more than once in a rolling three periods; the minimum population calculation will no longer apply and the 'Service Failure Threshold' process and penalties incurred on that SLA

- 7.4.9** Subject to the Parties first following the processes set out in Clauses 7.4.6, 7.4.7 and 7.4.8 Schedule 6 Appendix A above, if Customer wishes to terminate the Contract in accordance with Clause 26.4, as a result of Critical Service Failures, Customer shall not incur the Early Termination Fees as a result of such Supplier Default.

## 7.5 Repeat Failures To Meet Service Level Agreements

7.5.1 If the Supplier fails to achieve a Service Level Target in a Period and then fails to achieve the same Service Level Target in a subsequent Period, the failure in the subsequent Period shall be a “Repeat Failure”. The Repeat Failure count shall increment by one (1) for each additional failure.

7.5.2 Repeat Failures shall apply to all Service Levels.

7.5.3 The Repeat Failure count applicable to a particular Service Level shall be reset to zero (0) after the Service Level Target Threshold has been met or exceeded for the relevant Multiplier Exit Period (comprising consecutive Periods of successfully achieving the Service Level Target Threshold) described in section 7.4.4 below.

7.4.4 For any failure to meet Service Level Targets which is a Repeat Failure, the Service Credit applicable shall be increased as follows (a “Repeat Failure Multiplier”):

Repeat Failure count applicable to the Period	Repeat Failure Multiplier	Multiplier Exit Period <i>i.e. consecutive Periods of performance at or above the Service Target Threshold</i>
0	1	n/a
1	1.25	1
2	1.5	2
3 and above	2	3



## Part D

HP's Asset Recovery Services will purchase and dispose of TfL current Ricoh MPFs based on the following devices:



OryRicohContract  
v1.0.xlsx



TfL ARS Info  
Pack.docx

[Redacted text block]

### Assumptions:

- Based on provision of standard logistics services
  - Collection with 2 man crew
  - Collection from customer loading dock on ground floor
  - Onsite packing of equipment
  - Transport in hard sided vehicles
  - Consolidation of shipments in secure hub locations before onward shipment to HPFS processing centre in Erskine
- All printers are desktop or mid level (Large MFPs would need custom quoted logistics)
- Also assuming that all locations are individual single pickups

## SCHEDULE 11 - PRICING SCHEDULE

The Supplier's solution charges are set out below in Table 1. These Charges have been calculated based on the current print volumes and service requirements provided by the Customer within the RFP.

The Click volume will be calculated based on reports produced by each Device and reported by the Supplier ADM to the Customer. The Invoice will be raised based on such usage data.

Customer current print volume are in the region of 56 Million sheets per year across the 345 MFD's, this is broken down:

- 38 Million Sheets – Mono
- 18 Million Sheets – Colour

Table 1 – Click Charges for Phase 1 Devices

1		5%	5%	5%	10%	50% Current Base Line	10%	5%	5%	5%	<b>Weighting Mono 70%</b>
2	<b>Pages printed per annum</b>	Less than 20 million	>20 million to 25 million	>25 million to 30 million	>30 million to 35 million	>35 million to 45 million	>45 million to 50 million	>50 million to 55 million	>55 million to 60 million	Greater than 60 million	
3	<b>Price Per Click Mono</b>	██████	██████	██████	██████	██████	██████	██████	██████	██████	
1		5%	5%	5%	10%	50% Current Base Line	10%	5%	5%	5%	<b>Weighting Colour 30%</b>
2	<b>Pages printed per annum</b>	Less than 5 million	>5 to 7.5 million	>7.5 million to 10 million	>10 million to 15 million	>15 million to 20 million	>20 million to 25 million	>25 million to 27.5 million	>27.5 million to 30 million	Greater than 30 million	
3	<b>Price Per Click Colour</b>	██████	██████	██████	██████	██████	██████	██████	██████	██████	

### Pricing Assumptions for Phase 1



- The charges are for a 48 month contract.
- Early Termination Fees (“ETF”) will apply should the Customer terminate the Agreement before the end of the 48 month Term, which for the avoidance of doubt includes amortised Project start-up costs.
- Changing between the Charging bands will be discussed and agreed at the Service reviews
- Charges exclude VAT
- Upon reduction of printed volumes to an annual total printed mono pages of 25 million and 10 million colour pages the Supplier will work with the Customer to redesign the fleet which may potentially result in a reduced CPP.
- Lower Volumes would imply a requirement for the Supplier and the Customer to work together to optimise the fleet design as the currently mandated levels of hardware would result in an unrealistic CPP and would not be in the Customers interests.
- TUPE has been considered and the resources packages included within the Supplier's solution. The Supplier and Ricoh (the current employer) will undertake a full due diligence to confirm the staff data provide is correct. Incorrect data may result in +/- change to the pricing.

Provided below are example ETF's at certain periods through the life cycle of Phase 1 of the Agreement, these charges are based on the asset being return to the Supplier at the time of termination. These charges include any service costs amortised over the life cycle of Phase 1 of this Agreement. On completion of the initial 48 month Term no ETF's will be payable by the Customer



TFLTermination.xlsx

**Click Charges for Additional Phase 1 Devices**

Should the Customer wish to increase the number of in-scope print devices (“Additional Devices”) contracted under this Agreement the Supplier will charge the Customer for each printed A4 page (“Click”) at the rates stated in this section of Schedule 11 – Pricing Schedule. There will be no separate costs for additional devices outside of this click charge.

1		5%	5%	5%	10%	50% Current Base Line	10%	5%	5%	5%	Weighting Colour 30%
2	Pages printed per annum	Less than 20 million	>20 million to 25 million	>25 million to 30 million	>30 million to 35 million	>35 million to 45 million	>45 million to 50 million	>50 million to 55 million	>55 million to 60 million	Greater than 60 million	
3	Price Per Click Mono	██████	██████	██████	██████	██████	██████	██████	██████	██████	
1		5%	5%	5%	10%	50% Current Base Line	10%	5%	5%	5%	Weighting Colour 30%
2	Pages printed per annum	Less than 5 million	>5 to 7.5 million	>7.5 million to 10 million	>10 million to 15 million	>15 million to 20 million	>20 million to 25 million	>25 million to 27.5 million	>27.5 million to 30 million	Greater than 30 million	
3	Price Per Click Colour	██████	██████	██████	██████	██████	██████	██████	██████	██████	

- The charges are for a 48 month Term.
- Charges exclude VAT
- Early Termination Fees (“ETF”) will apply should the Customer terminate the Agreement before the end of the 48 month Term, which for the avoidance of doubt excludes amortised Project start-up costs. Example estimated ETF’s are provided in the spreadsheet below.





TfL - Estimated  
Additional Device E1

- Such ETF will be calculated at the time of the effective termination and communicated to the Customer in writing. On completion of the initial 48 month Term no ETF's will be payable by the Customer
- These Additional Phase 1 Device Charges are based on the Additional Devices achieving the per month average Click usage, + or – 10%, as stated for each Additional Device type in the table below.

Description	Average Monthly Pages	Monthly pages less 10%	Monthly pages plus 10%
X585zm Total	14,235	12,811	15,658
M775zm total	21,868	19,681	24,055
M880zm+ total	27,731	24,958	30,504
M630zm total	14,677	13,209	16,145

- Should the average monthly Clicks not be achieved by the Additional Devices on a rolling three (3) month period, The Supplier reserves the right to deploy a more appropriate Additional Device.
- The average monthly Clicks per Additional Device will be monitored and reported by the ADM during the monthly review meetings as part of the standard reporting.
- Additional Devices will be introduced to this Agreement via the agreed Change Control process and on a fixed four (4) year Term (48 months).

**Rate Card for Moves, Adds and Changes (MAC).**

The Suppliers standard rates for equipment moves and changes are as follows:

Simple move to same site	single device [REDACTED]	multiple devices [REDACTED]
Single move to different site	single device [REDACTED]	multiple devices [REDACTED] each

- All MAC's will be managed by the ADM using the agreed change control process.



- MAC's involving 5 or less devices will be managed through the agreed IMAC process. This process will be managed within the timescales described within SLA05.
- MAC's involving 6 or more devices will be treated as a project. The project will be priced by the ADM following an analysis of the project scope provided by the Customer.
- These rates exclude VAT.

**Rate Card for specific project roles**

- The rates provided below are Supplier rates for the stated Roles and exclude VAT. These rates will be used by the Supplier to price project and ad-hoc activities requested by the Customer.

Role	Maximum Day rate (1-30 man days)	Maximum Day Rate (30+ Man Days)
Consultant	██████	30+ Man days would typically be quoted separately.
Project Manager	██████	30+ Man days would typically be quoted separately
Technical Consultant	██████	30+ Man days would typically be quoted separately



## SCHEDULE 12 – PROJECT PLAN

	TfL Deployment schedule (Draft)																Total	
	Month 1				Month 2				Month 3				Month 4					
TfL Deployment	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Week 14	Week 15	Week 16		
<b>Mobilization phase</b>																		
Contract signing																		
Kickoff meeting																		
Design validation																		
Remote management server installed																		
Hardware placement orders																		
<b>Installation Phase</b>																		
Palestra								30	28									
Tube Lines								15	30	25	25	25	24					
Pier Walk									12	15	6							
Windsor House											10	17						
55, Broadway													11					
172 Buckingham Palace Road													9					
200 Buckingham Palace Road															7			
Westferry Circus															10			
Templar House															11			
Faith Lawson House															6			
Victoria Station House															5			
Townsend House															3			
Stratford Broadway																3		
Albany House																3		
Croydon Tramlink House																2		
																14		
<b>Weekly deployment numbers</b>									30	43	42	40	41	42	44	42	22	-
<b>Devices deployed</b>									30	73	115	155	196	238	282	324	346	346
<b>In %</b>									9%	21%	33%	45%	57%	69%	82%	94%	100%	100%

