

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 2.1

SERVICES DESCRIPTION

Services Description

1 INTRODUCTION

- 1.1 The UK Fishing Administrations (UKFAs) are responsible for implementing the EU Common Fisheries Policy and regulations for the UK as well as National regulations. EU Council Regulation (EC) No 1224/2009 (Commission Implementing Regulation (EU) No 404/2011) states that a Member State must operate a vessel monitoring system (VMS) using satellite communication systems to monitor the location of:
- UK licensed fishing vessels wherever they operate;
 - Foreign licensed fishing vessels operating in UK waters:
 - Vessels operating in Regional Fisheries Management Organisations (RFMOs);
 - Foreign vessels wherever they maybe, when engaged in Joint Deployment Plans (JDP) with the UK.
- 1.2 The UKFAs are collectively responsible for the UK meeting its flag state obligations under EU regulations. Defra acts as the central body responding to the EU on behalf of the UK as a flag state. The UKFAs work co-operatively on joint technology developments and enforcement activity. In the context of VMS each administration is responsible within the UK for vessels within its own administration.
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- 1.4 The UKFAs consist of the Marine Management Organisation England (MMO); Marine Scotland (MS); Department of Agriculture Environment and Rural Affairs Northern Ireland (DAERA); Welsh Government (WG) and non-UK Bodies: Department of Environment, Food and Agriculture Isle of Man (DEFA), Jersey and Guernsey who all administer UK fishing vessels while regulating EU legislation.
- 1.5 The UKFAs are now looking to provision, through a Software as a Service (SaaS) a Vessel Monitoring System Hub. The solution will provide receipt, analysis, and forwarding of positional data from tracking devices for effective monitoring of the activities of fishing vessels in accordance with Common Fisheries Policy.
- 1.6 This Schedule sets out the scope of the Services to be provided by the Supplier.

2 SERVICES DESCRIPTION

- 2.1 A full list of the Authority's requirements including Annex A - O are documented below:

2.2 General

Level 2	Requirement	Compliance (Full/Partial/ Non-Compliant)	Cross reference to Solution Response	Where Partial or Non-Compliant or not included in the price, Potential Supplier to provide explanation and proposed alternative proposal.
Data	Data must be held within European Economic Area (with a potential that data must be held within the United Kingdom)	FULL	SOL03_01	
Capacity	System must be able to store historic data (migrated as part of the implementation) approx 1TB for Current year+3 years. Anticipated data volume is approx. 300GB per year. However, the system should be capable of accommodating unexpected inorganic growth, if required	FULL	SOL03_01	
Capacity	System must be able to store further data anticipated data volume is approx. 300GB per year. However, the system should be capable of accommodating unexpected inorganic growth, if required	FULL	SOL03_01	
Scalability	System should be capable of receiving approximately 250Million reports (approx. 1kb per report) per year	FULL	SOL03_01	
Extensibility	System should be able to add additional capabilities based on business need	FULL	SOL03_01	
Interoperability	System should be able to be integrated with other applications via standard integration patterns e.g. API based, File based, Message based etc	FULL	SOL03_01	
Usability	System should be accessible via multiple user interfaces (mobile and desktop);	FULL	SOL03_01	

Response Times	<p>Transactions are grouped based on complexity - Low, Medium, High.</p> <p>Functionality - Complexity</p> <p>Vessel Grouping - Low</p> <p>Vessel Polling - Low</p> <p>Auditing - Low</p> <p>User Administration - Low</p> <p>Personal Account Mgt - Low</p> <p>Marine Spatial Dataset - Low</p> <p>Vessel Management - Medium</p> <p>Chart Management - Medium</p> <p>Vessel Alerts - Medium</p> <p>Zone Alerts - Medium</p> <p>System Configuration - Medium</p> <p>VMS Data Analysis - High</p> <p>Spatial Data Analysis - High</p> <p>Validation & Verification - High</p> <p>Data Exchange - High</p> <p>Vessel Monitoring - High</p> <p>Zone Management - High</p> <p>Low (1sec), Medium (2sec) & High (4sec)</p>	FULL	SOL03_01	
Backup & Retention policies	<p>System should meet the following data (at a minimum) backup policies:</p> <ol style="list-style-type: none"> 1. Daily incremental backup retained for 2 weeks 2. Weekly full backup retained for 4 weeks 3. Monthly full backup retained for 3 months 	FULL	SOL03_01	
RPO-Recovery Point Objective	System should meet a 1 day tolerance limit (at a minimum) for data loss.	FULL	SOL03_01	
Total # of users	System should be able to meet the need for a total number of 500 users	FULL	SOL03_01	
Concurrent # of users	System should be able to meet the need for a total of 300 concurrent users	FULL	SOL03_01	
Avg # of transactions per day	System must be able manage approximately 650,000 transactions per day	FULL	SOL03_01	
Avg # of transactions per hour	System must be able manage approximately 30,000 transactions per hour	FULL	SOL03_01	
Avg # of TPS (Transactions per Second)	System must be able manage approximately 10 transactions per second	FULL	SOL03_01	

2.3 Data Exchange:

Requirement	Compliance (Full/Partial /Non-Compliant)	Cross reference to Solution Response	Where Partial or Non-Compliant or not included in the price, Potential Supplier to provide explanation and proposed alternative proposal.
The system must receive vessel positional data from all UK approved VMS transponders in accordance with the data format specified in Annex A, B and C so that the Commission Implementing Regulation 404/2011 is met. The supplier must work with the provider of UK approved VMS transponders to establish the reporting and polling mechanism. The supplier must take ownership of any work required to establish requirements with relevant parties not contracted to the Authority on behalf of the UKFA (for example Inmarsat) without requiring UKFA to provide information or intervene in the event of slow or non response. Where SSL certificates are used, the supplier must ensure that they are updated as appropriate.	FULL	SOL03_02	
The system must receive vessel positional data from all UK approved I-VMS transponders in accordance with the data format specified in Annex D so that vessel activity can be monitored. The VMS Hub supplier must work with existing and any new device suppliers to integrate the transmission of I-VMS data. Where SSL certificates are used, the supplier must ensure that they are updated as appropriate.	FULL	SOL03_02	
The system must receive vessel positional data from all relevant EU Coastal States, 3rd Countries and RFMOs using UNCEFACT FLUX, HTTPS NAF or CREWS (if Norway) in accordance with data format specified in Annex E, F, G and K so that the Commission Implementing Regulation 404/2011 is met. Across the stakeholders, the supplier must consider implementing a mixture of transmission types and work directly with the providers of stakeholders' VMS to ensure that data exchange mechanisms are in place and reliable. Where SSL certificates are used, the supplier must ensure that they are updated as appropriate.	FULL	SOL03_02	

The system must send vessel positional data to all relevant EU Coastal States, 3rd Countries and RFMOs using UNCEFACT FLUX, HTTPS NAF or CREWS (if Norway) in accordance with data format specified in Annex E, F, G and K so that the Commission Implementing Regulation 404/2011 is met. Across the stakeholders, the supplier must consider implementing a mixture of transmission types and work directly with the providers of stakeholders' VMS to ensure that data exchange mechanisms are in place and reliable. Where SSL certificates are used, the supplier must ensure that they are updated as appropriate.	FULL	SOL03_02	
The system must send all received vessel positional data to Centre of Environment Fisheries & Aquaculture Science (CEFAS), National Maritime Information Centre (NMIC) and Maritime and Coastguard Agency (MCA) in accordance with data format specified in Annex H so that our obligation to share information is met. Where SSL certificates are used, the supplier must ensure that they are updated as appropriate.	FULL	SOL03_02	
The system must validate positional data upon receipt from VMS device suppliers and EU Coastal States so that erroneous data is prevented from being forwarded. The validation must consist of the following non-exhaustive list: -90 < Latitude < 90 -180 < Longitude < 180 0 <= Speed < 100 knots (5144 m/s) or NULL 0 <= Course < 360 or NULL	FULL	SOL03_02	
On receipt of a positional data, the system must automatically forward to relevant stakeholders and partner agencies in timely manner. This requirement applies to all received position data, poll responses and manually entered position reports. If the forwarding takes longer than 5 minutes, the system must notify the operator of the delay so that stakeholders are informed accordingly.	FULL	SOL03_02	
The system must be able to handle instances where there is a failure or disconnection to a communications channel that causes the transmission of positional data to fail in terms of automatic forwarding. The system must be able to automatically re-forward position reports following the re-connection of the communication channel to ensure successful transmission.	FULL	SOL03_02	
The system must monitor inward and outward data transmission and where there is a delay, must inform the operator.	FULL	SOL03_02	
In the event an amendment is made to a positional information i.e. manual report, the system must ensure that the updated positional information is captured in data forwarding.	FULL	SOL03_02	

The system must allow the sending of vessel catch and surveillance data from UK boats fishing in RFMO in NAF format in accordance with data format specified in Annex F so that RFMO Regulation is met	FULL	SOL03_02	
Supplier must create and maintain RFMO reporting templates to allow operator to manually enter the catch and surveillance details.	FULL	SOL03_02	
The system must allow the operator to add and remove data fields used by the Catch and Surveillance report templates.	FULL	SOL03_02	
The system must allow the operator to create a new data exchange in NAF format in accordance with data format specified in Annex E so that positional data is sent to EU Coastal States as part of Joint Inspection programme or sent to a local partner agency to meet a data sharing request.	FULL	SOL03_02	
The system must ensure that positional data that was entered manually is forwarded using similar procedure as standard VMS data to appropriate EU Coastal State(s), CEFAS, NMIC and MCA.	FULL	SOL03_02	
The system must receive vessel details via a web service from CEFAS vessel registry in accordance with the data format specified in Annex I. The system must automatically create a new vessel where one is received from these sources and update if there is already an existing vessel in the system.	FULL	SOL03_02	
UK Fisheries Administrations must provide the official Port List that consist of coordinates and radius. The supplier must create the Ports as spatial dataset so that it can be visualised on the chart.	FULL	SOL03_02	
The system should receive AIS vessel positional data from all relevant partner agencies with the agreed reporting frequency so that vessel positional data can be captured and processed.	FULL	SOL03_02	
The system should ensure the UK national fisheries limits displayed in the underlying chart layer is automatically updated to mirror the latest fisheries limits used by the UK Hydrographic Office.	FULL	SOL03_02	
The system should receive vessel authorisation list from UK Fisheries Administrations and display as information to the operator so that the operator is aware of vessels that can fish in UK waters	FULL	SOL03_02	

2.4 Vessel Management:

Requirement	Compliance (Full/Partial/Non-Compliant)	Cross reference to Solution Response	Where Partial or Non-Compliant or not included in the price, Potential Supplier to provide explanation and proposed alternative proposal.
The system must allow the operator to link VMS data received from EU Coastal States that have not been associated with the vessel so that the positional data can be processed and displayed on the chart. Linking must use a unique identifier such as Call Sign or Community Fleet Register number.	FULL	SOL03_03	
The system must allow the operator to link VMS data received from all UK VMS devices that have not been associated with the vessel so that the positional data can be processed and displayed on the chart. Linking must use a unique identifier such as device ID.	FULL	SOL03_03	
The system must allow the operator to manage VMS data that have not been associated to the vessel via a log or case management system.	FULL	SOL03_03	
The system must provide the option to operator to display on chart VMS data that have not been associated with a vessel.	FULL	SOL03_03	
The system must allow the operator to set up the details for a new vessel in accordance with Annex I and J.	FULL	SOL03_03	
The system must provide the option to operator to activate the monitoring of a UK vessel to enable the system to track the number of VMS reports received so that the reporting rate complies with EU regulation.	FULL	SOL03_03	
The system must provide the option to operator to deactivate the monitoring of a UK vessel to disable the system from tracking the number of VMS reports received.	FULL	SOL03_03	
The system must allow the operator to update a vessel's details so that the vessel data inventory is up to date.	FULL	SOL03_03	
To link VMS data received from UK VMS transponder to a vessel, the system must allow the operator to enter device information so that the device can be linked to the correct vessel.	FULL	SOL03_03	
The system must allow the operator to update the device information in the event the information has been incorrectly entered or when the device was replaced due to it becoming non-functioning.	FULL	SOL03_03	

The system must allow vessel positional data to be associated to the correct vessel in the event the operator linked the data to the incorrect vessel.	FULL	SOL03_03	
By default the supplier must represent VMS data displayed on chart as icons using the colour scheme in Annex L so that the nationality can be identified.	FULL	SOL03_03	
The system must allow the operator to override the default colour so that the VMS data can be highlighted and distinguished from other vessels on the chart.	FULL	SOL03_03	
The system must display VMS data as icons on chart but must also allow operator to choose different shape of icon to represent a different vessel type. For example an operator chooses different icons to represent a fishing vessel and patrol vessel.	FULL	SOL03_03	
By default the supplier must represent standard VMS data as icons on chart and use a different icon to represent VMS data that had been entered manually by the operator.	FULL	SOL03_03	
The system must allow the operator to override the UK or EU reporting frequency defined at system level so that the vessel can be monitored against the new reporting frequency.	FULL	SOL03_03	
The system should allow the operator to choose different icon to represent a different vessel speed.	FULL	SOL03_03	

2.5 Vessel Monitoring:

Requirement	Compliance (Full/Partial/Non-Compliant)	Cross reference to Solution Response	Where Partial or Non-Compliant or not included in the price, Potential Supplier to provide explanation and proposed alternative proposal.
The system must display position information of all licensed fishing vessels wherever they operate so that their position and movement can be monitored.	FULL	SOL03_04	
The system must display the position of all vessels engaged in Joint Deployment Plans so that their position and movement can be monitored.	FULL	SOL03_04	
The system must display latest positional information for all vessels after login so that the operator knows where vessels currently are.	FULL	SOL03_04	
The system must display the direction of a vessel at sea based on its course so that the operator can be informed of the vessel's travelling path.	FULL	SOL03_04	
The system must allow the display of positional information on chart based on a user defined start and end Date & Time.	FULL	SOL03_04	
The system must display vessel reports that match user defined characteristics such as Nationality, Gear or Length so that the operator can monitor vessels of interest.	FULL	SOL03_04	
The system must allow the operator to display additional details about a vessel such as vessel PLN, vessel name, length, Nationality, Gear, Latitude, Longitude, Course or Speed when viewing the vessel on chart display.	FULL	SOL03_04	
The system must display any delay in the receipt of the vessel's positional data and highlight it on the chart display.	FULL	SOL03_04	
The system must allow the operator to manually create, amend or delete vessel positional information so that the positional information advised by vessel owner in the event of non-functioning device is correctly recorded.	PARTIAL	SOL03_04	Amending positional information is for the moment impossible for integrity reasons.
When the operator plots vessel positional information on the chart, the system must focus on the vessel's track.	FULL	SOL03_04	
The system must be able to import non-VMS positional data so that the data can be displayed on chart.	FULL	SOL03_04	

The system should allow the operator to plot vessel positional information based on user defined date/time range and characteristics such as Nationality, Gear or Length. The system should then provide a timeline where the operator can choose to select specific point or have the system plot the positions using varying speeds (timeframe). On both occasions, the system must dynamically update the vessel track to be displayed on the chart. This task is known as replay.	FULL	SOL03_04	
The system should allow the operator to save the settings used in replay so that the task can be executed again without requiring the operator to enter the details.	FULL	SOL03_04	

2.6 Zone Monitoring:

Requirement	Compliance (Full/Partial/Non-Compliant)	Cross reference to Solution Response	Where Partial or Non-Compliant or not included in the price, Potential Supplier to provide explanation and proposed alternative proposal.
The system must allow the operator to create spatial area to be displayed and alarmed on chart.	FULL	SOL03_05	
The system must allow the operator to create a circular spatial area based on a coordinate and radius.	FULL	SOL03_05	
The system must allow the operator to draw the spatial area on the chart.	FULL	SOL03_05	
The system must allow the operator to upload a GIS compatible dataset so that a spatial area can be created and displayed on chart.	FULL	SOL03_05	
The system must allow the operator to upload a list of coordinates using Excel or CSV so that a spatial area can be created and displayed on chart.	FULL	SOL03_05	
The system must allow the operator to manually enter the coordinates so that a spatial area can be created and displayed on chart.	FULL	SOL03_05	
The system must provide the operator option to make a spatial area visible on chart to all operators.	FULL	SOL03_05	
The system must provide the operator option to make a spatial area visible on chart only to the operator.	FULL	SOL03_05	
The supplier must create ICES rectangles and areas; and FAO spatial area in accordance with the information supplied in Annex M.	FULL	SOL03_05	
The supplier must create port circular spatial area based on the information provided as part of data migration.	FULL	SOL03_05	
The supplier must allow the operator to export spatial area coordinates in Excel, CSV or GIS Shapefile.	FULL	SOL03_05	
The system must provide the operator option to make the spatial area active so that alert can be generated upon a vessel incursion or make the spatial area inactive to stop generating alert upon a vessel incursion.	FULL	SOL03_05	

The system must provide user configurable spatial area data attributes that will be editable by operators: • Zone Name • Zone Description • Source • Copyright statement	FULL	SOL03_05	
The system must provide operator ability to select one or more spatial areas to create a group containing the selections so that the areas can be easily displayed on chart.	FULL	SOL03_05	
The system should provide operator option to hide spatial line.	FULL	SOL03_05	
The system should provide operator option to change line colour of a spatial area.	FULL	SOL03_05	
The system should provide operator option to select the shading colour of a spatial area.	FULL	SOL03_05	
The system should allow operator to organise spatial areas into folders so that the operator can search for the spatial area by locating the relevant folder.	FULL	SOL03_05	

2.7 Vessel Grouping:

Requirement	Compliance (Full/Partial/Non-Compliant)	Cross reference to Solution Response	Where Partial or Non-Compliant or not included in the price, Potential Supplier to provide explanation and proposed alternative proposal.
The system must be able to create a group containing selection of vessels based upon user defined characteristics such as Nationality, Gear or Length.	FULL	SOL03_06	
The system must be able to update a vessel group so that the vessel membership and/or user defined characteristics of that group can be changed.	FULL	SOL03_06	
The system must be able to delete a vessel group.	FULL	SOL03_06	
The system must be able to link one or more vessel groups to a spatial area for the purpose of monitoring.	FULL	SOL03_06	
The system must be able to link one or more vessel groups to the chart display so that vessels of interest can be monitored.	FULL	SOL03_06	
The system must be able to link one or more vessel groups to a poll request.	FULL	SOL03_06	
When a vessel detail changes, the system must allow members of the vessel group to be updated automatically so that the vessels are correctly associated with the vessel group.	FULL	SOL03_06	

2.8 Chart Management:

Requirement	Compliance (Full/Partial/Non-Compliant)	Cross reference to Solution Response	Where Partial or Non-Compliant or not included in the price, Potential Supplier to provide explanation and proposed alternative proposal.
The system must provide functionality to zoom in and out of any part of the chart display.	FULL	SOL03_07	
The system must be able to pan easily across the chart display.	FULL	SOL03_07	
The system must provide operator option to show or hide chart graticule. The graticule must be dynamic rather than set.	FULL	SOL03_07	
The system must provide operator the option to export a screenshot of the chart display in JPG or PDF so it can be presented as evidence for an investigation.	FULL	SOL03_07	
The system must provide operator option to show or hide spatial areas by selecting one or more zone groups.	FULL	SOL03_07	
The system must be able to have one or more chart displays opened.	FULL	SOL03_07	
The system must provide operator option to show or hide individual spatial area.	FULL	SOL03_07	
The system must be able to search for a specific spatial area using smart search functionality to avoid manually searching through a list of spatial areas.	FULL	SOL03_07	
The system must be able to show or hide underlying chart details such as depth area, shipping lane, buoy or windfarms.	FULL	SOL03_07	
When a screenshot of chart display is exported, the system must include a copyright statement in the screenshot in accordance with the statement specified in Annex N.	FULL	SOL03_07	
The system must be able to calculate Estimated Time of Arrival based on user specified speed and/or time.	FULL	SOL03_07	
The system must be able to draw routes on the chart display and calculate the distance and ETA between segments, and total distance.	FULL	SOL03_07	
The system must be able to show or hide one or more vessel tracks so that their shipping path can be displayed on the chart.	FULL	SOL03_07	
The system must provide operator option to show or hide positional details on the chart display.	FULL	SOL03_07	
The system must be able to show positional details when the mouse cursor hovers over a vessel icon on chart display.	FULL	SOL03_07	

The system must provide operator option to override the default chart display refresh rate.	FULL	SOL03_07	
The system must provide operator option to show current positional information of the mouse cursor.	FULL	SOL03_07	
The system must display positional information as a cluster (vessels grouped and indicated by number of vessels) when a high level scale is used.	FULL	SOL03_07	
The system must provide operator option to change the colour of the vessel track on chart display in accordance with the colour scheme specified in Annex L so that the vessel track can be distinguished from other vessel tracks.	FULL	SOL03_07	
The system must allow the operator to display the zone name on chart display.	FULL	SOL03_07	
The system should provide operator option to annotate the chart display so that it can be included and exported as screenshot.	FULL	SOL03_07	
The system should be able to display on chart AIS data.	FULL	SOL03_07	
The system should be able to display on chart vessel inspection data.	PARTIAL	SOL03_07	CLS will add on a position a manual alert "INSPECTION" with date and comments.

2.9 Vessel Alerts:

Requirement	Compliance (Full/Partial/Non-Compliant)	Cross reference to Solution Response	Where Partial or Non-Compliant or not included in the price, Potential Supplier to provide explanation and proposed alternative proposal.
The system should be able to display on chart vessel catch data.	FULL	SOL03_08	
The system must alert the operator if positional information is not received when the vessel is at sea.	FULL	SOL03_08	
The system must alert the operator if positional information is not received when the vessel is in port.	FULL	SOL03_08	
The system must provide the option to alert the operator if a status code (for example hardware tamper) is received.	FULL	SOL03_08	
The system must provide functionality to operator to manage vessel alerts via a log or case management system so that analysis is conducted and results of investigation are recorded.	FULL	SOL03_08	
The system must alert the operator of a non-functioning VMS device of which is administered by the operator's Fisheries Administration. For example, if a vessel is administered by Marine Management Organisation, only their operators are alerted if the VMS device becomes non-functioning.	FULL	SOL03_08	
The system must provide operator option to override the default reporting frequency defined at system level as a vessel may be subjected to a different reporting frequency.	FULL	SOL03_08	
The system must alert the operator when a vessel is travelling above a user defined speed.	FULL	SOL03_08	
The system should cross check VMS and AIS data and alert the operator when a discrepancy is found.	FULL	SOL03_08	
The system should cross check VMS data and authorisation list of non UK vessels allowed to fish in UK EEZ. The system should alert operator when the system detects VMS data received from a non UK vessel that is not in the authorisation list.	FULL	SOL03_08	

2.10 Zone Alerts:

Requirement	Compliance (Full/Partial/Non-Compliant)	Cross reference to Solution Response	Where Partial or Non-Compliant or not included in the price, Potential Supplier to provide explanation and proposed alternative proposal.
The system must alert the operator if a VMS device is over reporting.	FULL	SOL03_09	
The system must allow the operator to create alert on a spatial area	FULL	SOL03_09	
The system must allow the operator to create alert based on one or more date/time ranges. The alert must be activated during the date/time range and deactivated when it falls outside.	FULL	SOL03_09	
The system must allow the operator to link alert to polling. When a vessel enters the alarmed spatial area, the system must generate an alert and send poll requests in accordance with user specified frequency.	FULL	SOL03_09	
The system must alert the operator when a vessel enters into an alarmed spatial area.	FULL	SOL03_09	
The system must alert the operator when a vessel exits from an alarmed spatial area.	FULL	SOL03_09	
The system must provide operator option to create alert on one or more spatial areas using similar user defined criteria.	FULL	SOL03_09	
The system must allow the operator to create alert based on speed range.	FULL	SOL03_09	
The system must provide operator option to create alert by email for one or more recipients.	FULL	SOL03_09	
The system must provide operator option to create alert by SMS for one or more recipients.	FULL	SOL03_09	
The system must provide operator option to create alert by screen prompt.	FULL	SOL03_09	
The system must allow the content of email and SMS alert to be configurable. For example an operator may want Vessel Name, Latitude and Longitude as information in the email alert.	FULL	SOL03_09	
The system must allow operator to export alerts in Excel or CSV.	FULL	SOL03_09	
The system must allow operator to create alert on a vessel at sea to monitor instances of transshipment.	FULL	SOL03_09	
The system must provide functionality to operator to manage zone alerts via a log or case management system so that analysis is conducted and results of investigation are recorded.	FULL	SOL03_09	
The system must allow operator to create alert for a spatial area or a group of spatial areas.	FULL	SOL03_09	

The system should alert operator each time a positional information indicates the vessel to be in the alarmed spatial area.	FULL	SOL03_09	
The system must provide operator option to activate or deactivate a zone alert.	FULL	SOL03_09	
The system must provide the operator option to make a zone alert effective to only the operator.	FULL	SOL03_09	
The system must provide the operator option to make a zone alert effective to all the operators.	FULL	SOL03_09	

2.11 Vessel Polling:

Requirement	Compliance (Full/Partial/Non-Compliant)	Cross reference to Solution Response	Where Partial or Non-Compliant or not included in the price, Potential Supplier to provide explanation and proposed alternative proposal.
The system should zone alert to be configured with minimal effort.	FULL	SOL03_10	
The system must allow operator to poll one or more UK vessels in accordance with the transponder's specification in Annex B and C.	FULL	SOL03_10	
The system must allow operator to poll one or more vessels at a user defined frequency and date/time period in accordance with the transponder's specification in Annex B and C.	FULL	SOL03_10	
The system must allow operator to interrogate one or more UK vessel's internal memory using a specified date/time period in accordance with the transponder's specification so that higher resolution positional data can be obtained.	FULL	SOL03_10	
The system should allow operator to poll one or more transmission channels on a UK vessel in accordance with the transponder's specification in Annex B and C.	FULL	SOL03_10	
The system must alert the operator when a poll response has not been received in accordance with the transponder's specification in Annex B and C.	FULL	SOL03_10	
The system must alert the operator when a poll response has been received in accordance with the transponder's specification in Annex B and C.	FULL	SOL03_10	

2.12 VMS Data Analysis:

Requirement	Compliance (Full/Partial/Non-Compliant)	Cross reference to Solution Response	Where Partial or Non-Compliant or not included in the price, Potential Supplier to provide explanation and proposed alternative proposal.
The system must provide a summary of poll requests using a log and it must be updated to show the latest status of requests.	FULL	SOL03_11	
The system must be able to search one or more vessels by using current vessel details. For example, if a vessel has changed its name, the system must be able to search using the latest vessel name rather than the old vessel name.	FULL	SOL03_11	
The system must display vessel positional information in tabular format in the position log in accordance with the example provided in Annex O.	FULL	SOL03_11	
The system must display ICES rectangle in the position log in accordance with the example provided in Annex O.	FULL	SOL03_11	
The system must display FAO in the position log in accordance with the example provided in Annex O.	FULL	SOL03_11	
The system must display vessel details in tabular format in the position log in accordance with the example provided in Annex O.	FULL	SOL03_11	
The system must display device details in tabular format in the position log in accordance with the example provided in Annex O.	FULL	SOL03_11	
The system must allow operator to open one or more position logs.	FULL	SOL03_11	
The system must provide operator option to plot the position log on chart display.	FULL	SOL03_11	
When a vessel detail changes, the system must display the vessel's historical and latest details in position log and when it is plotted on chart display.	FULL	SOL03_11	
The system must highlight any delay in receipt of positional information.	FULL	SOL03_11	
The system must allow operator to sort position log in ascending or descending order on all the data fields.	FULL	SOL03_11	
The system must allow operator to filter position log based upon user defined criteria of the data fields.	FULL	SOL03_11	
The system must allow operator to print position log.	FULL	SOL03_11	
The system must provide operator option to export position log in CSV, Excel or PDF.	FULL	SOL03_11	
The system must allow operator to create and save a report based on a user defined query that can be saved for re-use.	FULL	SOL03_11	

The system must allow operator to select one or more spatial areas to be cross checked against positional data based upon user defined characteristics.	FULL	SOL03_11	
The system should allow AIS data to be displayed in tabular format in position log.	FULL	SOL03_11	
The system should allow vessel inspection data to be displayed in tabular format in position log.	FULL	SOL03_11	
The system should allow vessel catch data to be displayed in tabular format in position log.	FULL	SOL03_11	

2.13 Spatial Data Analysis:

Requirement	Compliance (Full/Partial/Non-Compliant)	Cross reference to Solution Response	Where Partial or Non-Compliant or not included in the price, Potential Supplier to provide explanation and proposed alternative proposal.
The system should allow intelligence data to be displayed in tabular format in position log so that suspicious activity can be investigated.	FULL	SOL03_11	
The system should allow operator to select current or historical spatial dataset to be shown on chart display.	FULL	SOL03_11	

2.14 Auditing:

Requirement	Compliance (Full/Partial/Non-Compliant)	Cross reference to Solution Response	Where Partial or Non-Compliant or not included in the price, Potential Supplier to provide explanation and proposed alternative proposal.
The system should allow operator to query the chart display so that more information about marine features can be displayed.	FULL	SOL03_12	
The system must record changes that have been made to vessel data in an audit log.	FULL	SOL03_12	
The system must record changes that have been made to spatial data in an audit log.	FULL	SOL03_12	
The system must record changes that have been made to user accounts in an audit log.	FULL	SOL03_12	
The system must record changes that have been made to vessel groups in an audit log.	FULL	SOL03_12	
The system must record changes that have been made to vessel alerts in an audit log.	FULL	SOL03_12	
The system must record changes that have been made to zone alerts in an audit log.	FULL	SOL03_12	
The system must record poll requests in an audit log.	FULL	SOL03_12	
The system must record changes that have been made to data exchange in an audit log.	FULL	SOL03_12	
The system must record changes that have been made to device details in an audit log.	FULL	SOL03_12	

2.15 Marine Spatial Dataset:

Requirement	Compliance (Full/Partial/Non-Compliant)	Cross reference to Solution Response	Where Partial or Non-Compliant or not included in the price, Potential Supplier to provide explanation and proposed alternative proposal.
The system must allow operator to search and export audit log in tabular format in CSV or Excel.	FULL	SOL03_13	
The system must ensure that the chart display is compatible with WGS84 standard so that the positional information is projected accurately.	FULL	SOL03_13	
The system must use the latest chart display to reflect up to date information such as marine features, navigational lanes and EEZ limits, and ensure the chart information are kept up to date..	FULL	SOL03_13	
The system must display the full coverage of FAO27 and use Electronic Navigation Vector Charts that meet IHO standard S57.	FULL	SOL03_13	
The system should automatically update the chart display to reflect up to date marine information.	FULL	SOL03_13	
The system should obtain official national spatial datasets from the GIS repository so that it reduces administrative burden of manually updating national limits and marine protection areas.	FULL	SOL03_13	
The system should archive historical national spatial datasets.	FULL	SOL03_13	
The system should make archived historical national spatial datasets accessible.	FULL	SOL03_13	

2.16 User Administration:

Requirement	Compliance (Full/Partial/Non-Compliant)	Cross reference to Solution Response	Where Partial or Non-Compliant or not included in the price, Potential Supplier to provide explanation and proposed alternative proposal.
The system should display oceanographic data on chart display.	FULL	SOL03_14	
The system must allow operator to create a new user account.	FULL	SOL03_14	
The system must allow operator to define the permissions of a user account so that the correct level of access can be assigned.	FULL	SOL03_14	
The system must allow operator to update details of user account.	FULL	SOL03_14	
The system must allow operator to assign permissions at a granular level.	FULL	SOL03_14	
The system must force operators to change their password every 3 months.	FULL	SOL03_14	
The system must use the following password complexity when an operator changes their password: • A minimum of eight characters • Be case sensitive • Be a combination of upper case alpha characters, lower case alpha characters and contain at least 1 numeric character. • Allow the use of special characters (!"£\$%^&'()*.,/:@~<>+=-#';)	FULL	SOL03_14	
The system must allow the operator to lock or unlock a user account.	FULL	SOL03_14	
The system must allow operator to enter email and SMS details so that they can be used to set up vessel and zone alerts.	FULL	SOL03_14	
The system must allow the association of list of vessels to specific operators.	FULL	SOL03_14	
The system should allow operator to create a group of users.	FULL	SOL03_14	
The system should allow the operator to assign one or more user accounts to the group.	FULL	SOL03_14	
The system should allow the operator to remove one or more user accounts from the group.	FULL	SOL03_14	
The system must allow operator to reset their password through a self-service function.	FULL	SOL03_14	

2.17 System Configuration:

Requirement	Compliance (Full/Partial/Non-Compliant)	Cross reference to Solution Response	Where Partial or Non-Compliant or not included in the price, Potential Supplier to provide explanation and proposed alternative proposal.
The system should allow operator to send a username reminder through a self-service function.	FULL	SOL03_15	
The system must use a default screen refresh rate to update positional information on chart display.	FULL	SOL03_15	
The system must allow the operator to choose the positional format from DD 'MM.MMM', DD°MM "SS" or DD.DDD and this selection must affect all screens that display positional information.	FULL	SOL03_15	
The system must display date/time in UTC format.	FULL	SOL03_15	
The system must ensure the colours of vessel icons denote the nationality in accordance with Annex L.	FULL	SOL03_15	
The system must allow operator to define the Coastal State expected reporting frequency.	FULL	SOL03_15	
The system must allow operator to define UK reporting frequency for vessels at sea.	FULL	SOL03_15	
The system must allow operator to define UK reporting frequency for vessels in port.	FULL	SOL03_15	
The system must allow user settings such as chart display zoom level, scale or vessels being displayed to be retained and re-use when the operator logs back into the system.	FULL	SOL03_15	
The system should allow operator to define the replay speed (timeframe).	FULL	SOL03_15	
The system should allow operator to define the business rules so that suspicious fishing activity can be detected.	FULL	SOL03_15	
The system should allow operator to define the business rules so that the system can predict vessels' next location based on last known position, speed and course.	FULL	SOL03_15	

2.18 Implementation Services:

Requirement	Compliance (Full/Partial/ Non-Compliant)	Cross reference to Implementation response (IMP02)	Where Partial or Non-Compliant or not included in the price, Supplier to provide explanation and proposed alternative proposal.
deliver the Implementation of the Services in accordance with Schedule 6.1 (Implementation Plan) and Schedule 6.2 (Testing Procedures).	Full	IMP02_Annex_1_OIP_FINAL.mpp	
deliver its activities and Deliverables set out in the Implementation Plan in order to deliver and achieve the Services as defined in this Schedule 2.1 (Services Description) and Schedule 2.2 (Performance Levels) in accordance with the timescales set out in the Implementation Plan.	Full	IMP02_1	
ensure its Implementation Plan includes details of the technical cutover, build, test, service readiness, release and deployment elements (with reference to the testing requirements in Schedule 6.2 (Testing Procedures)).	Full	IMP02_Annex_1_OIP_FINAL.mpp	
ensure that the Authority has access to the Implementation Plan to include full detail to the lowest level at all times.	Full	IMP02_1	
appoint an Implementation project lead who shall attend and report progress against the Implementation Plan to the Transition Management Board meetings.	Full	IMP02_2	
in addition to the Transition Management Board as described in Schedule 8.1 (Governance), identify a Supplier Implementation team that shall report into the Transition Management Board through the Supplier Implementation project lead.	Full	IMP02_2	
attend regular (and as a minimum weekly and more frequently if requested by the Authority) meetings with Former Suppliers and the Authority to monitor and evaluate progress against the Implementation Plan.	Full	IMP02_2	
during Implementation design and implement (as required) systems and interfaces necessary to deliver the reports, records, Registers and other information required to be provided to the Authority pursuant to Schedule 8.4 (Records Provision) and Schedule 8.5 (Exit Management), in the necessary format.	Full	IMP02_2	
produce operating procedures and mechanisms, prior to the first Operational Service Commencement Date, to monitor and control secure access to and from the Services and associated data in accordance with the Authority's Security Policies and	Full	IMP02_1	

Standards for Approval by the Authority as detailed within the Implementation Plan.			
provide to the Authority for Approval an ITSC Management Plan in accordance with the Detailed Implementation Plan but in any event no later than ninety (90) Working Days after the Effective Date. The ITSCM Plan shall support the Authority's Business Continuity Plan and comply with the Authority's ITSC Management Policy (SMSI-071-001-008) and ITSC Management Process (SMSI-071-002-008).	Full	IMP02_1	
prior to the Operational Service Commencement Date, provide to the Authority a member of the Supplier Personnel who will act as a single point of contact for the management of ITSC Events and provide an escalation procedure with full contact details at each level. The single point of contact must be identified as one of the Key Personnel as set out in Schedule 9.2 (Key Personnel).	Full	IMP02_1	
connect to and interoperate with the Authority ICT Environment in accordance with the security standards set out in Schedule 2.4 (Security Management).	Full	IMP02_1	

2.19 Annexes A - O

ANNEX A

Example of a standard VMS Data received from UK Device.

ITEM No	DESCRIPTION/field name	EXAMPLE
1	Device ID	12345 (EMA BlueTraker) or D:45678,M:1,AORE (Mini C DNID,Member,Region)
2	Latitude	58.7661
3	Longitude	-11.6981
4	Course	253
5	Speed	6.5
6	Status Code	Hardware Tamper
7	Log Time	08/06/2018 12:00

ANNEX B



ANNEX C

Data Position Report Format for Thrane TT3026M Mini C VMS Device installed on UK Vessels

INMARSAT C: POSITION REPORT FORMAT

PACKET 1 - POSITION

BIT Number														
Byte	8	7	6	5	4	3	2	1						
1	P	C	Type											
2	DNID													
3														
4	LES ID													
5	Member Number													
6	Cat													
7														
8	Position													
9														
10														
11	MEM code													
12	Attribute													
13														
14	Check sum													
15														

Notes

P	Date report priority (normally = 0)
C	Continuation bit
Type	04H (data report)
DNID	Data Network Identifier an account no/LES address box for sender
LES ID	Identifies the Land Earth Station to which the report is to be transmitted
Member no.	Identifies terminal in a closed network/group
Cat	Category of terminal, 01B for marine terminal
Position	Lat (19 bits), Long (20 bits)
MEM code	Macro Encoded Message being a pre-defined message represented by a 7 bit code
Attribute	A parameter for the MEM code

Note: This data is to the best of UKFA understanding but must be confirmed by the Contractor in delivery and with the relevant organisations.

PACKET 2 - COURSE AND SPEED

BIT Number								
Byte	8	7	6	5	4	3	2	1
1	P	C	Type					
2	Speed							
3	Course							
4	Reserved							
5								
6	User Defined							
7								
8								
9								
10								
11								
12								
13								
14	Check sum							
15								

Speed = one byte unsigned binary number with a resolution of 0.2 knots. If no data from terminal field is set to "FFH".

Course = 9 bit unsigned binary number with a resolution of one degree. If no data from terminal field is set to "1FFH".

Notes

P	Date report priority (normally = 0)
C	Continuation bit
Type	04H (data report)
DNID	Data Network Identifier an account no/LES address box for sender
LES ID	Identifies the Land Earth Station to which the report is to be transmitted
Member no.	Identifies terminal in a closed network/group
Cat	Category of terminal, 01B for marine terminal
Position	Lat (19 bits), Long (20 bits)
MEM code	Macro Encoded Message being a pre-defined message represented by a 7 bit code
Attribute	A parameter for the MEM code

ANNEX D

Data Position Report Format for I-VMS Device installed on UK Vessels

a) Each transmitted position report for I-VMS reporting is to contain:

- national report flag to indicate this report is as a result of national reporting regulations (not EU regulations)
- most recent geographical position of the fishing vessel to 5 decimal places (in WGS84);
- date and time (in UTC) of the fixing of the said position;
- instant speed and course of the vessel (equivalent to 0.1 knots and course expressed in degrees (true not magnetic) to 0.1 degree);
- unique serial number of transmitting I-VMS device
- status code:
 - Geofence reference number indicating entry and exit of a geofence
 - loss of primary power/switch to battery (when lost);
 - restoration of primary power (when restored);
 - loss of connection with the GSM/GPRS network (when restored);
 - upon opening the I-VMS device;
 - antenna blockage or no position fix obtained at appointed time (when restored);
 - stored position forwarded;
 - low battery alert;
 - a break or disconnection of the cable(s) from the I-VMS device and GPRS/GSM antenna
- Geofence reference number
 - b) These data exchanges and formats are to use XML files and delivered using web services description language (WSDL) from the supplier's hub. Please refer to attachment below:



ANNEX E

Data Position Report Format for VMS Device installed on EU Coastal States Vessels

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011R0404&from=EN> (pg 53)
<http://www.naf-format.org/messages.htm>

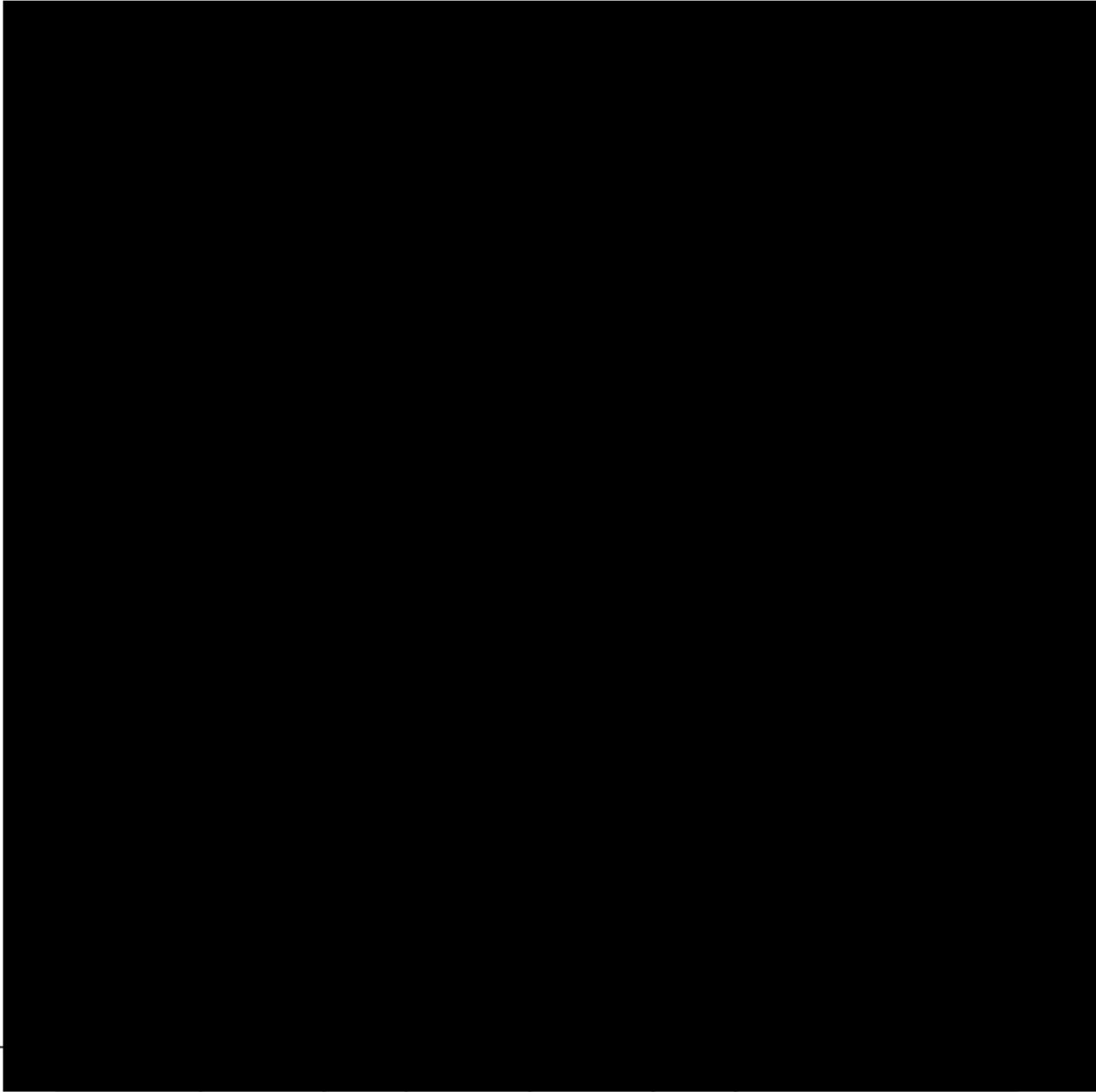
An example of EU NAF format would be:

//SR//AD/XFA//FR/GBR//TM/POS//NA/NORMA

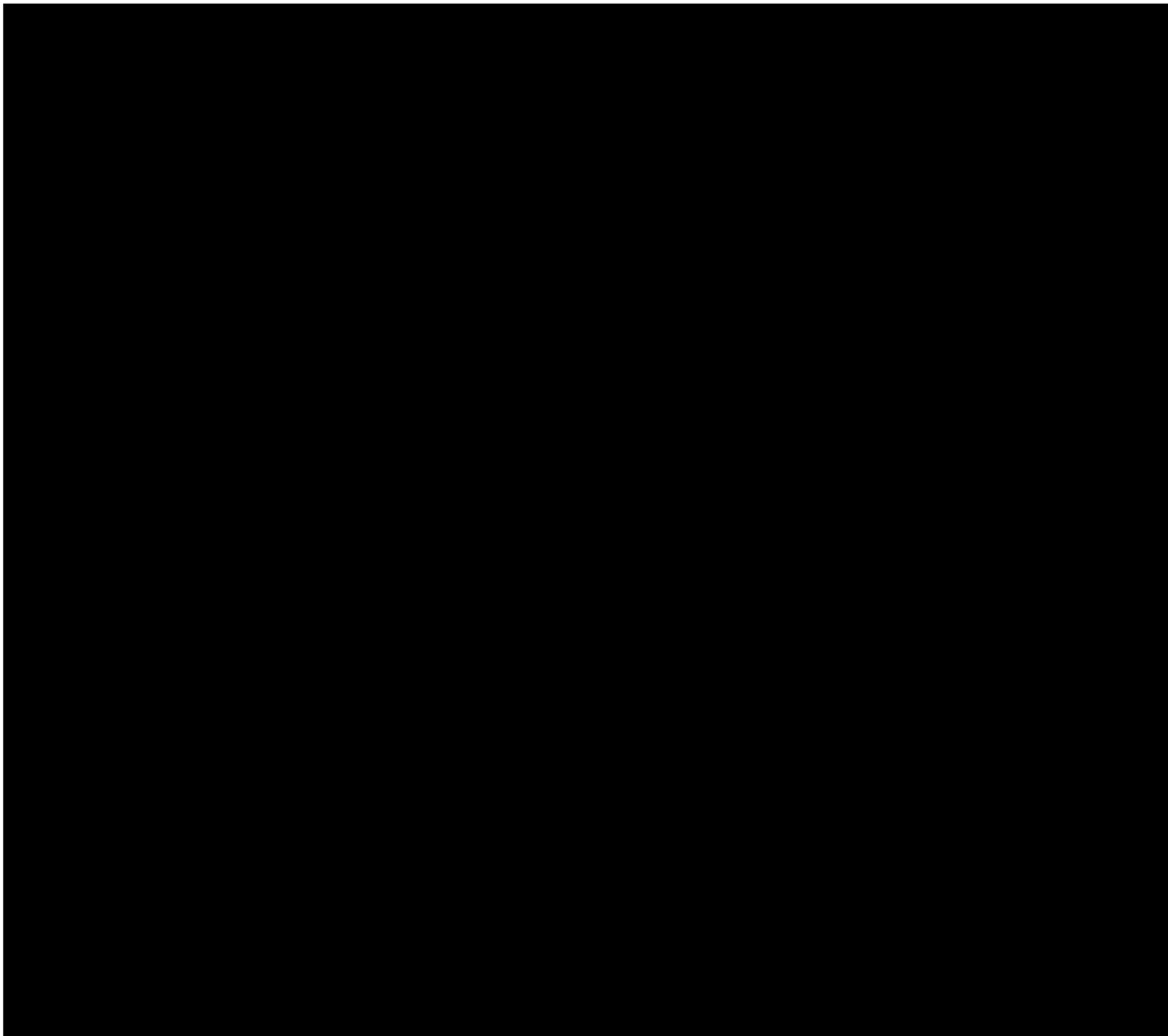
MARY//XR/GBR000C19717//TI/0737//DA/20130402//RN/118//RD/20130402//RT/0742//LT/+46.762//LG/-
045.725//CO/203//SP/108//RC/2DFR3//ER//.

An example of Norway CREWS format would be:

%2f%2fSR%2f%2fAD%2f<<RC>>%2f%2fFR%2fGBR%2f%2fTM%2fPOS%2f%2fRC%2fMy Call Sign%2f%2fLT%2f+52.119%2f%2fLG%2f-
002.399%2f%2fCO%2f45%2f%2fSP%2f152%2f%2fDA%2f20100308%2f%2fTI%2f1531%2f%2fER%2f%2f



B.



ANNEX F

ANNEX G

□

████████████████████

104

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114

ANNEX H

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I T E M N o	DESCRIPTION/field name		EXAMPLE	
1	Date of sighting (format dd/mm/yyyy)		21/11/2011	
2	Time of sighting (format hh:mm)		21:35	
3	Community Fleet Register No. (to maximum of 12 characters)		GBR000A12345 BEL030961986 NORLGBZ	
4	Port Letter No (PLN) (to maximum of 12 characters)		BCK9999	
5	Vessel Name (to maximum of 40 characters)		Maggie Smith	
6	Nationality (3 letter ISO country code)		GBR	
7	Latitude (float)		61.005333	
8	Longitude (float)		-1.554739	
9	Course		179	
10	Speed		9.14	

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ANNEX I

Format for Importing Core Vessel Data

Vessel data items imported into the UK VMS platform:

Code lists and corresponding item description will be provided to Contractor. Certain code lists such as Nationality and Gear Type are based on

EU Master Data Register - <https://circabc.europa.eu/faces/jsp/extension/wai/navigation/container.jsp>

ITEM No	DESCRIPTION/field name	EXAMPLE
1	Community Fleet Register (alpha numeric - up to 12 chars) PRIMARY VESSEL IDENTIFIER	GBR000A12345 BEL030961986 NORLGBZ
2	Port Letter No (PLN) (up to 12 chars)	BCK9999
3	Nationality (3 letter ISO country code)	GBR
4	Vessel Name (up to 40 chars)	Maggie Smith
5	International Radio Call Sign (IRCS) (up to 6 chars)	MNCQ5
6	Registered Length (metres) (real)	23.95
7	Overall Length (metres) (real)	26.25
8	Reg. Power(kw) (real)	214
9	Tonnage (real)	66
10	Admin Port Code (Alphanumeric 5 static)	GBDGL
11	Admin Port Name (up to 30 chars)	Douglas
12	Home Port Code (Alphanumeric 5 static)	GBPEL
13	Home Port Name (up to 30 chars)	Peel
14	Producer Organisation (PO) code (small integer)	22
15	Producer Organisation name (up to 50 chars)	Orkney FPO
16	1 st Licence Category (up to 50 chars)	Category A
17	1 st Licence No. (up to 20 chars)	1509/11/10/12345
18	2 nd Licence Category (up to 50 chars)	As above
19	2 nd Licence No. (up to 20 chars)	As above
20	Last Gear used code (up to 3 Alphanumeric)	TBB
21	last gear used name (up to varchar(30))	Beam Trawl
22	Vessel type code (up to 15 chars) /vessel type name (up to 30 chars)	FG - Demersal stern trawl

ANNEX J

Format for Data In Addition to Core Vessel Data

Monitoring Grace Period

ITEM No	DESCRIPTION/field name	EXAMPLE
1	Expected reporting frequency	2 hrs
2	Grace period	4 hrs
3	In Port grace period	72 hrs

UK Vessel Using Thrane TT 3026M Mini C

ITEM No	DESCRIPTION/field name	EXAMPLE
1	██████████	████████████████████ ██
█	██████████	████████
█	████████	████
█	██████████	█
█	██████████	████████

6		

UK Vessel Using EMA Bluetraker VMS+

ITE M No		

UK Vessel Using EMA Bluetraker I-VMS

ITEM M No	DESCRIPTION/field name	EXAMPLE
1	[REDACTED]	[REDACTED]
■	[REDACTED]	[REDACTED]
■	[REDACTED]	[REDACTED]

UK Vessel Using Succorfish I-VMS

ITEM M No	DESCRIPTION/field name	EXAMPLE
1	[REDACTED]	[REDACTED]
■	[REDACTED]	[REDACTED]
■	[REDACTED]	[REDACTED]

UK Vessel Using Marine Instrument I-VMS

ITEM M No	DESCRIPTION/field name	EXAMPLE
1	[REDACTED]	[REDACTED]
■	[REDACTED]	[REDACTED]
■	[REDACTED]	[REDACTED]

ANNEX K




















































LIST OF COUNTRIES AND ORGANISATIONS WITH WHOM WE REGULARLY EXCHANGE REPORTS THAT ARE CONSIDERED PRIORITY STATES.

Country
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

LIST OF COUNTRIES AND ORGANISATIONS WITH WHOM WE REGULARLY EXCHANGE REPORTS

Country
[REDACTED]
[REDACTED]
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[REDACTED]
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[REDACTED]

ANNEX L

Country	Colour	Hex Code
		
		
		
		
		
		
		
		
		
		
		
		
		
		
		
		
		

ANNEX M

The Zone information below must be displayed as spatial area on the Chart Display

- Food and Agriculture Organisation (FAO) fishing areas.
- Statistical Rectangles UK and Non UK Ports
- UK 12 Nautical Mile Limit
- UK 6 Nautical Mile Limit
- Isle of Man 6 and 12 and 9 Nautical Mile Limits
- Exclusive Economic Zones
- British Fishery Limit (current UK EEZ)
- Fishing Effort Zones
- Marine Protection Areas
- Closed and restricted areas
- All other layers as part of data migration as provided by UKFA. There may be other zones that may need to be migrated that will be provided by UKFA.

The information regarding ICES areas can be obtained from the following website:
http://gis.ices.dk/shapefiles/ICES_areas.zip

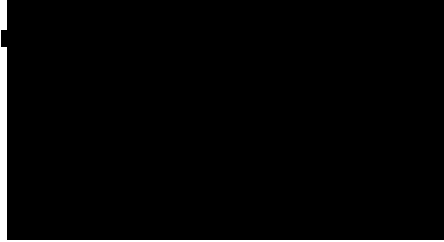
The information regarding ICES rectangles can be obtained from the following website:
http://gis.ices.dk/shapefiles/ICES_rectangles.zip

The information regarding FAO27 can be obtained from the following website: <http://www.fao.org/fishery/area/Area27/en>
<http://www.fao.org/geonetwork/srv/en/main.home?uuid=ac02a460-da52-11dc-9d70-0017f293bd28>

ANNEX N

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ANNEX O



MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 2.2

PERFORMANCE LEVELS

Performance Levels

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Available”	has the meaning given in Paragraph 1.2 of Part II of Annex 1;
“End User”	any person authorised by the Authority to use the IT Environment and/or the Services;
“Help Desk”	the single point of contact help desk set up and operated by the Supplier for the purposes of this Agreement;
“Non-Available”	in relation to the IT Environment or the Services, that the IT Environment or the Services are not Available;
“Performance Monitoring Report”	has the meaning given in Paragraph 1.1(a) of Part B;
“Performance Review Meeting”	the regular meetings between the Supplier and the Authority to manage and review the Supplier's performance under this Agreement, as further described in Paragraph 1.5 of Part B;
“Repeat KPI Failure”	has the meaning given in Paragraph 3.1 of Part A;
“Satisfaction Survey”	has the meaning given in Paragraph 5.1 of Part II of Annex 1;
“Service Availability”	has the meaning given in Paragraph 2 of Part II of Annex 1
“Service Downtime”	any period of time during which any of the Services are not Available except where it is due to the discontinuation of the Azure cloud provided by Microsoft or any Internet connectivity discontinuation; and
“System Response Time”	has the meaning given in Paragraph 2.1 of Part II of Annex 1.

PART A: PERFORMANCE INDICATORS AND SERVICE CREDITS

1 PERFORMANCE INDICATORS

- 1.1 Annex 1 sets out the Key Performance Indicators and Subsidiary Performance Indicators which the Parties have agreed shall be used to measure the performance of the Services by the Supplier.
- 1.2 The Supplier shall monitor its performance against each Performance Indicator and shall send the Authority a report detailing the level of service actually achieved in accordance with Part B.
- 1.3 Service Points, and therefore Service Credits, shall accrue for any KPI Failure and shall be calculated in accordance with Paragraphs 2, 3 and 5.

2 SERVICE POINTS

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

3 REPEAT KPI FAILURES AND RELATED KPI FAILURES

Repeat KPI Failures

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

$$SP = P \times 2$$

where:

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

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

Worked example based on the following Service Points regime for Service Availability:

Service Availability Severity Levels	Service Points
Target Performance Level: 99.95%	0
Minor KPI Failure: 99.95% - 99.00%	1
Serious KPI Failure: 98.99% - 98.00%	2
Severe KPI Failure: 97.99% - 97.0%	3
KPI Service Threshold: below 97%	4

Example 1:

If the Supplier achieves Service Availability of 98.5% in a given Measurement Period, it will incur a Minor KPI Failure for Service Availability in that Measurement Period and accordingly accrue 1 Service Point. If, in the next Measurement Period, it achieves Service Availability of 96.5%, it will incur a Severe KPI Failure and accordingly accrue 3 Service Points, but as the failure is a Repeat Failure, this amount is doubled and so the Supplier will incur 6 Service Points for the failure (i.e. $SP = 3 \times 2$). If in the next Measurement Period it achieves Service Availability of 96.5%, the Supplier will again incur 6 Service Points.

Example 2:

If the Supplier achieves Service Availability of 96.5% in a given Measurement Period, it will incur a Severe KPI Failure for Service Availability in that Measurement Period and accordingly accrue 3 Service Points. If, in the next Measurement Period, it achieves Service Availability of 98.5%, it will incur a Minor KPI Failure and accordingly accrue 1 Service Point, but as the failure is a Repeat Failure, this amount is doubled and so the Supplier will incur 2 Service Points for the failure (i.e. $SP = 1 \times 2$). If in the next Measurement Period it achieves Service Availability of 96.5%, the Supplier will incur 6 Service Points.

Related KPI Failures

- 3.3 If any specific Key Performance Indicators refer to both Service Availability and System Response Times, the System Response Times achieved by the Supplier for any period of time during a Service Period during which the relevant Service or element of a Service is determined to be Non-Available shall not be taken into account in calculating the average System Response Times over the course of that Service Period. Accordingly, the Supplier shall not incur any Service Points for failure to meet System Response Times in circumstances where such failure is a result of, and the Supplier has already incurred Service Points for, the Service being Non-Available.

4 PERMITTED MAINTENANCE

- 4.1 The Supplier shall be allowed to book a maximum of 2 hours Service Downtime for Permitted Maintenance in any one Service Period which shall take place between the hours and on the day specified in the Maintenance Schedule unless otherwise agreed in writing with the Authority.

5 SERVICE CREDITS

- 5.1 Schedule 7.1 (*Charges and Invoicing*) sets out the mechanism by which Service Points shall be converted into Service Credits.
- 5.2 The Authority shall use the Performance Monitoring Reports provided pursuant to Part B, among other things, to verify the calculation and accuracy of the Service Credits (if any) applicable to each Service Period.

PART B: PERFORMANCE MONITORING

1 PERFORMANCE MONITORING AND PERFORMANCE REVIEW

1.1 Within 10 Working Days of the end of each Service Period, the Supplier shall provide:

- (a) a report to the Authority Representative which summarises the performance by the Supplier against each of the Performance Indicators as more particularly described in Paragraph 1.2 (the “**Performance Monitoring Report**”); and
- (b) a report to the Authority’s senior responsible officer which summarises the Supplier’s performance over the relevant Service Period as more particularly described in Paragraph 1.3 (the “**Balanced Scorecard Report**”).

Performance Monitoring Report

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

Information in respect of the Service Period just ended

- (a) for each Key Performance Indicator and Subsidiary Performance Indicator, the actual performance achieved over the Service Period, and that achieved over the previous 3 Measurement Periods;
- (b) a summary of all Performance Failures that occurred during the Service Period;
- (c) the severity level of each KPI Failure which occurred during the Service Period and whether each PI Failure which occurred during the Service Period fell below the PI Service Threshold;
- (d) which Performance Failures remain outstanding and progress in resolving them;
- (e) for any Material KPI Failures or Material PI Failures occurring during the Service Period, the cause of the relevant KPI Failure or PI Failure and the action being taken to reduce the likelihood of recurrence;
- (f) the status of any outstanding Rectification Plan processes, including:
 - (i) whether or not a Rectification Plan has been agreed; and
 - (ii) where a Rectification Plan has been agreed, a summary of the Supplier’s progress in implementing that Rectification Plan;

- (g) for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;
- (h) the number of Service Points awarded in respect of each KPI Failure;
- (i) the Service Credits to be applied, indicating the KPI Failure(s) to which the Service Credits relate;
- (j) the conduct and performance of any agreed periodic tests that have occurred, such as the annual failover test of the BCDR Plan;
- (k) relevant particulars of any aspects of the Supplier's performance which fail to meet the requirements of this Agreement;
- (l) such other details as the Authority may reasonably require from time to time; and

Information in respect of previous Service Periods

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

Information in respect of the next Quarter

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

Balanced Scorecard Report

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

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

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

- 1.5 The Parties shall attend meetings on a monthly basis (unless otherwise agreed) to review the Performance Monitoring Reports and the Balanced Scorecard Reports. The Performance Review Meetings shall (unless otherwise agreed):
- (a) take place within 5 Working Days of the Performance Monitoring Report being issued by the Supplier;
 - (b) take place at such location and time (within normal business hours) as the Authority shall reasonably require (unless otherwise agreed in advance); and
 - (c) be attended by the Supplier Representative and the Authority Representative.
- 1.6 The Authority shall be entitled to raise any additional questions and/or request any further information from the Supplier regarding any KPI Failure and/or PI Failure.

2 PERFORMANCE RECORDS

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

3 PERFORMANCE VERIFICATION

The Authority reserves the right to verify the Availability of the IT Environment and/or the Services and the Supplier's performance under this Agreement against the Performance Indicators including by sending test transactions through the IT Environment or otherwise.

ANNEX 1: KEY PERFORMANCE INDICATORS AND SUBSIDIARY PERFORMANCE INDICATORS

PART I: KEY PERFORMANCE INDICATORS AND SUBSIDIARY PERFORMANCE INDICATORS TABLES

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

1 Key Performance Indicators

No.	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points
KPI1	Service Availability	See Paragraph 1 of Part II of this Annex		Target Performance Level: 99.5% Minor KPI Failure: 99.49% - 99.00% Serious KPI Failure: 98.99% - 98.00% Severe KPI Failure: 97.99% - 97.00% KPI Service Threshold: below 96.99%	0 [1] [2] [3] [4]
KPI2	Supplier System Response Times	See Paragraph 3 of Part II of this Annex		Target Performance Level: 95% Minor KPI Failure: 94.99% - 94.00% Serious KPI Failure: 93.99% - 93.00% Severe KPI Failure: 92.99% - 92.00%	0 [1] [2] [3]

No.	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points
				KPI Service Threshold: 91.99%	[4]
KPI3	Help Desk Response Times	See Paragraph 4 of Part II of this Annex		Target Performance Level: [60] seconds Minor KPI Failure: [60] seconds Serious KPI Failure: [180] seconds Severe KPI Failure: [300] seconds KPI Service Threshold: [301] seconds	0 [1] [2] [3] [4]
KPI4	Fix Times	See Paragraph 5 of Part II of this Annex		Target Performance Level: 95% Minor KPI Failure: 94.99% - 85.00% Serious KPI Failure: 84.99% - 75.00% Severe KPI Failure: 74.99% - 60.00% KPI Service Threshold: 59.99%	0 [1] [2] [3] [4]

2 Subsidiary Performance Indicators - Not Used

PART II: DEFINITIONS

1 AVAILABLE

1.1 The IT Environment and/or the Services shall be Available when:

- (a) End Users are able to access and utilise all the functions of the Supplier System and/or the Services; and
- (b) the Supplier System is able to process the Authority Data and to provide any required reports within the timescales set out in the Services Description (as measured on a 24 x 7 basis); and
- (c) all Performance Indicators other than Service Availability are above the KPI Service Threshold.

2 SERVICE AVAILABILITY

2.1 Service Availability shall be measured as a percentage of the total time in a Service Period, in accordance with the following formula:

$$\text{Service Availability \%} = \frac{(MP - SD) \times 100}{MP}$$

where:

MP = total number of minutes, excluding Permitted Maintenance, within the relevant Service Period; and

SD = total number of minutes of Service Downtime, excluding Permitted Maintenance, in the relevant Service Period.

2.2 When calculating Service Availability in accordance with this Paragraph 2:

- (a) Service Downtime arising due to Permitted Maintenance that is carried out by the Supplier in accordance with Clause 9.4 (*Maintenance*) shall be subtracted from the total number of hours in the relevant Service Period; and
- (b) Service Points shall accrue if:
 - (i) any Service Downtime occurs as a result of Emergency Maintenance undertaken by the Supplier; orwhere maintenance undertaken by the Supplier exceeds 2 hours in any Service Period.

3 RESPONSE TIMES

3.1 The “**System Response Time**” is the round trip time taken to process a message or request of the IT Environment and/or the Services, and shall be measured from the moment the last packet of data which relates to a particular message is received at the external interface of the IT Environment until a response is generated and the first block of data leaves the external interface (including, for the avoidance of doubt, the time taken for any necessary processing).

3.2 Transactions are grouped based on complexity - Low, Medium, High.

	Functionality -	Complexity
(a)	Vessel Grouping -	Low
(b)	Vessel Polling -	Low
(c)	Auditing -	Low
(d)	User Administration -	Low
(e)	Personal Account Mgt -	Low
(f)	Marine Spatial Dataset -	Low
(g)	Vessel Management -	Medium
(h)	Chart Management -	Medium
(i)	Vessel Alerts -	Medium
(j)	Zone Alerts -	Medium
(k)	System Configuration -	Medium
(l)	VMS Data Analysis -	High
(m)	Spatial Data Analysis -	High
(n)	Validation & Verification -	High
(o)	Data Exchange -	High
(p)	Vessel Monitoring -	High
(q)	Zone Management -	High

3.3 For each complexity the “**system response time**” is expected as:

(a)	Low	1 second
(b)	Medium	2 seconds
(c)	High	4 seconds

3.4 The Supplier System Response Time shall be based on the percentage of transactions meeting the System Response Time measured over the course of a Service Period.

4 HELP DESK RESPONSE TIMES

4.1 Measurement of Help Desk response times will be based on the average time taken for a Help Desk operative to answer a call. Calls receiving an automated response or placed into a queuing system shall be deemed not to have been answered.

4.2 The Supplier shall monitor the Help Desk response times and shall provide the results of such monitoring to the Authority in accordance with the provisions of Part B of this Schedule.

5 FIX TIMES

5.1 The “**Incident Fix Time**” of a Service Incident is the period from the time that the Service Incident has been reported to the Supplier to the point of its Resolution and “**Resolution**” means in relation to a Service Incident either:

- (a) the root cause of the Service Incident has been removed and the Services are being provided in accordance with the Services Description and Service Levels; or
- (b) the Authority has been provided with a workaround in relation to the Service Incident deemed acceptable by the Authority.

5.2 Incident Fix Times for Severity 3 Service Incidents and Severity 4 Service Incidents shall be measured in Operational Hours.

Worked example: if the Operational Hours for a fault are 0800-1800, then the clock stops measuring Incident Fix Time at 1800 in the evening and restarts at 0800 the following day).

5.3 Incident Fix times for Severity 1 Service Incidents and Severity 2 Service Incidents shall be measured 24x7.

5.4 For each severity the Incident Fix Time is expected as:

- (a) Severity 1 4 hours
- (b) Severity 2 19 hours
- (c) Severity 3 25 hours
- (d) Severity 4 60 hours

5.5 The Fix Times shall be based on the percentage of incidents meeting the Incident Fix Time measured over the course of a Service Period.

5.6 The Supplier shall measure Incident Fix Times as part of its service management responsibilities and report periodically to the Authority on Fix Times as part of the Performance Monitoring Report.

For Severity 3 Service Incidents and for Severity 4 Service Incidents, measurement should start at written decision of the Authority to fix the related incident. CLS proposes to gather corresponding fixes into releases whose date of delivery will be conjointly defined between the Authority and CLS. If the Authority agrees to receive the related fix in the scope of a planned release, KPI should be measured with respect to the planned delivery date of this release. Otherwise, KPI is measured as stated in Schedule 2.2

5.7 For the purposes of this Paragraph 5, the following expressions shall have the meanings set opposite them below:

“Operational Hours”	In relation to any Service, the hours for which that Service is to be operational as set out in Schedule 2.1 (<i>Services Description</i>);
“Service Incident”	a reported occurrence of a failure to deliver any part of the Services in accordance with the Authority Requirements or the Performance Indicators;
“Severity 1 Service Incident”	<p>a Service Incident which, in the reasonable opinion of the Authority:</p> <ul style="list-style-type: none"> (a) constitutes a loss of the Service which prevents a large group of End Users from working; (b) has a critical impact on the activities of the Authority; (c) causes significant financial loss and/or disruption to the Authority; or (d) results in any material loss or corruption of Authority Data; <p><i>Non-exhaustive examples:</i></p> <ul style="list-style-type: none"> • a loss of power to a data centre causing failure of Services; or • a failure of the Services to provide user authentication service;
“Severity 2 Service Incident”	<p>a Service Incident which, in the reasonable opinion of the Authority has the potential to:</p> <ul style="list-style-type: none"> (a) have a major (but not critical) adverse impact on the activities of the Authority and no workaround acceptable to the Authority is available; (b) have a major (but not critical) adverse impact on the activities of the Authority and no workaround acceptable to the Authority is available; or (c) cause a financial loss and/or disruption to the Authority which is more than trivial but less severe than the significant financial loss described in the definition of a Severity 1 Service Failure; <p><i>Non-exhaustive examples:</i></p> <ul style="list-style-type: none"> • corruption of organisational database tables; or • loss of ability to update Authority Data.

“Severity 3 Service Incident”

a Service Incident which, in the reasonable opinion of the Authority has the potential to:

- (a) have a major adverse impact on the activities of the Authority which can be reduced to a moderate adverse impact due to the availability of a workaround acceptable to the Authority; or
- (b) have a moderate adverse impact on the activities of the Authority;

Non-exhaustive example:

- inability to access data for a class of customers;

“Severity 4 Service Incident”

a Service Incident which, in the reasonable opinion of the Authority has the potential to have a minor adverse impact on the provision of the Services to End Users

Non-exhaustive example:

inability to access data for a single customer; and

or

a Service Incident comprising a flaw which is cosmetic and, as such, does not undermine the End User’s confidence in the information being displayed;

Non-exhaustive examples:

- spelling error; or
- misalignment of data on screen display.

6 SATISFACTION SURVEYS

6.1 In order to assess the level of performance of the Supplier, the Authority may undertake satisfaction surveys in respect of End Users or various groups of End Users (each such survey a “**Satisfaction Survey**”), the results of which may be reflected in the Balanced Scorecard Report. The subject matter of Satisfaction Surveys may include:

- (a) the assessment of the Supplier’s performance by the End Users against the agreed Key Performance Indicators and Subsidiary Performance Indicators; and/or
- (b) other suggestions for improvements to the Services.

- 6.2 The Authority shall reflect in the Balanced Scorecard Report any aspects of the Supplier's performance of the Services which the responses to the Satisfaction Surveys reasonably suggest are not meeting the Services Description.

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 2.3

STANDARDS

Standards

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

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

2 GENERAL

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

3 TECHNOLOGY AND DIGITAL SERVICES PRACTICE

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

4 OPEN DATA STANDARDS & STANDARDS HUB

- 4.1 The Supplier shall comply to the extent within its control with UK Government’s Open Standards Principles as documented at <https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles>, as they relate to the specification of standards for software interoperability, data and document formats in the IT Environment.

- 4.2 Without prejudice to the generality of Paragraph 2.2, the Supplier shall, when implementing or updating a technical component or part of the Software or Supplier Solution where there is a requirement under this Agreement or opportunity to use a new or emergent standard, submit a Suggested Challenge compliant with the UK Government's Open Standards Principles (using the process detailed on Standards Hub and documented at <http://standards.data.gov.uk/>). Each Suggested Challenge submitted by the Supplier shall detail, subject to the security and confidentiality provisions in this Agreement, an illustration of such requirement or opportunity within the IT Environment, Supplier Solution and Government's IT infrastructure and the suggested open standard.
- 4.3 The Supplier shall ensure that all documentation published on behalf of the Authority pursuant to this Agreement is provided in a non-proprietary format (such as PDF or Open Document Format (ISO 26300 or equivalent)) as well as any native file format documentation in accordance with the obligation under Paragraph 4.1 to comply with the UK Government's Open Standards Principles, unless the Authority otherwise agrees in writing.

5 TECHNOLOGY ARCHITECTURE STANDARDS

The Supplier shall produce full and detailed technical architecture documentation for the Supplier Solution in accordance with Good Industry Practice. If documentation exists that complies with TOGAF 9.1 or its equivalent, then this shall be deemed acceptable.

6 ACCESSIBLE DIGITAL STANDARDS

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

- (a) the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.0 Conformance Level AA; and
- (b) ISO/IEC 13066-1: 2011 Information Technology - Interoperability with assistive technology (AT) - Part 1: Requirements and recommendations for interoperability.

7 SERVICE MANAGEMENT SOFTWARE & STANDARDS

- 7.1 Subject to Paragraphs 2 to 4 (inclusive), the Supplier shall reference relevant industry and HM Government standards and best practice guidelines in the management of the Services, including the following and/or their equivalents:
- (a) ITIL v3 2011;
 - (b) ISO/IEC 20000-1 2011 "ITSM Specification for Service Management";
 - (c) ISO/IEC 20000-2 2012 "ITSM Code of Practice for Service Management";
 - (d) ISO 10007 "Quality management systems - Guidelines for configuration management"; and

- (e) BS25999-1:2006 “Code of Practice for Business Continuity Management” and, ISO/IEC 27031:2011, ISO 22301 and ISO/IEC 24762:2008 in the provision of “IT Service Continuity Strategy” or “Disaster Recovery” plans.

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

8 ENVIRONMENTAL STANDARDS

8.1 The Supplier warrants that it has obtained ISO 14001 (or equivalent) certification for its environmental management and shall comply with and maintain certification requirements throughout the Term. The Supplier shall follow a sound environmental management policy, ensuring that any Goods and the Services are procured, produced, packaged, delivered, and are capable of being used and ultimately disposed of in ways appropriate to such standard.

8.2 The Supplier shall comply with relevant obligations under the Waste Electrical and Electronic Equipment Regulations 2006 in compliance with Directive 2002/96/EC and subsequent replacements (including those in compliance with Directive 2012/19/EU).

8.3 The Supplier shall (when designing, procuring, implementing and delivering the Services) ensure compliance with Article 6 and Annex III of the Energy Efficiency Directive 2012/27/EU and subsequent replacements.

8.4 The Supplier shall comply with the EU Code of Conduct on Data Centres’ Energy Efficiency. The Supplier shall ensure that any data centre used in delivering the Services are registered as a Participant under such Code of Conduct.

8.5 The Supplier shall comply with the Authority and HM Government’s objectives to reduce waste and meet the aims of the Greening Government: IT strategy contained in the document “Greening Government: ICT Strategy issue (March 2011)” at <https://www.gov.uk/government/publications/greening-government-ict-strategy>.

9 HARDWARE SAFETY STANDARDS

9.1 The Supplier shall comply with those BS or other standards relevant to the provision of the Services, including the following or their equivalents:

- (a) any new hardware required for the delivery of the Services (including printers), shall conform to BS EN 60950-1:2006+A12:2011 or subsequent replacements. In considering where to site any such hardware, the Supplier shall consider the future working user environment and shall position the hardware sympathetically, wherever possible;
- (b) any new audio, video and similar electronic apparatus required for the delivery of the Services, shall conform to the following standard: BS EN 60065:2002+A12:2011 or any subsequent replacements;

- (c) any new laser printers or scanners using lasers, required for the delivery of the Services, shall conform to either of the following safety Standards: BS EN 60825-1:2007 or any subsequent replacements ; and
 - (d) any new apparatus for connection to any telecommunication network, and required for the delivery of the Services, shall conform to the following safety Standard: BS EN 41003:2009 or any subsequent replacements.
- 9.2 Where required to do so as part of the Services, the Supplier shall perform electrical safety checks in relation to all equipment supplied under this Agreement in accordance with the relevant health and safety regulations.

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 2.4

SECURITY MANAGEMENT

1. Definitions

In this Schedule, the following definitions shall apply:

"Risk Management Documentation"	has the meaning given in Paragraph 6.3;
"Information Management System"	means the Core Information Management System and the Wider Information Management System;
"Accreditation"	the assessment of the Core Information Management System in accordance with Paragraph 6 by the Authority or an independent information risk manager/professional appointed by the Authority, which results in an Accreditation Decision;
"Accreditation Decision"	is the decision of the Authority, taken in accordance with the process set out in Paragraph 6, to issue the Supplier with a Risk Management Approval Statement or a Risk Management Rejection Notice in respect of the Core Information Management System;
"Accreditation Plan"	the Supplier's plan to attain an Accreditation Approval Statement from the Authority, which is prepared by the Supplier and approved by the Authority in accordance with Paragraph 6.4;
"Breach of Security"	the occurrence of: (a) any unauthorised access to or use of the Services, the Authority Premises, the Sites, the Supplier

System, the Authority System and/or any information or data (including the Confidential Information and the Authority Data) used by the Authority, the Supplier or any Sub-contractor in connection with this Agreement;

- (b) the loss (physical or otherwise) and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including copies of such information or data, used by the Authority, the Supplier or any Sub-contractor in connection with this Agreement; and/or
- (c) any part of the Supplier System ceasing to be compliant with the Certification Requirements,

in each case as more particularly set out in the security requirements in Schedule 2.1 (*Services Description*) and the Baseline Security Requirements;

"Certification Requirements"

the requirements set out in Paragraph 7;

"Core Information Management System"

those information assets, ICT systems and/or Sites which will be used by the Supplier and/or its Sub-contractors to Process Authority Data, together with the associated information management system (including organisational structure, controls, policies, practices, procedures, processes and resources, which the Authority has determined in accordance with Paragraph 6 shall be subject to Accreditation;

"IT Health Check"

has the meaning given Paragraph 8.1.1;

Personal Data

has the meaning given in the Data Protection Legislation;

Personal Data Breach

has the meaning given in the Data Protection Legislation;

**Personal Data Processing
Statement**

sets out: (i) the types of Personal Data which the Supplier and/or its Sub-contractors are Processing on behalf of the Authority; (ii) the categories of Data Subjects whose Personal Data the Supplier and/or its Sub-contractors are Processing on behalf of the Authority; the nature and purpose of such Processing; (iii) the locations at which the Supplier and/or its Subcontractors Process Authority Data; and, (iv) the Protective Measures that the Supplier and, where applicable, its Subcontractors have implemented to protect the Authority Data against a Security Breach including a Personal Data Breach, which shall be prepared by the Supplier in accordance with Paragraph 6.4 of Schedule [•] (Security Management) and included in the Risk Management Documentation;

"Process Authority Data"

any operation which is performed on Authority Data, whether or not by automated means, including adapting, altering, collecting, combining, copying, destroying, erasing, organising, publishing retrieving, storing, structuring, transmitting or otherwise using Authority Data;

"Required Changes Register"

is a register which forms part of the Risk Management Documentation which records each of the changes that the Supplier has agreed with the Authority shall be made to the Core Information System and/or the Risk Management Documentation as a consequence of the occurrence of any of the events set out in Paragraph 6.13.1 to 6.13.8 together with the date on which each such change shall be implemented and the date on which each such change was implemented;

"Risk Management Approval Statement"	a notice issued by the Authority which sets out the information risks associated with using the Core Information Management System and confirms that the Authority is satisfied that the identified risks have been adequately and appropriately addressed and that the residual risks are understood and accepted by the Authority;
"Risk Management Reject Notice"	has the meaning given in Paragraph 6.7.2;
"Security Test"	has the meaning given Paragraph 8.1; and
"Statement of Information Risk Appetite"	has the meaning given in Paragraph 5.1;.
"Vulnerability Correction Plan"	has the meaning given in Paragraph 8.3.3(a); and
"Wider Information Management System"	those information assets, ICT systems and/or Sites which will be used by the Supplier and/or its Sub-contractors to Process Authority Data which have not been determined by the Authority to form part of the Core Information Management System together with the associated information management system (including organisational structure, controls, policies, practices, procedures, processes and resources.

2. Introduction

2.1 This Schedule sets out:

- 2.1.1** the principles which the Supplier shall comply with when performing its obligations under this Agreement in order to ensure the security of the Authority Data, the IT Environment, the Supplier Solution and the Information Management System;
- 2.1.2** the process which shall apply to the Accreditation of the Core Information Management System in Paragraph 6;
- 2.1.3** the Certification Requirements applicable to the Wider Information Management System in Paragraph 7;
- 2.1.4** the Security Tests which the Supplier shall conduct during the Term in Paragraph 8;
- 2.1.5** the Security Tests which the Authority may conduct during the Term in Paragraph 8.6;

- 2.1.6 the requirements to patch vulnerabilities in the Core Information Management System in Paragraph 9;
- 2.1.7 the obligations on the Supplier to prevent the introduction of Malicious Software into the Information Management System and to scan for, contain the spread of, and minimise the impact of Malicious Software which is introduced into the Information Management System in Paragraph 10; and
- 2.1.8 each Party's obligations in the event of an actual or attempted Breach of Security in Paragraph 11.

3. Principles of Security

- 3.1 The Supplier acknowledges that the Authority places great emphasis on the confidentiality, integrity and availability of the Authority Data and, consequently on the security of:
 - 3.1.1 the IT Environment;
 - 3.1.2 the Supplier Solution; and
 - 3.1.3 the Information Management System.
- 3.2 Notwithstanding the involvement of the Authority in the Accreditation of the Core Information Management System, the Supplier shall be and shall remain responsible for:
 - 3.2.1 the security, confidentiality, integrity and availability of the Authority Data whilst that Authority Data is under the control of the Supplier or any of its Sub-contractors;
 - 3.2.2 the security of the Supplier Solution; and
 - 3.2.3 the security of the Information Management System.
- 3.3 The Service Management board shall, in addition to its responsibilities set out in Schedule 8.1 (Governance), monitor and may also provide recommendations to the Supplier on the Accreditation of the Core Information Management System.
- 3.4 Each Party shall provide access to members of its information assurance personnel to facilitate the Supplier's design, implementation, operation, management and continual improvement of the Risk Management Documentation and the security of the Supplier Solution and Information Management System and otherwise at reasonable times on reasonable notice.

4. Information Management System

- 4.1 The Information Management System comprises the Core Information Management System and the Wider Information Management System.

- 4.2 The Authority shall be responsible for determining the boundary between the Core Information Management System and the Wider Information Management System. In order to enable the Authority to make such determination, the Supplier shall provide the Authority with such documentation and information that the Authority may reasonably require regarding any information assets, ICT systems and/or Sites which will be used by the Supplier or any Sub-contractor to Process Authority Data together with the associated information management system (including organisational structure, controls, policies, practices, procedures, processes and resources). The Authority shall notify the Supplier, as soon as reasonably practical following the receipt of such documentation and information, of its decision regarding the component parts of the Core Information Management System and its boundary with the Wider Information Management System
- 4.3 Any proposed change to the component parts of and/or boundary of the Core Information Management System shall be notified and processed in accordance with the Change Control Procedure.
- 5. Statement of Information Risk Appetite and Baseline Security Requirements**
- 5.1 The Supplier acknowledges that the Authority has provided and the Supplier has received a statement of information risk appetite for the Supplier System and the Services (the "**Statement of Information Risk Appetite**").
- 5.2 The Authority's Baseline Security Requirements in respect of the Core Information Management System are set out in Annex 1.
- 5.3 The Statement of Information Risk Appetite and the Baseline Security Requirements shall inform the Accreditation of the Core Information Management System.
- 6. Accreditation of the Core Information Management System**
- 6.1 The Core Information Management System shall be subject to Accreditation in accordance with this Paragraph 6.
- 6.2 The Accreditation shall be performed by the Authority or by representatives appointed by the Authority.
- 6.3 Prior to the Operational Services Commencement Date, the Supplier shall prepare and submit to the Authority the risk management documentation for the Core Information Management System, which shall comply with, and be subject to approval by the Authority in accordance with, this Paragraph 6 (the "**Risk Management Documentation**").
- 6.4 The Risk Management Documentation shall be structured in accordance with the template as set out in Annex 3 and include:
- 6.4.1 the Accreditation Plan, which shall include:

- (a) the dates on which each subsequent iteration of the Risk Management Documentation will be delivered to the Authority for review and staged approval; and
 - (b) the date by which the Supplier is required to have received a Risk Management Approval Statement from the Authority together with details of each of the tasks which must be completed by the Supplier, Milestones which must be Achieved and the Authority Responsibilities which must be completed in order for the Supplier to receive a Risk Management Approval Statement pursuant to Paragraph 6.7.1
- 6.4.2 a formal risk assessment of the Core Information Management System and a risk treatment plan for the Core Information Management System;
- 6.4.3 a completed ISO 27001:2013 Statement of Applicability for the Core Information Management System; the process for managing any security risks from Sub-contractors and third parties authorised by the Authority with access to the Services, processes associated with the delivery of the Services, the Authority Premises, the Sites, the Supplier System, the Authority System (to extent that it is under the control of the Supplier) and any IT, Information and data (including the Authority Confidential Information and the Authority Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Services;
- 6.4.4 unless such requirement is waived by the Authority, proposed controls that will be implemented in respect of all aspects of the Services and all processes associated with the delivery of the Services, including the Authority Premises, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and any IT, Information and data (including the Authority Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Agreement or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Services;
- 6.4.5 the Required Changes Register;
- 6.4.6 evidence that the Supplier and each applicable Sub-contractor is compliant with the Certification Requirements; and
- 6.4.7 a Personal Data Processing Statement.
- 6.5 If the Risk Management Documentation submitted to the Authority pursuant to Paragraph 6.3 (or Paragraph 6.10, as applicable) is approved by the Authority, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the Risk Management Documentation is not approved by the Authority, the Supplier shall amend it within 10 Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for approval. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Risk Management

Documentation following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Authority pursuant to this Paragraph may be unreasonably withheld or delayed. However, any failure to approve the Risk Management Documentation on the grounds that it does not comply with the requirements set out in Paragraph 6.4 shall be deemed to be reasonable.

- 6.6 To facilitate Accreditation of the Core Information Management System, the Supplier shall provide the Authority and its authorised representatives with:
 - 6.6.1 access to the Sites, ICT information assets and ICT systems within the Core Information Management System on request or in accordance with the Accreditation Plan; and
 - 6.6.2 such other information and/or documentation that the Authority or its authorised representatives may reasonably require, to enable the Authority to establish that the Core Information Management System is compliant with the Risk Management Documentation.
- 6.7 The Authority shall, by the relevant date set out in the Accreditation Plan, review the identified risks to the Core Information Management System and issue to the Supplier either:
 - 6.7.1 a Risk Management Approval Statement which will then form part of the Risk Management Documentation, confirming that the Authority is satisfied that the identified risks to the Core Information Management System have been adequately and appropriately addressed and that the residual risks are understood and accepted by the Authority; or
 - 6.7.2 a rejection notice stating that the Authority considers that the residual risks to the Core Information Management System have not been reduced to a level acceptable by the Authority and the reasons why ("**Risk Management Rejection Notice**").
- 6.8 If the Authority issues a Risk Management Rejection Notice, the Supplier shall, within 20 Working Days of the date of the Risk Management Rejection Notice:
 - 6.8.1 address all of the issues raised by the Authority in such notice; and
 - 6.8.2 notify the Authority that the Core Information Management System is ready for an Accreditation Decision.
- 6.9 If the Authority determines that the Supplier's actions taken pursuant to the Risk Management Rejection Notice have not reduced the residual risks to the Core Information Management System to an acceptable level and issues a further Risk Management Rejection Notice, the failure to receive a Risk Management Approval Statement shall constitute a material Default and the Authority may by terminate this Agreement with immediate effect by issuing a Termination Notice to the Supplier in accordance with Clause 33.1(b).

- 6.10 The process set out in Paragraph 6.7 and Paragraph 6.8 shall be repeated until such time as the Authority issues a Risk Management Approval Statement to the Supplier or terminates this Agreement.
- 6.11 The Supplier acknowledges that it shall not be permitted to use the Core Information Management System to Process Authority Data prior to receiving a Risk Management Approval Statement.
- 6.12 The Supplier shall keep the Core Information Management System and Risk Management Documentation under review and shall update the Risk Management Documentation annually in accordance with this Paragraph and the Authority shall review the Accreditation Decision annually and following the occurrence of any of the events set out in Paragraph 6.13.
- 6.13 The Supplier shall notify the Authority within 2 Working Days after becoming aware of:
- 6.13.1 a significant change to the components or architecture of the Core Information Management System;
 - 6.13.2 a new risk or vulnerability is identified to the components or architecture of the Core Information Management System;
 - 6.13.3 a change in the threat profile;
 - 6.13.4 a Sub-contractor failure to comply with the Core Information Management System code of connection;
 - 6.13.5 a significant change to any risk component;
 - 6.13.6 a significant change in the quantity of Personal Data held within the Core Information Management System;
 - 6.13.7 a proposal to change any of the Sites from which any part of the Services are provided; and/or
 - 6.13.8 an ISO27001 audit report produced in connection with the Certification Requirements indicates significant concerns,

update the Required Changes Register and provide the updated Required Changes Register to the Authority for review and approval within 10 Working Days after the initial notification or such other timescale as may be agreed with the Authority.
- 6.14 If the Supplier fails to implement a change which is set out in the Required Changes Register by the date agreed with the Authority, such failure shall constitute a material Default and the Supplier shall:
- 6.14.1 immediately cease using the Core Information Management System to Process Authority Data until the Default is remedied, unless directed otherwise by the Authority in writing and then it may only continue to Process Authority Data in accordance with the Authority's written directions; and

- 6.14.2 where such Default is capable of remedy, the Supplier shall remedy such Default within the timescales set by the Authority and, should the Supplier fail to remedy the Default within such timescales, the Authority may terminate this Agreement with immediate effect by issuing a Termination Notice to the Supplier in accordance with Clause 33.1(b).
- 6.15 The Supplier shall review each Change Request against the Risk Management Documentation to establish whether the documentation would need to be amended should such Change Request be agreed and, where a Change Request would require an amendment to the Risk Management Documentation, the Supplier shall set out any proposed amendments to the documentation in the Impact Assessment associated with such Change Request for consideration and approval by the Authority.
- 6.16 The Supplier shall be solely responsible for the costs associated with developing and updating the Risk Management Documentation and carrying out any remedial action required by the Authority as part of the Accreditation process.

7. Certification Requirements

- 7.1 The Supplier shall ensure, at all times during the Term, that the Supplier and any Sub-contractor with access to Authority Data or who will Process Authority Data are certified as compliant with:
- 7.1.1 ISO/IEC 27001:2013 by a UKAS approved certification body or are included within the scope of an existing certification of compliance with ISO/IEC 27001:2013; and
- 7.1.2 Cyber Essentials PLUS,
- and shall provide the Authority with a copy of each such certificate of compliance before the Supplier or the relevant Sub-contractor (as applicable) shall be permitted to use the Core Information Management System to receive, store or Process any Authority Data. Any exceptions to the flow-down of the certification requirements to third party suppliers and sub-contractors must be agreed with the Authority.
- 7.2 The Supplier shall ensure, at all times during the Term, that the Supplier and each Sub-contractor who is responsible for the secure destruction of Authority Data:
- 7.2.1 securely destroys Authority Data only on Sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001:2013; and
- 7.2.2 are certified as compliant with the NCSC Assured Service (CAS) Service Requirement Sanitisation Standard or an alternative standard as agreed by the Authority.

The Supplier shall provide the Authority with evidence of its and its Sub-contractor's compliance with the requirements set out in this Paragraph before

the Supplier or the relevant Sub-contractor (as applicable) shall be permitted to carry out the secure destruction of the Authority Data.

7.3 The Supplier shall notify the Authority as soon as reasonably practicable and, in any event within 2 Working Days, if the Supplier or any Sub-contractor ceases to be compliant with the Certification Requirements and, on request from the Authority, shall or shall procure that the relevant Sub-contractor shall:

7.3.1 immediately ceases using the Authority Data; and

7.3.2 procure that the relevant Sub-contractor promptly returns, destroys and/or erases the Authority Data in accordance with Baseline Security Requirements.

8. Security Testing

8.1 The Supplier shall, at its own cost and expense:

8.1.1 procure a CHECK IT Health Check of the Core Information Management System (an "IT Health Check") by a NCSC approved member of the CHECK Scheme or an alternative standard such as CVSS (Common Vulnerability Scoring System) or NIAC (National Infrastructure Advisory Council) as agreed by the Authority:

(a) prior to it submitting the Risk Management Documentation to the Authority for an Accreditation Decision;

(b) if directed to do so by the Authority in accordance with Paragraph 8.2; and

(c) once every 12 months during the Term.

8.1.2 conduct vulnerability scanning and assessments of the Core Information Management System monthly;

8.1.3 conduct an assessment as soon as reasonably practicable following receipt by the Supplier or any of its Sub-contractors of a critical vulnerability alert from a Supplier of any software or other component of the Core Information Management System to determine whether the vulnerability affects the Core Information Management System; and

8.1.4 conduct such other tests as are required by:

(a) any Vulnerability Correction Plans;

(b) the ISO27001 certification requirements;

(c) the Risk Management Documentation; and

(d) the Authority following a Breach of Security or a significant change to the components or architecture of the Core Information Management System,

(each a "Security Test").

- 8.2 The Supplier shall provide the Authority with the results of such Security Tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.
- 8.3 In relation to each IT Health Check, the Supplier shall:
- 8.3.1 agree with the Authority the aim and scope of the IT Health Check;
 - 8.3.2 promptly, following receipt of each IT Health Check report, provide the Authority with a copy of the IT Health Check report;
 - 8.3.3 in the event that the IT Health Check report identifies any vulnerabilities, the Supplier shall:
 - (a) prepare a remedial plan for approval by the Authority (each a "**Vulnerability Correction Plan**") which sets out in respect of each vulnerability identified in the IT Health Check report:
 - (i) how the vulnerability will be remedied;
 - (ii) the date by which the vulnerability will be remedied;
 - (iii) the tests which the Supplier shall perform or procure to be performed (which may, at the discretion of the Authority, include a further IT Health Check) to confirm that the vulnerability has been remedied;
 - (b) comply with the Vulnerability Correction Plan; and
 - (c) conduct such further Security Tests on the Core Information Management System as are required by the Vulnerability Correction Plan to confirm that the Vulnerability Correction Plan has been complied with.
- 8.4 The Security Tests shall be designed and implemented pursuant to a written protocol prepared by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority. Subject to the Supplier complying with this Paragraph 8.4, if a Security Test causes a Performance Failure in a particular Measurement Period, the Supplier shall be granted relief in respect of such Performance Failure for that Measurement Period.
- 8.5 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. Without prejudice to the Supplier's obligations under Paragraph 8.3, the Supplier shall provide the Authority with the results of such Security Tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.
- 8.6 The Authority and/or its authorised representatives shall be entitled, at any time upon giving [1] months' prior notice to the Supplier, to carry out such

tests (including penetration tests) as it may deem necessary in relation to the Service, the Information System and/or the Supplier's compliance with the Risk Management Documentation ("**Authority Security Tests**").

- 8.7 The Authority shall notify the Supplier of the results of such Authority Security Tests after completion of each Authority Security Test.
- 8.8 The Authority Security Tests shall be designed and implemented pursuant to a written protocol so as to minimise their impact on the delivery of the Services. If an Authority Security Test causes a Performance Failure in a particular Measurement Period, the Supplier shall be granted corresponding relief in respect of such Performance Failure for that Measurement Period. Relief shall also be given in relation to successive Measurement Periods to the extent that the Performance Failure impacts on the same.
- 8.9 Without prejudice to the provisions of Paragraph 8.3.3, where any Security Test carried out pursuant to this Paragraph 8 reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Supplier shall promptly notify the Authority of any changes to the Core Information Management System and/or the Risk Management Documentation (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Authority's prior written approval, the Supplier shall implement such changes to the Core Information Management System and/or the Risk Management Documentation and repeat the relevant Security Tests in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible.
- 8.10 If the Authority unreasonably withholds its approval to the implementation of any changes proposed by the Supplier to the Risk Management Documentation in accordance with Paragraph 8.8 above, the Supplier shall not be deemed to be in breach of this Agreement to the extent it can be shown that such breach:
 - 8.10.1 has arisen as a direct result of the Authority unreasonably withholding its approval to the implementation of such proposed changes; and
 - 8.10.2 would have been avoided had the Authority given its approval to the implementation of such proposed changes.
- 8.11 For the avoidance of doubt, where a change to the Core Information Management System and/or the Risk Management Documentation is required to remedy non-compliance with the Risk Management Documentation, the Baseline Security Requirements and/or any obligation in this Agreement, the Supplier shall effect such change at its own cost and expense.
- 8.12 If any repeat Security Test carried out pursuant to Paragraph 8.9 reveals an actual or potential Breach of Security or weakness exploiting the same root cause failure, such circumstance shall constitute a material Default and the Authority may by terminate this Agreement with immediate effect by issuing a Termination Notice to the Supplier in accordance with Clause 33.1(b).

- 8.13 The Supplier shall, by 30 January of each year during the Term, provide to the Authority a letter from its chief executive officer (or equivalent officer) confirming that the Supplier has made due and careful enquiry:
 - 8.13.1 the Supplier has in the previous year carried out all tests and has in place all procedures required in relation to security matters under this Agreement; and
 - 8.13.2 the Supplier is confident that its security and risk mitigation procedures with respect to the Services remain effective.

9. Vulnerabilities and Corrective Action

- 9.1 The Authority and the Supplier acknowledge that from time to time vulnerabilities in the Information System will be discovered which unless mitigated will present an unacceptable risk to the Authority Data.
- 9.2 The severity of vulnerabilities for Supplier COTS Software and Third Party COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the Risk Management Documentation and using the appropriate vulnerability scoring systems including:
 - 9.2.1 the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST at <http://nvd.nist.gov/cvss.cfm>); and
 - 9.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.
- 9.3 Subject to Paragraph 9.4, the Supplier shall procure the application of security patches to vulnerabilities in the Core Information Management System within:
 - 9.3.1 7 days after the public release of patches for those vulnerabilities categorised as 'Critical';
 - 9.3.2 30 days after the public release of patches for those vulnerabilities categorised as 'Important'; and
 - 9.3.3 60 days after the public release of patches for those vulnerabilities categorised as 'Other'.
- 9.4 The timescales for applying patches to vulnerabilities in the Core Information Management System set out in Paragraph 9.3 shall be extended where:
 - 9.4.1 the Supplier can demonstrate that a vulnerability in the Core Information Management System is not exploitable within the context of the Services (e.g. because it resides in a Software component which is not involved in running in the Services or where the patches are not available from the third party software provider) provided such vulnerabilities shall be remedied by the Supplier within the timescales set out in Paragraph 9.3 if the vulnerability becomes exploitable within the context of the Services;

- 9.4.2 the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of 5 days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Authority; or
- 9.4.3 the Authority agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the Risk Management Documentation.
- 9.5 The Risk Management Documentation shall include provisions for major version upgrades of all Supplier COTS Software and Third Party COTS Software to be kept up to date such that all Supplier COTS Software and Third Party COTS Software are always in mainstream support throughout the Term unless otherwise agreed by the Authority in writing.
- 9.6 The Supplier shall:
 - 9.6.1 implement a mechanism for receiving, analysing and acting upon threat information supplied by NCSC, or any other competent Central Government Body;
 - 9.6.2 promptly notify the Authority of any actual or sustained attempted Breach of Security, so that the Authority may inform NCSC if appropriate;
 - 9.6.3 ensure that the Core Information Management System is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;
 - 9.6.4 ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the Core Information Management System by actively monitoring the threat landscape during the Term;
 - 9.6.5 pro-actively scan the Core Information Management System for vulnerable components and address discovered vulnerabilities through the processes described in the Risk Management Documentation;
 - 9.6.6 from the date specified in the Accreditation Plan and within 5 Working Days of the end of each subsequent month during the Term, provide the Authority with a written report which details both patched and outstanding vulnerabilities in the Core Information Management System, the elapsed time between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report and any failure to comply with the timescales set out in Paragraph 9.3 for applying patches to vulnerabilities in the Core Information Management System;
 - 9.6.7 propose interim mitigation measures to vulnerabilities in the Core Information Management System known to be exploitable where a security patch is not immediately available;

- 9.6.8 remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the Core Information Management System); and
- 9.6.9 inform the Authority when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the Core Information Management System and provide initial indications of possible mitigations.
- 9.7 If the Supplier is unlikely to be able to mitigate the vulnerability within the timescales under Paragraph 10, the Supplier shall immediately notify the Authority.
- 9.8 If the Supplier fails to patch vulnerabilities in the Core Information Management System in accordance with Paragraph 9.3, such failure shall constitute a material Default and the Authority may terminate this Agreement with immediate effect by issuing a Termination Notice to the Supplier in accordance with Clause 33.1(b).

10. Malicious Software

- 10.1 The Supplier shall install and maintain anti-Malicious Software or procure that latest versions of anti-virus definitions and anti-Malicious Software is installed and maintained on any part of the Information Management System, which may Process Authority Data and ensure that such anti-Malicious Software is configured to perform automatic software and definition updates as well as regular scans of the Information Management System to check for, prevent the introduction of Malicious Software or where Malicious Software has been introduced into the Information Management System, to identify, contain the spread of, and minimise the impact of Malicious Software.
- 10.2 If Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.
- 10.3 any cost arising out of the actions of the Parties taken in compliance with the provisions of Paragraph 10.2 shall be borne by the Parties as follows:
 - 10.3.1 by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier (except where the Authority has waived the obligation set out in Clause 20.13) or the Authority Data (whilst the Authority Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the Supplier; and
 - 10.3.2 otherwise by the Authority.

11. Breach of Security

- 11.1 If either Party becomes aware of a Breach of Security or an attempted Breach of Security it shall notify the other in accordance with the security incident management process as set out in the Risk Management Documentation.
- 11.2 The security incident management process set out in the Risk Management Documentation shall, as a minimum, require the Supplier upon becoming aware of a Breach of Security or an attempted Breach of Security to:
- 11.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Authority which shall be completed within such timescales as the Authority may reasonably require) necessary to:
- (a) minimise the extent of actual or potential harm caused by such Breach of Security;
 - (b) remedy such Breach of Security to the extent possible and protect the integrity of the Information System against any such potential or attempted Breach of Security;
 - (c) apply a tested mitigation against any such Breach of Security or potential or attempted Breach of Security and, provided that reasonable testing has been undertaken by the Supplier, if the mitigation adversely affects the Supplier's ability to deliver the Services so as to meet any Performance Indicator, the Supplier shall be granted relief against the failure to meet such affected Performance Indicator for such period as the Authority, acting reasonably, may specify by written notice to the Supplier; and
 - (d) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure;
- 11.2.2 as soon as reasonably practicable and, in any event, within 2 Working Days, following the Breach of Security or attempted Breach of Security, provide to the Authority full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.
- 11.3 In the event that any action is taken in response to a Breach of Security or attempted Breach of Security which occurred as a result of non-compliance of the Information System and/or the Risk Management Documentation with the Baseline Security Requirements and/or this Agreement, then such action and any required change to the Information System and/or Risk Management Documentation shall be completed by the Supplier at no cost to the Authority.
- 11.4 If the Supplier fails to comply with its obligations set out in this Paragraph 11, such failure shall constitute a material Default, which if not remedied to the satisfaction for the Authority, shall permit the Authority to terminate this Agreement with immediate effect by issuing a Termination Notice to the Supplier in accordance with Clause 33.1(b).

12. Data Processing, Storage, Management and Destruction

- 12.1 In addition to the obligations on the Supplier set out Clause 23 (Protection of Personal Data) in respect of Processing Personal Data and compliance with the DPA, the Supplier shall:
 - 12.1.1 Process Authority Data only at the Sites and such Sites must not be located outside of the European Union except where the Authority has given its consent to a transfer of the Authority Data to outside of the European Union in accordance with Clause 23;
 - 12.1.2 on demand, provide the Authority with all Authority Data in an agreed open format;
 - 12.1.3 have documented processes to guarantee availability of Authority Data in the event of the Supplier ceasing to trade;
 - 12.1.4 securely erase any or all Authority Data held by the Supplier when requested to do so by the Authority; and
 - 12.1.5 securely destroy all media that has held Authority Data at the end of life of that media in accordance with any specific requirements in this Agreement and, in the absence of any such requirements, as directed by the Authority.

Annex 1: Baseline Security Requirements

1. Security Classification of Information

If the provision of the Services requires the Supplier to Process Authority Data which is classified as:

- 1.1 OFFICIAL-SENSITIVE, the Supplier shall implement such additional measures as agreed with the Authority from time to time in order to ensure that such information is safeguarded in accordance with the applicable Standards; and/or
- 1.2 SECRET or TOP SECRET, the Supplier shall only do so where it has notified the Authority prior to receipt of such Authority Data and the Supplier shall implement additional measures as agreed with the Authority from time to time in order to ensure that such information is safeguarded in accordance with the applicable Standards.

2. End User Devices

- 2.1 The Supplier shall ensure that any Authority Data which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the Authority except where the Authority has given its prior written consent to an alternative arrangement.
- 2.2 The Supplier shall ensure that any device which is used to Process Authority Data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security>.

3. Networking

The Supplier shall ensure that any Authority Data which it causes to be transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.

4. Personnel Security

- 4.1 All Supplier Personnel shall be subject to a pre-employment check before they may participate in the provision and or management of the Services. Such pre-employment checks must include all pre-employment checks which are required by the HMG Baseline Personnel Security Standard including: verification of the individual's identity; verification of the individual's nationality and immigration status; and, verification of the individual's employment history; verification of the individual's criminal record.
- 4.2 The Authority and the Supplier shall review the roles and responsibilities of the Supplier Personnel who will be involved in the management and/or provision of the Services in order to enable the Authority to determine which roles require additional vetting and a specific national security vetting

clearance (e.g. a Counter Terrorist Check; a Security Check). Roles which are likely to require additional vetting and a specific national security vetting clearance include system administrators whose role would provide those individuals with privileged access to IT systems which Process Authority Data or data which is classified as OFFICIAL-SENSITIVE.

- 4.3 The Supplier shall not permit Supplier Personnel who fail the security checks required by Paragraphs 4.1 and 4.2 to be involved in the management and/or provision of the Services except where the Authority has expressly agreed in writing to the involvement of the named individual in the management and/or provision of the Services.
- 4.4 The Supplier shall ensure that Supplier Personnel are only granted such access to Authority Data as is necessary to enable the Supplier Personnel to perform their role and to fulfil their responsibilities.
- 4.5 The Supplier shall ensure that Supplier Personnel who no longer require access to the Authority Data (e.g. they cease to be employed by the Supplier or any of its Sub-contractors), have their rights to access the Authority Data revoked within 1 Working Day.

5. Identity, Authentication and Access Control

- 5.1 The Supplier shall operate an access control regime to ensure:
 - 5.1.1 all users and administrators of the Supplier System are uniquely identified and authenticated when accessing or administering the Services; and
 - 5.1.2 all persons who access the Sites are identified and authenticated before they are allowed access to the Sites.
- 5.2 The Supplier shall apply the 'principle of least privilege' when allowing persons access to the Supplier System and Sites so that such persons are allowed access only to those parts of the Sites and the Supplier System they require.
- 5.3 The Supplier shall retain records of access to the Sites and to the Supplier System and shall make such record available to the Authority on request.

6. Audit and Protective Monitoring

- 6.1 The Supplier shall collect audit records which relate to security events in the VMS Hub or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include regular reports and alerts setting out details of access by users of the VMS Hub, to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of Authority Data.

- 6.2 The Supplier and the Authority shall work together to establish any additional audit and monitoring requirements for the Core Information Management System.
- 6.3 The retention periods for audit records and event logs must be agreed with the Authority and documented in the Risk Management Documentation.

7. Secure Architecture

- 1.1 The Supplier shall design the Core Information Management System in accordance with:
 - 1.1.1 the NCSC "Security Design Principles for Digital Services", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/security-design-principles-digital-services-main>;
 - 1.1.2 the NCSC "Bulk Data Principles", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/protecting-bulk-personal-data-main>; and
 - 1.1.3 the NSCS "Cloud Security Principles", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles> and which are summarised below:
 - (a) "Cloud Security Principle 1: data in transit protection" which, amongst other matters, requires that user data transiting networks should be adequately protected against tampering and eavesdropping;
 - (b) "Cloud Security Principle 2: asset protection and resilience" which, amongst other matters, requires that user data, and the assets storing or processing it, should be protected against physical tampering, loss, damage or seizure;
 - (c) "Cloud Security Principle 3: separation between users" which, amongst other matters, requires that a malicious or compromised user of the service should not be able to affect the service or data of another;
 - (d) "Cloud Security Principle 4: governance framework" which, amongst other matters, requires that the Supplier should have a security governance framework which coordinates and directs its management of the Services and information within it;
 - (e) "Cloud Security Principle 5: operational security" which, amongst other matters, requires that the Services need to be operated and managed securely in order to impede, detect or prevent a Breach of Security;
 - (f) "Cloud Security Principle 6: personnel security" which, amongst other matters, requires that where Supplier Personnel have access to Authority Data and/or the Authority System that those personnel be subject to appropriate security screening and regular security training;

- (g) "Cloud Security Principle 7: secure development" which, amongst other matters, requires that the Services be designed and developed to identify and mitigate threats to their security;
- (h) "Cloud Security Principle 8: supply chain security" which, amongst other matters, requires the Supplier to ensure that appropriate security controls are in place with its Sub-contractors and other suppliers;
- (i) "Cloud Security Principle 9: secure user management" which, amongst other matters, requires the Supplier to make the tools available for the Authority to securely manage the Authority's use of the Service;
- (j) "Cloud Security Principle 10: identity and authentication" which, amongst other matters, requires the Supplier to implement appropriate controls in order to ensure that access to Service interfaces is constrained to authenticated and authorised individuals;
- (k) "Cloud Security Principle 11: external interface protection" which, amongst other matters, requires that all external or less trusted interfaces with the Services should be identified and appropriately defended;
- (l) "Cloud Security Principle 12: secure service administration" which, amongst other matters, requires that any ICT system which is used for administration of a cloud service will have highly privileged access to that service;
- (m) "Cloud Security Principle 13: audit information for users" which, amongst other matters, requires the Supplier to be able to provide the Authority with the audit records it needs to monitor access to the Service and the Authority Data held by the Supplier and/or its Sub-contractors;
- (n) "Cloud Security Principle 14: secure use of the service" which, amongst other matters, requires the Supplier to educate Supplier Personnel on the safe and secure use of the Information Management System.

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Annex 2

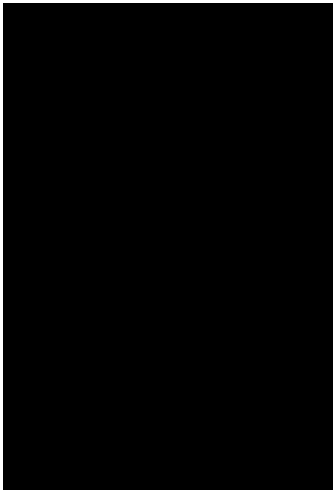
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OFFICIAL CONFIDENTIAL

Annex 3

Risk Management Documentation Template



the 'information' and 'communication' fields. The 'information' field is defined as:

...the study of the nature, uses and functions of information, and the ways in which it is created, communicated, evaluated and used. (p. 1)

The 'communication' field is defined as:

...the study of the nature, uses and functions of communication, and the ways in which it is created, communicated, evaluated and used. (p. 1)

The 'information science' field is defined as:

...the study of the nature, uses and functions of information science, and the ways in which it is created, communicated, evaluated and used. (p. 1)

The 'information studies' field is defined as:

...the study of the nature, uses and functions of information studies, and the ways in which it is created, communicated, evaluated and used. (p. 1)

The 'information research' field is defined as:

...the study of the nature, uses and functions of information research, and the ways in which it is created, communicated, evaluated and used. (p. 1)

The 'information practice' field is defined as:

...the study of the nature, uses and functions of information practice, and the ways in which it is created, communicated, evaluated and used. (p. 1)

The 'information theory' field is defined as:

...the study of the nature, uses and functions of information theory, and the ways in which it is created, communicated, evaluated and used. (p. 1)

The 'information technology' field is defined as:

...the study of the nature, uses and functions of information technology, and the ways in which it is created, communicated, evaluated and used. (p. 1)

The 'information systems' field is defined as:

...the study of the nature, uses and functions of information systems, and the ways in which it is created, communicated, evaluated and used. (p. 1)

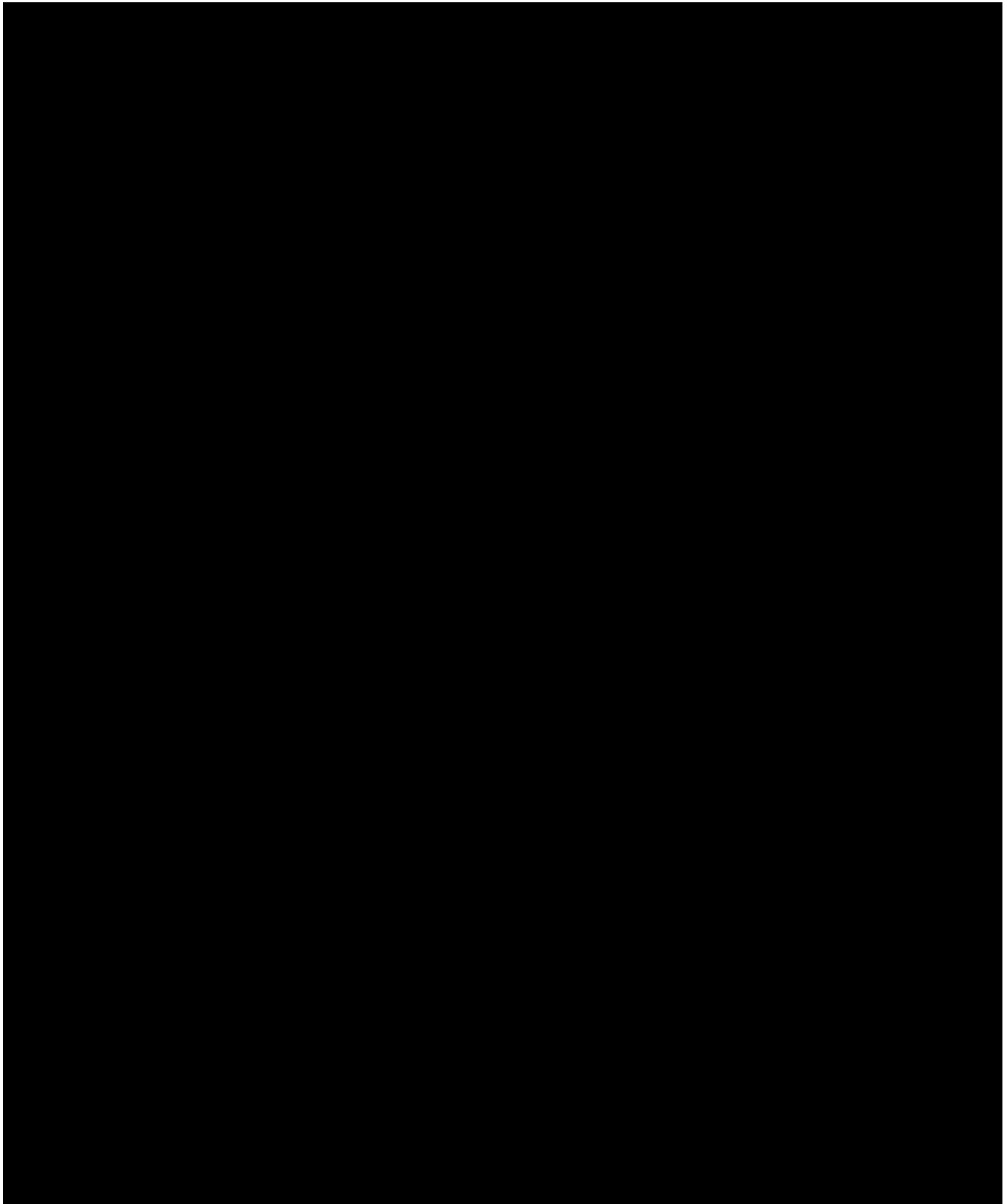
The 'information management' field is defined as:

...the study of the nature, uses and functions of information management, and the ways in which it is created, communicated, evaluated and used. (p. 1)

The 'information policy' field is defined as:

...the study of the nature, uses and functions of information policy, and the ways in which it is created, communicated, evaluated and used. (p. 1)

[The following text is a dense, illegible block of characters and symbols, likely representing a corrupted or redacted document. It contains no meaningful information.]



3.1 Accreditation/Assurance Scope

3.2 Risk appetite

		Likelihood				
		Minimum	Low	Medium	High	Maximum
		1	2	3	4	5
Severity	Catastrophic	5				
	Critical	4				
	Major	3				
	Significant	2				
	Negligible	1				
Risk Impact	Acceptable	no action				
	Supportable	Control and monitor				
	Unacceptable	Implement new process or change baseline				

[REDACTED]
 [REDACTED]

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[REDACTED]

5 SECURITY OPERATING PROCEDURES (SYOPS)

6 MAJOR HARDWARE AND SOFTWARE AND END OF SUPPORT DATES

Name	Version	End of mainstream Support/Extended Support	Notes/RAG Status
Server Host	HP XXXX	Feb 2020/ March 2022	

7 INCIDENT MANAGEMENT PROCESS

Incidents are notified to the customer by e-mail to an agreed mailing-list. The notification includes the begin time of the incident, the impact and the reason (if known). The end of the incident is also notified to the customer through the same mailing list. It includes the ending time of the incident, the impact and the reason (if known).

Incidents are also reported in the operations report sent to the customer.

Internal Incident Management Process: the incidents are detected, recorded and classified. They are prioritized according their impact and urgency. Then they are investigated, resolved. The service is recovered per agreed service level, and the incident is closed.

Jira is also the tool used to manage incidents.

The workflow used for action, risk and incident in CLS is a light workflow, as shown in the next picture.

1. [REDACTED]

2. [REDACTED]

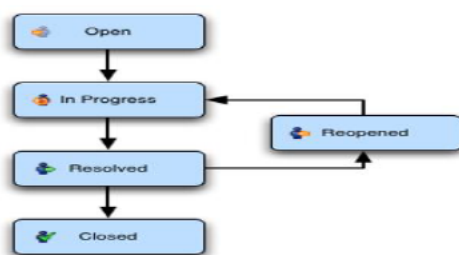


Figure 2: action / risk/ incident workflow

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Age Group	Should Take Action	Should Not Take Action
18-29	85%	15%
30-49	85%	15%
50-69	85%	15%
70+	85%	15%

11 ANNEX A. ISO27001 AND/OR CYBER ESSENTIAL PLUS CERTIFICATES



12 Annex B. Cloud Security Principles assessment

<A spreadsheet may be attached>

13 Annex C. Protecting Bulk Data assessment if required by the Authority/Customer

<A spreadsheet may be attached>

14 Annex E. Latest ITHC report and Vulnerability Correction Plan

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 2.5

INSURANCE REQUIREMENTS

Insurance Requirements

1 OBLIGATION TO MAINTAIN INSURANCES

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

2 GENERAL OBLIGATIONS

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

- (a) take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
- (b) promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
- (c) hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3 FAILURE TO INSURE

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 3.2 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

4 EVIDENCE OF INSURANCES

The Supplier shall upon the Effective Date and within 15 Working Days after the renewal or replacement of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations under this Agreement.

5 AGGREGATE LIMIT OF INDEMNITY

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

- (a) if a claim or claims which do not relate to this Agreement are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Supplier shall immediately submit to the Authority:
- (i) details of the policy concerned; and
 - (ii) its proposed solution for maintaining the minimum limit of indemnity specified; and
- (b) if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Agreement are paid by insurers, the Supplier shall:
- (i) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Agreement; or
 - (ii) if the Supplier is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Authority full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

6 CANCELLATION

- 6.1 Subject to Paragraph 6.2, the Supplier shall notify the Authority in writing at least 5 Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 6.2 Without prejudice to the Supplier's obligations under Paragraph 4, Paragraph 6.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

7 INSURANCE CLAIMS

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Agreement for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Services and/or this Agreement, the Supplier shall co-operate with the Authority and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.
- 7.2 Except where the Authority is the claimant party, the Supplier shall give the Authority notice within 20 Working Days after any insurance claim in excess of £100,000 (one hundred thousand pounds sterling) relating to or arising out of the provision of the Services or this Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Agreement or otherwise.

ANNEX 1: REQUIRED INSURANCES

PART A: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE

1 Insured

The Supplier

2 Interest

To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

(a) death or bodily injury to or sickness, illness or disease contracted by any person; and

(b) loss of or damage to property;

happening during the period of insurance (as specified in Paragraph 5) and arising out of or in connection with the provision of the Services and in connection with this Agreement.

3 Limit of indemnity

Not less than £5,000,000 (five million pounds sterling) in respect of any one occurrence, the number of occurrences being unlimited, but £5,000,000 (five million pounds sterling) in the aggregate per annum in respect of products and pollution liability.

4 Territorial limits

United Kingdom

5 Period of insurance

From the date of this Agreement for the Term and renewable on an annual basis unless agreed otherwise by the Authority in writing.

6 Cover features and extensions

Indemnity to principals clause.

7 Principal exclusions

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.

7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

- 7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

8 Maximum deductible threshold

Not to exceed £50,000 (fifty thousand pounds sterling) for each and every third party property damage claim (personal injury claims to be paid in full).

PART B: PROFESSIONAL INDEMNITY INSURANCE

1 Insured

The Supplier

2 Interest

To indemnify the Insured for all sums which the Insured shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the Insured during the period of insurance (as specified in paragraph 5) by reason of any negligent act, error and/or omission arising from or in connection with the provision of the Services.

3 Limit of indemnity

Not less than £5,000,000 (five million pounds sterling) in respect of any one claim and in the aggregate per annum, exclusive of defence costs which are payable in addition.

4 Territorial Limits

United Kingdom

5 Period of insurance

From the date of this Agreement and renewable on an annual basis unless agreed otherwise by the Authority in writing (a) throughout the Term or until earlier termination of this Agreement and (b) for a period of 6 years thereafter.

6 Cover features and extensions

Retroactive cover to apply to any "claims made policy wording" in respect of this Agreement or retroactive date to be no later than the Effective Date.

7 Principal exclusions

7.1 War and related perils

7.2 Nuclear and radioactive risks

8 Maximum deductible threshold

Not to exceed £50,000 (fifty thousand pounds sterling) for each and every claim.

PART C: UNITED KINGDOM COMPULSORY INSURANCES

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

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 3

AUTHORITY RESPONSIBILITIES

Authority Responsibilities

1 INTRODUCTION

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

2 GENERAL OBLIGATIONS

The Authority shall:

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

3 SPECIFIC OBLIGATIONS

The Authority shall, in relation to this Agreement perform the Authority’s responsibilities identified as such in this Agreement the details of which are set out below:

(m)

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 4.1

SUPPLIER SOLUTION

Supplier Solution

[illegible]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 4.2

COMMERCIALLY SENSITIVE INFORMATION

Commercially Sensitive Information

[illegible]

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 4.3

NOTIFIED KEY SUB-CONTRACTORS

Notified Key Sub-Contractors

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

Key Sub-contractor name and address (if not the same as the registered office)	Registered office and company number	Related product/Service description	Key Sub-contract price expressed as a percentage of total projected Charges over the Term	Key role in delivery of the Services	Credit Rating Threshold
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MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 4.4

THIRD PARTY CONTRACTS

Third Party Contracts

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

Third party supplier name and address (if not the same as the registered office)	Registered office and company number	Related product/service description
██████████	██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████	████████████████████ ██████████████████

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 5

SOFTWARE



Software

1 THE SOFTWARE

- 1.1 The Software below is licensed to the Authority in accordance with Clauses 16 (*Intellectual Property Rights*) and 17 (*Licences Granted by the Supplier*).
- 1.2 The Parties agree that they will update this Schedule periodically to record any Supplier Software or Third Party Software subsequently licensed by the Supplier or third parties for the purposes of the delivery of the Services.

2 SUPPLIER SOFTWARE

The Supplier Software includes the following items:

Software	Supplier (if an Affiliate of the Supplier)	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non-COTS)
██████		██████ ██████ ██████ ██████ ██████	1			██████

3 THIRD PARTY SOFTWARE

The Third Party Software shall include the following items:

Third Party Software	Supplier	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non-COTS)
████	████	████ ████	█			████

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

[Supplier letterhead]

[insert
name and address]

Authority

[Date]

Dear Sirs

LICENCES FOR SUPPLIER COTS SOFTWARE AND SUPPLIER COTS BACKGROUND IPRS

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

In accordance with Clause 17.3(b) of the Agreement we confirm that:

1. the Authority is licensed by the Supplier to use the Supplier COTS Software and Supplier COTS Background IPRs identified in the first column of the Appendix to this letter (the “Appendix”) on the terms of the licences identified in the second column of the Appendix (the “Licences”); and
2. notwithstanding any provision to the contrary in the Licences, it is agreed that the Authority may sub-license, assign and novate the Supplier COTS Software and Supplier COTS Background IPRs as referred to in Clause 17.3(b) of the Agreement.

Yours faithfully,

Signed:

On behalf of [name of the Supplier]

ANNEX 2: FORM OF CONFIDENTIALITY UNDERTAKING
CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on *[date]* 20

BETWEEN:

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

WHEREAS:

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

IT IS AGREED as follows:

1 Interpretation

- 1.1 In this Agreement, unless the context otherwise requires:

“Confidential Information”

means:

(a) Information, including all personal data within the meaning of the Data Protection Act 1998, and however it is conveyed, provided by the Authority to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:

(i) the Supplier; or

(ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;

(b) the source code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation supplied by the Supplier to the Authority pursuant to or in connection with the Sub-licence;

(c) other Information provided by the Authority pursuant to this Agreement to the Sub-licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub-licensee's attention or into the Sub-licensee's possession in connection with the Sub-licence; and

(d) Information derived from any of the above,

but not including any Information that:

was in the possession of the Sub-licensee without obligation of confidentiality prior to its disclosure by the Authority;

the Sub-licensee obtained on a non-confidential basis from a third party who is not, to the Sub-licensee's knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Sub-licensee;

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

was independently developed without access to the Confidential Information;

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

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

1.2 In this Agreement:

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

2 Confidentiality Obligations

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

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

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

3 Permitted Disclosures

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

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

4 General

- 4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
 - (a) to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;
 - (b) to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
 - (c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub-licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub-licensee of any of the provisions of this Agreement. Accordingly, the Sub-licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Sub-licensee to the Supplier for any breach of this Agreement shall be limited to five million pounds (£5,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

5 Notices

5.1 Any notice to be given under this Agreement (each a “Notice”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.

5.2 Any Notice:

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

[Address]

Attention: [Contact name and/or position, e.g. “The Finance Director”]

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

[Name of Organisation]
[Address]

Attention: []

6 Governing law

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

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

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

For and on behalf of [name of Supplier]

Signature:

Date:

Name:

Position:

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

Signature:

Date:

Name:

Position:

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 6.1

IMPLEMENTATION PLAN

Implementation Plan

1 INTRODUCTION

1.1 This Schedule:

- (a) defines the process for the preparation and implementation of the Outline Implementation Plan and Detailed Implementation Plan; and
- (b) identifies the Milestones (and associated Deliverables) including the Milestones which trigger payment to the Supplier of the applicable Milestone Payments following the issue of the applicable Milestone Achievement Certificate.

2 OUTLINE IMPLEMENTATION PLAN

2.1 The Outline Implementation Plan is set out in Annex 1.

2.2 All changes to the Outline Implementation Plan shall be subject to the Change Control Procedure provided that the Supplier shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise (except in accordance with Clause 31 (*Authority Cause*)).

3 APPROVAL OF THE DETAILED IMPLEMENTATION PLAN

3.1 The Supplier shall submit a draft of the Detailed Implementation Plan to the Authority for approval within 20 Working Days of the Effective Date.

3.2 The Supplier shall ensure that the draft Detailed Implementation Plan:

- (a) incorporates all of the Milestones and Milestone Dates set out in the Outline Implementation Plan;
- (b) includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones:
 - (i) the completion of each design document;
 - (ii) the completion of the build phase;
 - (iii) the completion of any Testing to be undertaken in accordance with Schedule 6.2 (*Testing Procedures*); and
 - (iv) training and roll-out activities;
- (c) clearly outlines all the steps required to implement the Milestones to be achieved in the next 12 months, together with a high level plan for the rest of the programme, in conformity with the Authority Requirements;
- (d) clearly outlines the required roles and responsibilities of both Parties, including staffing requirements; and
- (e) is produced using a software tool as specified, or agreed by the Authority.

- 3.3 Prior to the submission of the draft Detailed Implementation Plan to the Authority in accordance with Paragraph 3.1, the Authority shall have the right:
- (a) to review any documentation produced by the Supplier in relation to the development of the Detailed Implementation Plan, including:
 - (i) details of the Supplier's intended approach to the Detailed Implementation Plan and its development;
 - (i) copies of any drafts of the Detailed Implementation Plan produced by the Supplier; and
 - (ii) any other work in progress in relation to the Detailed Implementation Plan; and
 - (b) to require the Supplier to include any reasonable changes or provisions in the Detailed Implementation Plan.
- 3.4 Following receipt of the draft Detailed Implementation Plan from the Supplier, the Authority shall:
- (a) review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and
 - (b) notify the Supplier in writing that it approves or rejects the draft Detailed Implementation Plan no later than 20 Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Authority.
- 3.5 If the Authority rejects the draft Detailed Implementation Plan:
- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
 - (b) the Supplier shall then revise the draft Detailed Implementation Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Authority for the Authority's approval within 10 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 3.4 and this Paragraph 3.5 shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 3.6 If the Authority approves the draft Detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of the Authority's notice of approval.
- 4 UPDATES TO AND MAINTAINANCE OF THE DETAILED IMPLEMENTATION PLAN**
- 4.1 Following the approval of the Detailed Implementation Plan by the Authority:
- (a) the Supplier shall submit a revised Detailed Implementation Plan to the Authority every month starting 1 month from the Effective Date;

- (b) without prejudice to Paragraph 4.1(a), the Authority shall be entitled to request a revised Detailed Implementation Plan at any time by giving written notice to the Supplier and the Supplier shall submit a draft revised Detailed Implementation Plan to the Authority within 10 Working Days of receiving such a request from the Authority (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure);
 - (c) any revised Detailed Implementation Plan shall (subject to Paragraph 4.2) be submitted by the Supplier for approval in accordance with the procedure set out in Paragraph 3; and
 - (d) the Supplier's performance against the Implementation Plan shall be monitored at meetings of the Service Management Board (as defined in Schedule 8.1 (*Governance*)). In preparation for such meetings, the current Detailed Implementation Plan shall be provided by the Supplier to the Authority not less than 5 Working Days in advance of each meeting of the Service Management Board.
- 4.2 Save for any amendments which are of a type identified and notified by the Authority (at the Authority's discretion) to the Supplier in writing as not requiring approval, any material amendments to the Detailed Implementation Plan shall be subject to the Change Control Procedure provided that:
- (a) any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments; and
 - (b) in no circumstances shall the Supplier be entitled to alter or request an alteration to any Milestone Date except in accordance with Clause 31 (*Authority Cause*).
- 4.3 Any proposed amendments to the Detailed Implementation Plan shall not come into force until they have been approved in writing by the Authority.

5 GOVERNMENT REVIEWS

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

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 6.2

TESTING PROCEDURES

Testing Procedures

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Component”	any constituent parts of the infrastructure for a Service, hardware or Software;
“Material Test Issue”	a Test Issue of Severity Level 1 or Severity Level 2;
“Severity Level”	the level of severity of a Test Issue, the criteria for which are described in Annex 1;
“Test Certificate”	a certificate materially in the form of the document contained in Annex 2 issued by the Authority when a Deliverable has satisfied its relevant Test Success Criteria;
“Test Issue”	any variance or non-conformity of a Deliverable from its requirements (such requirements being set out in the relevant Test Success Criteria);
“Test Issue Threshold”	in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan ;
“Test Issue Management Log”	a log for the recording of Test Issues as described further in Paragraph 9.1;
“Test Plan”	<p>a plan:</p> <ul style="list-style-type: none">(a) for the Testing of Deliverables; and(b) setting out other agreed criteria related to the achievement of Milestones, as described further in Paragraph 5;
“Test Reports”	the reports to be produced by the Supplier setting out the results of Tests;
“Test Specification”	the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph 7;
“Test Strategy”	a strategy for the conduct of Testing as described further in Paragraph 4;

“Test Success Criteria”	in relation to a Test, the test success criteria for that Test as referred to in Paragraph 6;
“Test Witness”	any person appointed by the Authority pursuant to Paragraph 10.1; and
“Testing Procedures”	the applicable testing procedures and Test Success Criteria set out in this Schedule .

2 RISK

- 2.1 The issue of a Test Certificate, a Milestone Achievement Certificate and/or a conditional Milestone Achievement Certificate shall not:
- (a) operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Authority's requirements for that Deliverable or Milestone; or
 - (b) affect the Authority's right subsequently to reject:
 - (i) all or any element of the Deliverables to which a Test Certificate relates; or
 - (i) any Milestone to which the Milestone Achievement Certificate relates.
- 2.2 Notwithstanding the issuing of any Milestone Achievement Certificate (including the Milestone Achievement Certificate in respect of Authority to Proceed), the Supplier shall remain solely responsible for ensuring that:
- (a) the Supplier Solution as designed and developed is suitable for the delivery of the Services and meets the Authority Requirements;
 - (b) the Services are implemented in accordance with this Agreement; and
 - (c) each Target Performance Level is met from the relevant Operational Service Commencement Date.

3 TESTING OVERVIEW

- 3.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, the Test Plans and the Test Specifications.
- 3.2 The Supplier shall not submit any Deliverable for Testing:
- (a) unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;
 - (b) until the Authority has issued a Test Certificate in respect of any prior, dependant Deliverable(s); and
 - (c) until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).

- 3.3 The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.
- 3.4 Prior to the issue of a Test Certificate, the Authority shall be entitled to review the relevant Test Reports and the Test Issue Management Log.
- 3.5 Any Disputes between the Authority and the Supplier regarding Testing shall be referred to the Dispute Resolution Procedure using the Expedited Dispute Timetable.

4 TEST STRATEGY

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

5 TEST PLANS

- 5.1 The Supplier shall develop Test Plans and submit these for the approval of the Authority as soon as practicable but in any case no later than 20 Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start date for the relevant Testing (as specified in the Implementation Plan).
- 5.2 Each Test Plan shall include as a minimum:
- (a) the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being tested and, for each Test, the specific Test Success Criteria to be satisfied;
 - (b) a detailed procedure for the Tests to be carried out, including:
 - (i) the timetable for the Tests, including start and end dates;
 - (i) the Testing mechanism;
 - (ii) dates and methods by which the Authority can inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;
 - (iii) the mechanism for ensuring the quality, completeness and relevance of the Tests;
 - (iv) the format and an example of Test progress reports and the process with which the Authority accesses daily Test schedules;
 - (v) the process which the Authority will use to review Test Issues and the Supplier's progress in resolving these in a timely basis;
 - (vi) the Test Schedule;
 - (vii) the re-Test procedure, the timetable and the resources which would be required for re-Testing; and
 - (c) the process for escalating Test Issues from a re-test situation to the taking of specific remedial action to resolve the Test Issue.
- 5.3 The Authority shall not unreasonably withhold or delay its approval of the Test Plans provided that the Supplier shall incorporate any reasonable requirements of the Authority in the Test Plans.

6 TEST SUCCESS CRITERIA

- (n) The Test Success Criteria for:
 - (a) each Test that must be Achieved for the Supplier to Achieve either the ATP Milestone or a CPP Milestone are set out in Annex 4; and
 - (b) all other Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 5.

7 TEST SPECIFICATION

- 7.1 Following approval of a Test Plan, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least 10 Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start of the relevant Testing (as specified in the Implementation Plan).
- 7.2 Each Test Specification shall include as a minimum:
- (a) the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Authority and the extent to which it is equivalent to live operational data;
 - (b) a plan to make the resources available for Testing;
 - (c) Test scripts;
 - (d) Test pre-requisites and the mechanism for measuring them; and
 - (e) expected Test results, including:
 - (i) a mechanism to be used to capture and record Test results; and
 - (ii) a method to process the Test results to establish their content.

8 TESTING

- 8.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.
- 8.2 The Supplier shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with Paragraph 10.
- 8.3 The Supplier shall notify the Authority at least 10 Working Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Tests and the Authority shall ensure that the Test Witnesses attend the Tests, except where the Authority has specified in writing that such attendance is not necessary.
- 8.4 The Authority may raise and close Test Issues during the Test witnessing process.
- 8.5 The Supplier shall provide to the Authority in relation to each Test:
- (a) a draft Test Report not less than 2 Working Days (or such other period as the Parties may agree in writing) prior to the date on which the Test is planned to end; and
 - (b) the final Test Report within 5 Working Days (or such other period as the Parties may agree in writing) of completion of Testing.

- 8.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
- (a) an overview of the Testing conducted;
 - (b) identification of the relevant Test Success Criteria that have been satisfied;
 - (c) identification of the relevant Test Success Criteria that have not been satisfied together with the Supplier's explanation of why those criteria have not been met;
 - (d) the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
 - (e) the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with Paragraph 9.1; and
 - (f) the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.

9 TEST ISSUES

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

10 TEST WITNESSING

- 10.1 The Authority may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Authority, each of whom shall have appropriate skills to fulfil the role of a Test Witness.
- 10.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
- 10.3 The Test Witnesses:
- (a) shall actively review the Test documentation;

- (b) will attend and engage in the performance of the Tests on behalf of the Authority so as to enable the Authority to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;
- (c) shall not be involved in the execution of any Test;
- (d) shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
- (e) may produce and deliver their own, independent reports on Testing, which may be used by the Authority to assess whether the Tests have been Achieved;
- (f) may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
- (g) may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

11 TEST QUALITY AUDIT

- 11.1 Without prejudice to its rights pursuant to Clause 12.2(b) (*Records, Reports, Audits & Open Book Data*), the Authority may perform on-going quality audits in respect of any part of the Testing (each a “**Testing Quality Audit**”) subject to the provisions set out in the agreed Quality Plan.
- 11.2 The focus of the Testing Quality Audits shall be on:
 - (a) adherence to an agreed methodology;
 - (b) adherence to the agreed Testing process;
 - (c) adherence to the Quality Plan;
 - (d) review of status and key development issues; and
 - (e) identification of key risk areas.
- 11.3 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 11.4 The Authority will give the Supplier at least 5 Working Days' written notice of the Authority's intention to undertake a Testing Quality Audit and the Supplier may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the Supplier's reasonable opinion, the carrying out of a Testing Quality Audit at the time specified by the Authority will materially and adversely impact the Implementation Plan.

- 11.5 A Testing Quality Audit may involve document reviews, interviews with the Supplier Personnel involved in or monitoring the activities being undertaken pursuant to this Schedule, the Authority witnessing Tests and demonstrations of the Deliverables to the Authority. Any Testing Quality Audit shall be limited in duration to a maximum time to be agreed between the Supplier and the Authority on a case by case basis (such agreement not to be unreasonably withheld or delayed). The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Authority to enable it to carry out the Testing Quality Audit.
- 11.6 If the Testing Quality Audit gives the Authority concern in respect of the Testing Procedures or any Test, the Authority shall:
- (a) discuss the outcome of the Testing Quality Audit with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities; and
 - (b) subsequently prepare a written report for the Supplier detailing its concerns, and the Supplier shall, within a reasonable timeframe, respond in writing to the Authority's report.
- 11.7 In the event of an inadequate response to the Authority's report from the Supplier, the Authority (acting reasonably) may withhold a Test Certificate (and consequently delay the grant of a Milestone Achievement Certificate) until the issues in the report have been addressed to the reasonable satisfaction of the Authority.

12 OUTCOME OF TESTING

- 12.1 The Authority shall issue a Test Certificate as soon as reasonably practicable when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.
- 12.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Authority shall notify the Supplier and:
- (a) the Authority may issue a Test Certificate conditional upon the remediation of the Test Issues;
 - (b) where the Parties agree that there is sufficient time prior to the relevant Milestone Date, the Authority may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or
 - (c) where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Authority's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of Clause 27.1 (*Rectification Plan Process*).

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

13 ISSUE OF MILESTONE ACHIEVEMENT CERTIFICATE

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

- (a) the issuing by the Authority of Test Certificates and/or conditional Test Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and
- (b) performance by the Supplier to the reasonable satisfaction of the Authority of any other tasks identified in the Implementation Plan as associated with that Milestone (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).

- 13.2 The grant of a Milestone Achievement Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of Schedule 7.1 (*Charges and Invoicing*).

- 13.3 If a Milestone is not Achieved, the Authority shall promptly issue a report to the Supplier setting out:

- (a) the applicable Test Issues ; and
- (b) any other reasons for the relevant Milestone not being Achieved.

- 13.4 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Authority shall issue a Milestone Achievement Certificate.

- 13.5 If there is one or more Material Test Issue(s), the Authority shall refuse to issue a Milestone Achievement Certificate and, without prejudice to the Authority's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of Clause 27.1 (*Rectification Plan Process*).

- 13.6 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Authority may at its discretion (without waiving any rights in relation to the other options) choose to issue a Milestone Achievement Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:

- (a) any Rectification Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless the Authority agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Authority within 10 Working Days of receipt of the Authority's report pursuant to Paragraph 13.3); and

- (b) where the Authority issues a conditional Milestone Achievement Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

ANNEX 1: TEST ISSUES - SEVERITY LEVELS

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

but for which, as reasonably determined by the Authority, there is a practicable workaround available;
- 4 **Severity Level 4 Test Issue:** a Test Issue which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Services; and
- 5 **Severity Level 5 Test Issue:** a Test Issue that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Services

ANNEX 2: TEST CERTIFICATE

To: [NAME OF SUPPLIER]

FROM: [NAME OF AUTHORITY]

[Date]

Dear Sirs,

TEST CERTIFICATE

Deliverables: [*insert description of Deliverables*]

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

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

- (o) [We confirm that the Deliverables listed above have been tested successfully in accordance with the Test Plan relevant to those Deliverables.]
- (p) **OR**
- (q) [This Test Certificate is issued pursuant to Paragraph 12.1 of Schedule 6.2 (*Testing Procedures*) of the Agreement on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*
- (r) **delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of [*name of Authority*]

ANNEX 3: MILESTONE ACHIEVEMENT CERTIFICATE

To: [NAME OF SUPPLIER]

FROM: [NAME OF AUTHORITY]

[Date]

Dear Sirs,

MILESTONE ACHIEVEMENT CERTIFICATE

Milestone: [*insert description of Milestone*]

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

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

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

(t) OR

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

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with the provisions of Schedule 7.1 (*Charges and Invoicing*)]*

**delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of [*Authority*]

ANNEX 4: TEST SUCCESS CRITERIA

1. Tests to be Achieved in order to Achieve the ATP Milestone

Test Success Criteria
<ol style="list-style-type: none">1. All code has been developed and tested to the extent agreed in the test strategy and test plan2. The application has successfully completed all tests to the extent agreed in the test strategy and test plan3. The application is compliant with all relevant standards4. All products defined in the implementation plan are complete and have been reviewed and approved in accordance with the quality review process5. All products and deliverables have been made available6. Any issues raised have been addressed to the satisfaction of the Authority

* Note: The Pre-Conditions are that e.g. the Success Criteria for the previous Tests must be satisfied before the ATP Milestone tests are commenced

2. Tests to be Achieved in order to Achieve a CPP Milestone

Test Success Criteria
<ol style="list-style-type: none">1. The application has met levels of service aligned with the required service levels as described in schedule 2.2 for one reporting Service Measurement Period (no severe KPI failure measured on the period for KPI2 System Response time)2. A minimum of 20 consecutive days immediately prior CPP without a Priority 1 Incident

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 7.1

CHARGES AND INVOICING

Charges and Invoicing

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Achieved Profit Margin”	the cumulative Supplier Profit Margin calculated from (and including) the Effective Date (or, if applicable, the date of the last adjustment to the Charges made pursuant to Paragraph 2.2 of Part D) to (and including) the last day of the previous Contract Year;
“Anticipated Contract Life Profit Margin”	the anticipated Supplier Profit Margin over the Term as reflected in the Financial Model;
“Capped ADR”	in relation to a Milestone Payment or Service Charge means a capped average day rate calculated by reference to a Time and Materials blended pricing mechanism, £535;
“Costs”	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:</p> <p>(a) the cost to the Supplier or the Key Sub-contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including:</p> <ul style="list-style-type: none">(i) base salary paid to the Supplier Personnel;(ii) employer’s national insurance contributions;(iii) Employer Pension Contributions;(iv) car allowances;(v) any other contractual employment benefits;(vi) staff training;(vii) work place accommodation;(viii) work place IT equipment and tools reasonably necessary to perform the Services (but not including items included within limb (b) below); and(ix) reasonable recruitment costs, as agreed with the Authority;

- (b) costs incurred in respect of those Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Assets by the Supplier to the Authority or (to the extent that risk and title in any Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Assets;
- (c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the delivery of the Services;
- (d) Forecast Contingency Costs;
- (e) Reimbursable Expenses to the extent these are incurred in delivering any Services where the Charges for those Services are to be calculated on a Fixed Price or Firm Price pricing mechanism;
but excluding:
 - (i) Overhead;
 - (ii) financing or similar costs;
 - (iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term, whether in relation to Assets or otherwise;
 - (iv) taxation;
 - (v) fines and penalties;
 - (vi) amounts payable under Schedule 7.3 (*Benchmarking*); and
 - (vii) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

“Delay Payment Rate”

has the meaning given in Paragraph 1.1(a) of Part C;

“The Employer Pension Contributions”

means:

- a) in respect of CSPS Eligible Employees those sums set out at Clauses 7.1.1 (annual administration charges covering core services), 7.1.5 (employer contributions), 7.1.7 (the ASLC) and 7.1.8 (flat charges

applicable to the Partnership Pension Account) of the Admission Agreement;

- b) in respect of NHSPS Eligible Employees, the standard employer contribution rate applicable to NHS Pension Scheme employers during the Term and payable by the Supplier^[1] (but no other costs, contributions, charges or surcharges payable by the Supplier to or in respect of the NHS Pension Scheme or in respect of any NHS Premature Retirement Rights, unless otherwise agreed in writing by the Authority);
- c) in respect of LGPS Eligible Employees the standard employer contribution rate applicable to LGPS Eligible Employees during the Term and payable by the Supplier^[2] (but no other costs, contributions, charges or surcharges payable by the Supplier to or in respect of the LGPS or in respect of any Beckmann Liabilities, unless otherwise agreed in writing by the Authority); and

such other employer pension contributions, charges or costs incurred by the Supplier which have been expressly agreed by the Authority in writing to constitute 'Employer Pension Contributions';

“Forecast Contingency Costs”

the costs which the Supplier forecasts may be incurred in relation to the risks and contingencies that are identified in the Risk Register, such costs being those set out in the column headed ‘Forecast Contingency Costs’ in the Risk Register (as such costs are updated from time to time);

■ [REDACTED]

■ [REDACTED]

“Guaranteed Maximum Price”	in relation to a Milestone, 110% of the Target Price for the relevant Milestone;
“Incurred Costs”	<p>in relation to a Milestone, the sum of:</p> <ul style="list-style-type: none"> (a) the fixed day costs set out in Table 3 of Annex 1 multiplied by the number of Man Days that have been expended by the Supplier Personnel in Achieving the relevant Milestone; and (b) any amount that would fall within limbs (b) or (c) of the definition of “Costs” (but subject to exceptions (i) to (vii) in that definition), to the extent that such amount has been incurred in Achieving the relevant Milestone;
“Indexation” and “Index”	the adjustment of an amount or sum in accordance with Paragraph 5 of Part C;
“Man Day”	7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
“Man Hours”	the hours spent by the Supplier Personnel properly working on the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
“Maximum Permitted Profit Margin”	the Anticipated Contract Life Profit Margin plus 5%;
“Milestone Group”	has the meaning given in Paragraph 1.5 of Part B;
“Milestone Retention”	has the meaning given in Paragraph 1.3 of Part B;
“Overhead”	those amounts which are intended to recover a proportion of the Supplier's or the Key Sub-contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of “Costs” or the day cost set out in Table 3 of Annex 1;

“Reimbursable Expenses”	<p>reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Authority's expenses policy current from time to time, but not including:</p> <ul style="list-style-type: none"> (a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Authority otherwise agrees in advance in writing; and (b) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;
“Supplier Profit”	in relation to a period or a Milestone (as the context requires), the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;
“Supplier Profit Margin”	in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
“Supporting Documentation”	sufficient information in writing to enable the Authority reasonably to assess whether the Charges, Reimbursable Expenses and other sums due from the Authority detailed in the information are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts;
“Target Cost”	has the meaning given in Paragraph 3.1 of Part A;
“Target Price”	has the meaning given in Paragraph 3.1 of Part A;
“Verification Period”	in relation to an Allowable Assumption, the period from (and including) the Effective

Date to (and including) the date at which the relevant Allowable Assumption expires, as set out against the relevant Allowable Assumption in column 11 in the table in Annex 5.

(v)

PART A: PRICING

1 APPLICABLE PRICING MECHANISM

- 1.1 Milestone Payments and Service Charges shall be calculated using the pricing mechanism specified in Annex 2 and on the basis of the rates and prices specified in Annex 1 as more particularly set out in this Schedule.
- 1.2 Table 1 of Annex 2 sets out which pricing mechanism shall be used to calculate each Milestone Payment, which shall be one or more of the following:
- (a) “Time and Materials”, in which case the provisions of Paragraph 2 shall apply;
 - (b) “**Guaranteed Maximum Price with Target Cost**”, in which case the provisions of Paragraph 3 shall apply;
 - (c) “**Fixed Price**”, in which case the provisions of Paragraph 4 shall apply; or
 - (d) “**Firm Price**”, in which case the provisions of Paragraph 5 shall apply.
- 1.3 Table 2 of Annex 2 sets out which pricing mechanism shall be used to calculate each Service Charge, which shall be one or more of the following:
- (a) “**Time and Materials**”, in which case the provisions of Paragraph 2 shall apply;
 - (b) “**Volume Based**” pricing, in which case the provisions of Paragraph 6 shall apply; or
 - (c) “**Fixed Price**” in which case the provisions of Paragraph 4 shall apply.

2 TIME AND MATERIALS MILESTONE PAYMENTS OR SERVICE CHARGES

- 2.1 Where Table 1 or Table 2 of Annex 2 indicates that a Milestone Payment or Service Charge (as applicable) is to be calculated by reference to a Time and Materials pricing mechanism:
- (a) the day rates set out in Table 1 of Annex 1 shall be used to calculate the relevant Charges, provided that the Supplier (or its Sub-contractor) shall:
 - (i) not be entitled to include any uplift for risks or contingencies within its day rates;
 - (ii) not be paid any Charges to the extent that they would otherwise exceed the cap specified against the relevant Charge in Table 2 of Annex 1 unless the Supplier has obtained the Authority’s prior written consent. The Supplier shall monitor the amount of each Charge incurred in relation to the relevant cap and notify the Authority immediately in the event of any risk that the cap may be exceeded and the Authority shall instruct the Supplier on how to proceed;

- (iii) unless otherwise agreed by the Authority in relation to the relevant Milestone Payment or Service Charge (as the case may be), not be paid any Charges to the extent that they would otherwise exceed the amount calculated by multiplying:
 - (A) the total number of days expended by the Supplier in relation to the relevant Milestone; or
 - (B) the total number of days expended by the Supplier during the relevant Service Period in relation to the relevant Service,
 by the Capped ADR; and
 - (iv) only be entitled to be paid Charges that have been properly and reasonably incurred, taking into account the Supplier's obligation to deliver the Services in a proportionate and efficient manner; and
 - (b) the Supplier shall keep records of hours properly worked by Supplier Personnel (in the form of timesheets) and expenses incurred and submit a summary of the relevant records with each invoice. If the Authority requests copies of such records, the Supplier shall make them available to the Authority within 10 Working Days of the Authority's request.
- 2.2 The Supplier shall be entitled to Index the rates set out in Table 1 of Annex 1 and the Capped ADR in accordance with Paragraph 5 of Part C, but any caps set out in Table 2 of Annex 1 shall not be subject to Indexation.
- 3 **GUARANTEED MAXIMUM PRICE WITH TARGET COST INCENTIVE MILESTONE PAYMENTS**
- 3.1 Where Table 1 of Annex 2 indicates that a Milestone Payment is to be calculated by reference to the Guaranteed Maximum Price with Target Cost pricing mechanism, the target Costs (the "**Target Cost**") and the target Charge (the "**Target Price**") for the relevant Milestone shall be as set out in Table 4 of Annex 1.
- 3.2 If the Incurred Costs relating to a Milestone are lower than the Target Cost for that Milestone, the difference between the Incurred Costs and the Target Cost shall be shared equally between the Authority and the Supplier (resulting in the Supplier receiving a higher Supplier Profit Margin in relation to that Milestone), and the Milestone Payment shall be calculated as follows:

$$\text{Milestone Payment} = \text{TP} - ((\text{TC} - \text{IC})/2)$$

where:

- TP is the Target Price for the relevant Milestone;
- TC is the Target Cost for the relevant Milestone; and
- IC is the Incurred Costs relating to the relevant Milestone.

3.3 If the Incurred Costs relating to a Milestone are greater than the Target Cost for that Milestone, the difference between the Incurred Costs and the Target Cost shall be borne equally between the Authority and the Supplier (resulting in the Supplier receiving a lower Supplier Profit Margin in relation to that Milestone), provided that the maximum Milestone Payment payable by the Authority for the relevant Milestone shall not exceed an amount equal to the guaranteed maximum price for that Milestone as set out in Table 4 of Annex 1 (the “**Guaranteed Maximum Price**”) Represented numerically:

(a) if:

(i) $IC > TC$; and

(ii) $TP + ((IC - TC)/2) < GMP$,

then Milestone Payment = $TP + ((IC - TC)/2)$; or

(b) if:

(i) $IC > TC$; and

(ii) $TP + ((IC - TC)/2) \geq GMP$,

then Milestone Payment = GMP

where:

IC	is the Incurred Costs relating to the relevant Milestone;
TC	is the Target Cost for the relevant Milestone;
TP	is the Target Price for the relevant Milestone; and
GMP	is $TP * 1.1$, being the Guaranteed Maximum Price for the relevant Milestone.

3.4 The Supplier shall be entitled to Index the day costs set out in Table 3 of Annex 1 annually, but the Target Cost, Target Price and Guaranteed Maximum Price shall not be subject to Indexation.

4 FIXED PRICE MILESTONE PAYMENTS OR SERVICE CHARGES

4.1 Where Table 1 or Table 2 of Annex 2 indicates that a Milestone Payment or Service Charge is to be calculated by reference to a Fixed Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Table 5 of Annex 1.

4.2 Charges calculated by reference to a Fixed Price pricing mechanism shall be subject to increase by way of Indexation.

5 FIRM PRICE MILESTONE PAYMENTS

- 5.1 Where Table 1 of Annex 2 indicates that a Milestone Payment is to be calculated by reference to a Firm Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Table 6 of Annex 1.
- 5.2 Charges calculated by reference to a Firm Price pricing mechanism shall not be subject to increase by way of Indexation.

6 VOLUME BASED SERVICE CHARGES

- 6.1 Where Table 2 of Annex 2 indicates that a Service Charge is to be calculated by reference to a Volume Based pricing mechanism, the relevant Charges shall be calculated on the basis of the unit costs set out against that Service Charge in Table 7 of Annex 1.
- 6.2 In the event that the volume of any Services that are to be calculated by reference to a Volume Based pricing mechanism fall outside the relevant volume bands set out against that Service Charge in Table 7 of Annex 1, the relevant Service Charges shall be calculated in accordance with the Change Control Procedure and Paragraph 4 of Part C.
- 6.3 The Charge per unit set out in Table 7 of Annex 1 shall be subject to annual Indexation.

7 REIMBURSEABLE EXPENSES

7.1 Where:

- (a) Services are to be charged using the Time and Materials or Guaranteed Maximum Price with Target Cost pricing mechanism; and
- (b) the Authority so agrees in writing,

the Supplier shall be entitled to be reimbursed by the Authority for Reimbursable Expenses (in addition to being paid the relevant Charges), provided that such Reimbursable Expenses are supported by Supporting Documentation.

- 7.2 The Authority shall provide a copy of its current expenses policy to the Supplier upon request.
- 7.3 Except as expressly set out in Paragraph 7.1, the Charges shall include all costs and expenses relating to the Deliverables, the Services and/or the Supplier's performance of its obligations under this Agreement and no further amounts shall be payable by the Authority to the Supplier in respect of such performance, including in respect of matters such as:
- (a) any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document and report reproduction, shipping, desktop and office equipment costs required by the Supplier Personnel, including network or data interchange costs or other telecommunications charges; or
 - (b) any amount for any services provided or costs incurred by the Supplier prior to the Effective Date.

PART B: CHARGING MECHANISMS

1 MILESTONE PAYMENTS

- 1.1 Subject to the provisions of Paragraph 1.3 of Part C in relation to the deduction of Delay Payments, on the Achievement of a Milestone the Supplier shall be entitled to invoice the Authority for the Milestone Payment associated with that Milestone less the applicable Milestone Retention in accordance with this Part B.
- 1.2 Each invoice relating to a Milestone Payment shall be supported by:
- (a) a Milestone Achievement Certificate; and
 - (b) where the Milestone Payment is to be calculated by reference to a Guaranteed Maximum Price with Target Cost or Time and Materials pricing mechanism, a Certificate of Costs with Supporting Documentation.
- 1.3 The “**Milestone Retention** ” for each Milestone shall be calculated as follows:
- (a) where the Milestone Payment for the relevant Milestone is determined by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, 10% of the Target Price for the Milestone;
 - (b) where the Milestone Payment for the relevant Milestone is determined by reference to a Time and Materials, Fixed Price or Firm Price pricing mechanism, 10% of the Charges for that Milestone,

and, in the case of a Key Milestone, prior to deduction from the Milestone Payment of any Delay Payment attributable to that Key Milestone and without taking account of any amount payable by the Supplier pursuant to Paragraph 1.3 of Part C.

Guaranteed Maximum Price with Target Cost pricing mechanism

- 1.4 Where a Milestone Payment relating to a single Milestone is to be calculated by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, then the following payment process shall apply:
- (a) upon the issue of a Milestone Achievement Certificate for the Milestone, the Supplier may invoice the Authority for the Target Price for the relevant Milestone, less the Milestone Retention calculated using such Target Price; and
 - (b) no later than 60 Working Days after the invoice referred to in Paragraph 1.3(a) has been issued, the Supplier shall:
 - (i) submit to the Authority a report setting out the Incurred Costs and actual Milestone Payment for the Milestone;
 - (ii) issue to the Authority an invoice or credit note for the difference between the actual Milestone Payment payable and the Target Price invoiced for the Milestone (in each case, after deducting the applicable Milestone Retention);

- (iii) where a credit note is to be issued to the Authority pursuant to Paragraph 1.4(b)(ii), repay to the Authority a sum equal to such difference as a debt within 10 Working Days of issue of the credit note; and
- (iv) issue a Certificate of Costs with Supporting Documentation, which shall exclude any accruals, prepayments and provisions.

1.5 Where Milestones are stated in Table 4 of Annex 1 to constitute a group of Milestones (a “**Milestone Group**”) and the Milestone Payments relating to the Milestones in that Milestone Group are each to be calculated by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, then the following payment process shall apply:

- (a) in respect of each Milestone within the Milestone Group, the Supplier may invoice the Authority for the Target Price for the relevant Milestone, less the Milestone Retention calculated using such Target Price, upon the issue of the associated Milestone Achievement Certificate; and
- (b) no later than 60 Working Days after the issue of the invoice for the final Milestone Payment relating to the Milestone Group, the Supplier shall:
 - (i) submit to the Authority a report setting out the Incurred Costs and actual Milestone Payments for the Milestone Group;
 - (ii) issue to the Authority an invoice or credit note for the difference between the aggregate of the actual Milestone Payments payable and Target Prices invoiced for Milestones in the Milestone Group (in each case, after deducting all Milestone Retentions relating to that Milestone Group);
 - (iii) where a credit note is to be issued to the Authority pursuant to Paragraph 1.5(b)(ii), repay to the Authority a sum equal to such difference as a debt within 10 Working Days of issue of the credit note; and
 - (iv) issue a Certificate of Costs with Supporting Documentation, which shall exclude any accruals, prepayments and provisions.

1.6 If the Supplier does not repay any such sum as is referred to in Paragraph 1.4(b)(ii) or 1.5(b)(ii) within 10 Working Days of issue of the relevant credit note, it shall repay such sum together with interest on such sum at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment, whether before or after judgment.

1.7 Following the issue of a Certificate of Costs in accordance with Paragraph 1.2, 1.4(b)(iii) or 1.5(b)(iii), the Supplier shall not be entitled to invoice the Authority for any additional Charges relating to the Milestone or Milestone Group (as applicable) save as provided in Paragraph 1.8.

Release of Milestone Retentions

- 1.8 On Achievement of a CPP Milestone relating to the Supplier Solution or one or more Services (as the case may be), the Supplier shall be entitled to invoice the Authority for an amount equal to all Milestone Retentions that relate to Milestones identified in the “*CPP Milestone Charge Number*” column of Table 1 (or, in relation to Milestone Retentions in respect of Optional Services, Table 4) of Annex 2 and corresponding CPP Milestone Charge Number identified in Table 2 of Annex 4 of Schedule 6.2 (*Testing Procedures*) as being payable in respect of that CPP Milestone and have not been paid before such CPP Milestone.

2 SERVICE CHARGES

- 2.1 Each Service to which a Service Charge relates shall commence on the Achievement of the Milestone set out against that Service in the “*Service Charge Trigger Event*” column of Table 2 of Annex 2.
- 2.2 Service Charges shall be invoiced by the Supplier for each Service Period in arrear in accordance with the requirements of Part E.
- 2.3 If a Service Charge is to be calculated by reference to a Fixed Price pricing mechanism and the relevant Service:
- (a) commences on a day other than the first day of a month; and/or
 - (b) ends on a day other than the last day of a month,
- the Service Charge for the relevant Service Period shall be pro-rated based on the proportion which the number of days in the month for which the Service is provided bears to the total number of days in that month.
- 2.4 Any Service Credits that accrue during a Service Period shall be deducted from the Service Charges payable for the next following Service Period. An invoice for a Service Charge shall not be payable by the Authority unless all adjustments (including Service Credits) relating to the Service Charges for the immediately preceding Service Period have been agreed.

3 OPTIONAL SERVICES

If the Authority gives notice pursuant to Clause 5.10 (*Optional Services*) that it requires the Supplier to provide any or all of the Optional Services:

- (a) the Milestone Payments (if any) for the relevant Optional Services shall be calculated by reference to the pricing mechanism for those Optional Services set out in Table 3 of Annex 2; and
- (b) the Service Charges for the relevant Optional Services shall be calculated by reference to the pricing mechanism for those Optional Services set out in Table 4 of Annex 2,

in both cases using the relevant rates and prices specified in Annex 1.

PART C: ADJUSTMENTS TO THE CHARGES AND RISK REGISTER

1 DELAY PAYMENTS

1.1 If a Key Milestone has not been Achieved on or before the relevant Milestone Date, the Supplier shall pay A Delay Payment to the Authority in respect of that Key Milestone. Delay Payments shall accrue:

- (a) at the daily rate (the “**Delay Payment Rate**”) determined in accordance with Paragraph 1.2;
- (b) from (but excluding) the relevant Milestone Date to (and including) the later of:
 - (i) the date on which the Key Milestone is Achieved; and
 - (ii) the expiry of the Delay Deduction Period; and
- (c) on a daily basis, with any part day’s Delay counting as a day.

1.2 Where a Delay Payment is payable in respect of a Key Milestone, the Delay Payment Rate shall be:

- (a) where the Supplier has given the Authority less than 3 months’ prior notice of the Delay, the amount set out in column 4 of Table 1 of Annex 2 for the Key Milestone;
- (b) where the Supplier has given the Authority between 3 months’ and 6 months’ prior notice of the Delay, the amount set out in column 5 of Table 1 of Annex 2 for the Key Milestone; or
- (c) where the Supplier has given the Authority more than 6 months’ prior notice of the Delay, the amount set out in column 6 of Table 1 of Annex 2 for the Key Milestone.

1.3 Where the Supplier serves a notice pursuant to Paragraph 1.2(b) or 1.2(c), the Supplier shall, within 5 Working Days of the date the notice is served:

- (a) pay to the Authority in cleared funds on account of the relevant Delay Payment (but subject always to Paragraph 1.4) an amount equal to:
 - (i) in the case of a notice served pursuant to Paragraph 1.2(b), 5 days of Delay Payments; or
 - (ii) in the case of a notice served pursuant to Paragraph 1.2(c), 10 days of Delay Payments in accordance with paragraph 1.4,

in each case calculated at the applicable Delay Payment Rate; and

- (b) issue a credit note to the Authority in respect of the relevant amount.

Failure to make payment within 10 Working Days of the Supplier’s notice shall invalidate the notice.

- 1.4 Any amounts paid to the Authority pursuant to Paragraph 1.3 shall not be refundable to the Supplier in any circumstances, including where a Delay as referred to in the Supplier's notice:
- (a) does not occur; or
 - (b) does occur but continues for fewer days during the relevant Delay Deduction Period than the number of days referred to in Paragraph 1.3(a) or 1.3(b) as the case may be.
- 1.5 The Parties agree that Delay Payments calculated in accordance with the applicable Delay Payment Rates are in each case a genuine pre-estimate of the Losses which the Authority will incur as a result of any failure by the Supplier to Achieve the relevant Key Milestone by the Milestone Date. Delay Payment Rates are stated exclusive of VAT.
- 1.6 The Delay Payment in respect of a Key Milestone (net of any payment made in respect of that Key Milestone pursuant to Paragraph 1.3) shall be shown as a deduction from the amount due from the Authority to the Supplier in the next invoice due to be issued by the Supplier after the date on which the relevant Key Milestone is Achieved or the expiry of the Delay Deduction Period (as the case may be). If the relevant Key Milestone is not Achieved by the expiry of the Delay Deduction Period and no invoice is due to be issued by the Supplier within 10 Working Days of expiry of the Delay Deduction Period, then the Supplier shall within 10 Working Days of expiry of the Delay Deduction Period:
- (a) issue a credit note to the Authority in respect of the total amount of the Delay Payment in respect of the Key Milestone (net of any payment made in respect of the Key Milestone pursuant to Paragraph 1.3); and
 - (b) pay to the Authority as a debt a sum equal to the total amount of the Delay Payment in respect of the Key Milestone together with interest on such amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment, whether before or after judgment.

2 PAYMENTS FOR DELAYS DUE TO AUTHORITY CAUSE

- 2.1 If the Supplier is entitled in accordance with Clause 31.1(iii)(D) (*Authority Cause*) to compensation for failure to Achieve a Milestone by its Milestone Date, then, subject always to Clause 25 (*Limitations on Liability*), such compensation shall be determined in accordance with the following principles:
- (a) the compensation shall reimburse the Supplier for additional Costs incurred by the Supplier that the Supplier:
 - (i) can demonstrate it has incurred solely and directly as a result of the Authority Cause; and
 - (ii) is, has been, or will be unable to mitigate, having complied with its obligations under Clause 31.1 (*Authority Cause*)

together with an amount equal to the Anticipated Contract Life Profit Margin thereon;

- (b) the compensation shall not operate so as to put the Supplier in a better position than it would have been in but for the occurrence of the Authority Cause;
- (c) where the Milestone Payment for the relevant Milestone is to be calculated by reference to the Guaranteed Maximum Price with Target Cost pricing mechanism, then:
 - (i) the Target Price for the Milestone shall be increased in accordance with the following formula:

$$NTP = TP + (AC \times 1.x)$$

where:

NTP	is the revised Target Price for the relevant Milestone;
TP	is the original Target Price for the relevant Milestone;
AC	is an amount equal to any additional Costs incurred by the Supplier in Achieving the Milestone to the extent that the Supplier can demonstrate that such additional Costs were caused by the Authority Cause; and
X	is the Supplier Profit Margin that the Supplier would have received in respect of the relevant Milestone on the basis of the unadjusted Target Cost and unadjusted Target Price for that Milestone, as set out in Table 4 of Annex 1, expressed as a decimal; and

- (ii) the Guaranteed Maximum Price shall be increased to an amount equal to 110% of the Target Price as adjusted pursuant to Paragraph 2.1(c)(i);
- (d) where the relevant Milestone Payment is to be calculated based upon a Fixed Price or a Firm Price pricing mechanism, the compensation shall include such amount as is appropriate to maintain the Supplier Profit Margin set out in respect of the relevant Milestone in Table 5 or Table 6 of Annex 1; and
- (e) where the Milestone Payment includes any Charges which are capped, then to the extent that the compensation agreed pursuant to this Paragraph 2 results in the Authority paying additional Time and Materials Charges for resources or effort which the Supplier demonstrates are required as a result of the Authority Cause, such additional Time and Materials Charges shall be disregarded for the purposes of calculating the relevant cap.

- 2.2 The Supplier shall provide the Authority with any information the Authority may require in order to assess the validity of the Supplier's claim to compensation.

3 SERVICE CREDITS

- 3.1 Service Credits shall be calculated by reference to the number of Service Points accrued in any one Service Period pursuant to the provisions of Schedule 2.2 (*Performance Levels*).

- 3.2 For each Service Period:

- (a) the Service Points accrued shall be converted to a percentage deduction from the Service Charges for the relevant Service Period on the basis of one point equating to a 0,5% deduction in the Service Charges; and
- (b) the total Service Credits applicable for the Service Period shall be calculated in accordance with the following formula:

$$SC = TSP \times X \times AC$$

where:

- SC is the total Service Credits for the relevant Service Period;
- TSP is the total Service Points that have accrued for the relevant Service Period;
- X is 0,5%; and
- AC is the total Services Charges payable for the relevant Service Period (prior to deduction of applicable Service Credits).

- 3.3 The liability of the Supplier in respect of Service Credits shall be subject to Clause 25.4(b) (*Financial and other Limits*) provided that, for the avoidance of doubt, the operation of the Service Credit Cap shall not affect the continued accrual of Service Points in excess of such financial limit in accordance with the provisions of Schedule 2.2 (*Performance Levels*).
- 3.4 Service Credits are a reduction of the Service Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.
- 3.5 Service Credits shall be shown as a deduction from the amount due from the Authority to the Supplier in the invoice for the Service Period immediately succeeding the Service Period to which they relate.

4 CHANGES TO CHARGES

- 4.1 Any Changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 8.2 (*Change Control Procedure*) and on the basis that the Supplier Profit Margin on such Charges shall:
- (a) be no greater than that applying to Charges using the same pricing mechanism as at the Effective Date (as set out in the Contract Inception Report); and
 - (b) in no event exceed the Maximum Permitted Profit Margin.
- 4.2 The Authority may request that any Impact Assessment presents Charges without Indexation for the purposes of comparison.
- 4.3 A Change to the Charges may be notified by either party to the other if the value of the British Pound varies by more than 5% against the Euro compared with the relevant reference exchange rate.

The relevant reference exchange rate shall be the rate published by the European Central Bank ("ECB") on the Effective Date of the Agreement between the British Pound ("GBP") and the Euro ("ECB Reference Exchange Rate")

Once a year, upon notification by one of the parties, the other party shall agree to adjust the Charges, at the latest thirty (30) days before each anniversary of the Effective Date ("Adjustment Date"), if at the Adjustment Date, the ECB's published exchange rate for the GBP against the Euro is 5% more or less than the ECB Reference Exchange Rate. The adjustment to the Charges shall correspond to the percentage change in the exchange rate compared with the ECB Reference Exchange Rate.

- The Change will be applicable to the services to be provided over the following year;

5 INDEXATION

- 5.1 Any amounts or sums in this Agreement which are expressed to be "subject to Indexation" shall be adjusted in accordance with the provisions of this Paragraph 5 to reflect the effects of inflation.
- 5.2 Where Indexation applies, the relevant adjustment shall be:
- (a) applied on the first day of the second April following the Effective Date and on the first day of April in each subsequent year (each such date an "adjustment date"); and
 - (b) determined by multiplying the relevant amount or sum by the percentage increase or changes in the Consumer Price Index published for the 12 months ended on the 31 January immediately preceding the relevant adjustment date.

- 5.3 Except as set out in this Paragraph 5, neither the Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-contractors of the performance of their obligations.

6 ALLOWABLE ASSUMPTIONS

- 6.1 The Supplier shall determine whether each Allowable Assumption is accurate within its Verification Period.
- 6.2 During each Verification Period, the Authority shall provide the Supplier with reasonable assistance and access to information within its possession or reasonable control and which the Authority deems is relevant to the Allowable Assumption being verified.
- 6.3 Within 10 Working Days of the end of each Verification Period, the Supplier shall provide the Authority with a written report setting out the results of the Supplier's verification activity for the relevant Allowable Assumption, including whether the Allowable Assumption is accurate or whether the Implementation Plan and/or the Contract Inception Report require adjustment.
- 6.4 Each Allowable Assumption shall be deemed accurate unless adjusting for the relevant Allowable Assumption has an impact:
- (a) on the Financial Model greater than the associated trigger for invocation, as set out in column 9 of the table in Annex 5; or
 - (b) on the Implementation Plan which would require adjustment under the Change Control Procedure, as identified in column 3 of the table in Annex 5,
- in which case Paragraph 6.5 shall apply.
- 6.5 Where the Parties agree that an Allowable Assumption is not accurate and the Financial Model and/or Implementation Plan require adjusting:
- (a) the Supplier shall take all reasonable steps to mitigate the impact of the Allowable Assumption on the Financial Model and/or the Implementation Plan;
 - (b) the Supplier may (subject to Paragraph 6.5(c)) propose a Change to take account of the impact of the adjustment of the Allowable Assumption and such Change Request shall be considered in accordance with the Change Control Procedure; and
 - (c) where the Supplier proposes a Change to the Charges under Paragraph 6.5(b), the Change Request shall reflect the requirements of the table in Annex 5, including the requirement that any proposed adjustment to the Charges shall not exceed the maximum impact on the relevant Charges as specified in column 7 of the table in Annex 5.

7 RISK REGISTER

The Parties shall review the Risk Register set out in Annex 4 from time to time and as otherwise required for the purposes of Schedule 8.1 (*Governance*).

PART D: EXCESSIVE SUPPLIER PROFIT MARGIN

1 LIMIT ON SUPPLIER PROFIT MARGIN

- 1.1 The Supplier acknowledges that the Achieved Profit Margin applicable over the Term shall not exceed the Maximum Permitted Profit Margin.
- 1.2 The Supplier shall include in each Annual Contract Report the Achieved Profit Margin as at the end of the Contract Year to which the Annual Contract Report is made up and the provisions of Paragraph 2 of Part B of Schedule 7.5 (*Financial Reports and Audit Rights*) shall apply to the approval of the Annual Contract Report.

2 ADJUSTMENT TO THE CHARGES IN THE EVENT OF EXCESS SUPPLIER PROFIT

- 2.1 If an Annual Contract Report demonstrates (or it is otherwise determined pursuant to Paragraph 2 of Part B of Schedule 7.5 (*Financial Reports and Audit Rights*)) that the Achieved Profit Margin as at the end of the Contract Year to which the Annual Contract Report is made up exceeds the Maximum Permitted Profit Margin:
 - (a) the Supplier shall, within 5 Working Days of delivery to the Authority of the Annual Contract Report, propose such adjustments to the Charges as will ensure that the Achieved Profit Margin both over the Contract Year to which the next Annual Contract Report will relate and over the Term will not exceed the Maximum Permitted Profit Margin;
 - (b) the Authority (acting reasonably) may agree or reject the proposed adjustments;
 - (c) if the Authority rejects the proposed adjustments it shall give reasons and the Supplier shall propose revised adjustments within 10 Working Days of receiving those reasons; and
 - (d) if the Parties cannot agree such revised adjustments and the Authority terminates this Agreement by issuing a Termination Notice to the Supplier pursuant to Clause 33.1(a) (*Termination by the Authority*), then for the purpose of calculating any Compensation Payment due to the Supplier, the Termination Notice shall be deemed to have been served as at the date of receipt by the Authority of the relevant Annual Contract Report.
- 2.2 Pending agreement of a proposed adjustment to the Charges pursuant to this Part D, the Charges then in force shall continue to apply. Once the adjustments to the Charges are agreed in accordance with Paragraph 2.1, the Parties shall document the adjustment in a Change Authorisation Note and the adjusted Charges shall apply with effect from the first day of the Service Period that immediately follows the Service Period in which the Change Authorisation Note is executed or such other date as is specified in the Change Authorisation Note.

PART E: INVOICING AND PAYMENT TERMS

1 SUPPLIER INVOICES

- 1.1 The Supplier shall prepare and provide to the Authority for approval of the format a template invoice within 10 Working Days of the Effective Date which shall include, as a minimum, the details set out in Paragraph 1.2 together with such other information as the Authority may reasonably require to assess whether the Charges that will be detailed therein are properly payable. If the template invoice is not approved by the Authority then the Supplier shall make such amendments as may be reasonably required by the Authority. If the Authority uses an e-invoicing system then the Supplier shall instead comply with the requirements of that system.
- 1.2 The Supplier shall ensure that each invoice is submitted in the correct format for the Authority's e-invoicing system, or that it contains the following information:
- (a) the date of the invoice;
 - (b) a unique invoice number;
 - (c) the Service Period or other period(s) to which the relevant Charge(s) relate;
 - (d) the correct reference for this Agreement;
 - (e) the reference number of the purchase order to which it relates (if any);
 - (f) the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
 - (g) a description of the Services;
 - (h) the pricing mechanism used to calculate the Charges (such as Guaranteed Maximum Price with Target Cost, Fixed Price, Time and Materials etc);
 - (i) any payments due in respect of Achievement of a Milestone, including the Milestone Achievement Certificate number for each relevant Milestone;
 - (j) the total Charges gross and net of any applicable deductions and, separately, the amount of any Reimbursable Expenses properly chargeable to the Authority under the terms of this Agreement, and, separately, any VAT or other sales tax payable in respect of each of the same;
 - (k) details of any Service Credits or Delay Payments or similar deductions that shall apply to the Charges detailed on the invoice;
 - (l) reference to any reports required by the Authority in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Authority, then to any such reports as are validated by the Authority in respect of the Services);
 - (m) a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries; and

- (n) the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).
- 1.3 The Supplier shall invoice the Authority in respect of Services in accordance with the requirements of Part B. The Supplier shall first submit to the Authority a draft invoice setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within 5 Working Days of its receipt by the Authority, following which the Supplier shall be entitled to submit its invoice.
- 1.4 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Authority as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice.
- 1.5 The Supplier shall submit all invoices and Supporting Documentation through the Authority's electronic system Bravo or if that is not possible to:
- [REDACTED]
- [REDACTED]
- with a copy (again including any Supporting Documentation) to such other person and at such place as the Authority may notify to the Supplier from time to time.
- 1.6 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.
- 1.7 The Authority shall regard an invoice as valid only if it complies with the provisions of this Part E. Where any invoice does not conform to the Authority's requirements set out in this Part E, the Authority shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.
- 1.8 If the Authority fails to consider and verify an invoice in accordance with paragraphs 1.3 and 1.7, the invoice shall be regarded as valid and undisputed for the purpose of paragraph 2.1 [*Payment in 30 days*] after a reasonable time has passed.

2 PAYMENT TERMS

- 2.1 Subject to the relevant provisions of this Schedule, the Authority shall make payment to the Supplier within 30 days of verifying that the invoice is valid and undisputed.
- 2.2 Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 7.2

PAYMENTS ON TERMINATION

Payments on Termination

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Applicable Supplier Personnel”

any Supplier Personnel who:

- (i) at the Termination Date:
 - a) are employees of the Supplier;
 - b) are Dedicated Supplier Personnel;
 - c) have not transferred (and are not in scope to transfer at a later date) to the Authority or the Replacement Supplier by virtue of the Employment Regulations; and
- (ii) are dismissed or given notice of dismissal by the Supplier within:
 - d) 40 Working Days of the Termination Date; or
 - e) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and
- (iii) have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and
- (iv) the Supplier can demonstrate to the satisfaction of the Authority:
 - a) are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers;
 - b) are genuinely being dismissed for reasons of redundancy; and
 - c) have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier is entitled to reimbursement under this provision in respect of such employees;

“Breakage Costs Payment”

an amount equal to the Redundancy Costs and the Contract Breakage Costs as at the Termination Date as determined in accordance with Paragraph 3;

“Compensation Payment”	the payment calculated in accordance with Paragraph 6;
“Contract Breakage Costs”	the amounts payable by the Supplier to its Key Sub-contractors or other third parties (as applicable) for terminating all relevant Key Sub-contracts or Third Party Contracts as a direct result of the early termination of this Agreement;
“Dedicated Supplier Personnel”	all Supplier Personnel then assigned to the Services or any part of the Services. If the Supplier is unsure as to whether Supplier Personnel are or should be regarded as so assigned, it shall consult with the Authority whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Services;
“Profit Already Paid”	the Supplier Profit paid or payable to the Supplier under this Agreement for the period from the Effective Date up to (and including) the Termination Date;
“Redundancy Costs”	<p>the total sum of any of the following sums paid to Applicable Supplier Personnel, each amount apportioned between the Supplier and the Authority based on the time spent by such employee on the Services as a proportion of the total Service duration:</p> <ul style="list-style-type: none"> (a) any statutory redundancy payment; and (b) in respect of an employee who was a Transferring Former Supplier Employee or a Transferring Authority Employee, any contractual redundancy payment (or where such a contractual benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the Supplier as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to his or her transfer to the Supplier under the Employment Regulations;
“Request for Estimate”	a written request sent by the Authority to the Supplier, requiring that the Supplier provide it with an accurate estimate of the Termination Payment and Compensation Payment that would be payable if the Authority exercised its right under Clause 33.1(a) (<i>Termination by the Authority</i>) to terminate this Agreement for convenience on a

specified Termination Date;

“Shortfall Period” has the meaning given in Paragraph 6.2;

“Termination Estimate” has the meaning given in Paragraph 11.2;

“Third Party Contract” a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the Services, as listed in Schedule 4.4 (*Third Party Contracts*);

“Total Costs Incurred” the Costs incurred by the Supplier up to the Termination Date in the performance of this Agreement and detailed in the Financial Model (but excluding Contract Breakage Costs, Redundancy Costs and any costs the Supplier would not otherwise be able to recover through the Charges) less any Deductions up to (and including) the Termination Date;

“Unrecovered Costs” the Costs incurred by the Supplier in the performance of this Agreement (as summarised in the Financial Model) to the extent that the same remain at the Termination Date to be recovered through Charges that but for the termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7.1 (*Charges and Invoicing*) as such Costs and Charges are forecast in the Financial Model;

“Unrecovered Payment” an amount equal to the lower of:

(a) the sum of the Unrecovered Costs and the Unrecovered Profit; and

(b) the amount specified in Paragraph 4; and

) **“Unrecovered Profit”** (Total Costs Incurred x Anticipated Contract Life Profit Margin) - Profit Already Paid + Milestone Retentions remaining unpaid at the Termination Date.

2 TERMINATION PAYMENT

The Termination Payment payable pursuant to Clause 34.3(a) (*Payments by the Authority*) shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Payment.

3 BREAKAGE COSTS PAYMENT

3.1 The Supplier may recover through the Breakage Costs Payment only those costs incurred by the Supplier directly as a result of the termination of this Agreement which:

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

Limitation on Breakage Costs Payment

3.2 The Breakage Costs Payment shall not exceed the lower of:

- (a) the relevant limit set out in Annex 1; and
- (b) 120% of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

Redundancy Costs

- 3.3 The Authority shall not be liable under this Schedule for any costs associated with Supplier Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Costs.
- 3.4 Where the Supplier can demonstrate that a member of Supplier Personnel will be made redundant following termination of this Agreement, but redeployment of such person is possible and would offer value for money to the Authority when compared with redundancy, then the Authority shall pay the Supplier the actual direct costs incurred by the Supplier or its Sub-contractor arising out of the redeployment of such person (including retraining and relocation costs) subject to a maximum amount of £30,000 per relevant member of the Supplier Personnel.

Contract Breakage Costs

- 3.5 The Supplier shall be entitled to Contract Breakage Costs only in respect of Third Party Contracts or Sub-contracts which:
- (a) are not assigned or novated to a Replacement Supplier at the request of the Authority in accordance with Schedule 8.5 (*Exit Management*); and
 - (b) the Supplier can demonstrate:
 - (i) are surplus to the Supplier's requirements after the Termination Date, whether in relation to use internally within its business or in providing services to any of its other customers; and
 - (ii) have been entered into by it in the ordinary course of business.

- 3.6 The Supplier shall seek to negotiate termination of any Third Party Contracts or Sub-contracts with the relevant third party or Sub-contractor (as the case may be) using all reasonable endeavours to minimise the cancellation or termination charges.
- 3.7 Except with the prior written agreement of the Authority, the Authority shall not be liable for any costs (including cancellation or termination charges) that the Supplier is obliged to pay in respect of:
- (a) the termination of any contractual arrangements for occupation of, support of and/or services provided for Supplier premises which may arise as a consequence of the termination of this Agreement; and/or
 - (b) Assets not yet installed at the Termination Date.

4 UNRECOVERED PAYMENT

The Unrecovered Payment shall not exceed the lowest of:

- (a) the relevant limit set out in Annex 1;
- (b) 120% of the estimate for the Unrecovered Payment set out in any relevant Termination Estimate; and
- (c) the Charges that but for the termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7.1 (*Charges and Invoicing*) as forecast in the Financial Model.

5 MITIGATION OF CONTRACT BREAKAGE COSTS, REDUNDANCY COSTS AND UNRECOVERED COSTS

- 5.1 The Supplier agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs, Redundancy Costs and Unrecovered Costs by:
- (a) the appropriation of Assets, employees and resources for other purposes;
 - (b) at the Authority's request, assigning any Third Party Contracts and Sub-contracts to the Authority or a third party acting on behalf of the Authority; and
 - (c) in relation Third Party Contracts and Sub-contract that are not to be assigned to the Authority or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.
- 5.2 If Assets, employees and resources can be used by the Supplier for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs, Redundancy Costs and Unrecovered Costs payable by the Authority or a third party to the Supplier. In the event of any Dispute arising over whether the Supplier can use any Assets, employees and/or resources for other purposes and/or over the amount of the relevant equitable reduction, the Dispute shall be referred to an Expert for determination in accordance with the procedure detailed in Schedule 8.3 (*Dispute Resolution Procedure*).

6 COMPENSATION PAYMENT

6.1 The Compensation Payment payable pursuant to Clause 34.3(b) (*Payments by the Authority*) shall be an amount equal to the total forecast Charges over the Shortfall Period (as stated in the Financial Model) multiplied by the Anticipated Contract Life Profit Margin.

6.2 For the purposes of Paragraph 6.1, the “**Shortfall Period**” means:

- (a) where the Authority terminates this Agreement pursuant to Clause 33.1(a) (*Termination by the Authority*), a number of days equal to the number of days by which the notice given (or deemed given pursuant to Paragraph 2.1(a) of Part D of Schedule 7.1 (*Charges and Invoicing*)) falls short of 365 days; or
- (b) where the Supplier terminates this Agreement pursuant to Clause 33.3(a) (*Termination by the Supplier*), a number of days equal to the number of days by which the period from (and including) the date of the non-payment by the Authority to (and including) the Termination Date falls short of 365 days,

but in each case subject to the limit set out in Paragraph 6.3.

6.3 The Compensation Payment shall be no greater than the lower of:

- (a) the relevant limit set out in Annex 1; and
- (b) 120% of the estimate for the Compensation Payment set out in the relevant Termination Estimate.

7 FULL AND FINAL SETTLEMENT

Any Termination Payment and/or Compensation Payment paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Authority pursuant to Clause 33.1(a) (*Termination by the Authority*) or termination by the Supplier pursuant to Clause 33.3(a) (*Termination by the Supplier*) (as applicable), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

8 INVOICING FOR THE PAYMENTS ON TERMINATION

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

9 SET OFF

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

10 NO DOUBLE RECOVERY

- 10.1 If any amount payable under this Schedule (in whole or in part) relates to or arises from any Transferring Assets then, to the extent that the Authority makes any payments pursuant to Schedule 8.5 (*Exit Management*) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.
- 10.2 The value of the Termination Payment and/or the Compensation Payment shall be reduced or extinguished to the extent that the Supplier has already received the Charges or the financial benefit of any other rights or remedy given under this Agreement so that there is no double counting in calculating the relevant payment.
- 10.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

11 ESTIMATE OF TERMINATION PAYMENT AND COMPENSATION PAYMENT

- 11.1 The Authority may issue a Request for Estimate at any time during the Term provided that no more than 2 Requests for Estimate may be issued in any 6 month period.
- 11.2 The Supplier shall within 20 Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Termination Payment and the Compensation Payment that would be payable by the Authority based on a postulated Termination Date specified in the Request for Estimate (such estimate being the “**Termination Estimate**”). The Termination Estimate shall:
- (a) be based on the relevant amounts set out in the Financial Model;
 - (b) include:
 - (i) details of the mechanism by which the Termination Payment is calculated;
 - (ii) full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract or Third Party Contract and appropriate supporting documentation; and
 - (iii) such information as the Authority may reasonably require; and
 - (c) state the period for which that Termination Estimate remains valid, which shall be not less than 20 Working Days.
- 11.3 The Supplier acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Authority to terminate this Agreement.
- 11.4 If the Authority issues a Termination Notice to the Supplier within the stated period for which a Termination Estimate remains valid, the Supplier shall use the same mechanism to calculate the Termination Payment as was detailed in the Termination Estimate unless otherwise agreed in writing between the Supplier and the Authority.

ANNEX 1: MAXIMUM PAYMENTS ON TERMINATION

The table below sets out, by Contract Year, the maximum amount of the Unrecovered Payment, Breakage Costs Payment and Compensation Payment that the Authority shall be liable to pay to the Supplier pursuant to this Agreement:

Termination Date	Maximum Unrecovered Payment	Maximum Breakage Costs Payment	Maximum Compensation Payment
██████████	██████████ ██████████ ██████████ ██████████ ██████████	██████████ ██████████ ██████████ ██████████ ██████████ ██████████	██████████ ██████████ ██████████ ██████████

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 7.3

BENCHMARKING

Benchmarking

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Benchmarked Service”	a Service that the Authority elects to include in a Benchmark Review under Paragraph 2.3;
“Benchmarker”	the independent third party appointed under Paragraph 3.1;
“Benchmark Report”	the report produced by the Benchmarker following the Benchmark Review as further described in Paragraph 5;
“Benchmark Review”	a review of one or more of the Services carried out in accordance with Paragraph 4 to determine whether those Services represent Good Value;
“Comparable Service”	in relation to a Benchmarked Service, a service that is identical or materially similar to the Benchmarked Service (including in terms of scope, specification, volume and quality of performance);
“Comparison Group”	in relation to a Comparable Service, a sample group of organisations providing the Comparable Service identified by the Benchmarker under Paragraph 4.8 which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker’s professional opinion) fair comparators with the Supplier or which, in the professional opinion of the Benchmarker, are best practice organisations and, where there are a reasonable number of such organisations, referencing only those organisations that are carrying on at least a significant part of their business within the United Kingdom;
“Equivalent Services Data”	in relation to a Comparable Service, data derived from an analysis of the Comparable Service provided by the Comparison Group as adjusted in accordance with Paragraphs 4.8(a) and 4.9 provided that the Benchmarker shall not use any such data that relates to a period

which ended more than 36 months prior to the date of the appointment of the Benchmarker;

“Good Value”

in relation to a Benchmarked Service, that:

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

“Upper Quartile”

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

2 FREQUENCY, PURPOSE AND SCOPE OF BENCHMARK REVIEW

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

3 APPOINTMENT OF BENCHMARKER

- 3.1 The Authority shall appoint as the Benchmarker to carry out the Benchmark Review either an organisation on the list of organisations set out in Annex 1 or such other organisation as may be agreed in writing between the Parties.
- 3.2 The Authority shall, at the written request of the Supplier, require the Benchmarker to enter into a confidentiality agreement with the Supplier in, or substantially in, the form set out in Annex 2.
- 3.3 The costs and expenses of the Benchmarker and the Benchmark Review shall be shared equally between both Parties provided that each Party shall bear its own internal costs of the Benchmark Review. The Benchmarker shall not be compensated on a contingency fee or incentive basis.

- 3.4 The Authority shall be entitled to pay the Benchmarker's costs and expenses in full and to recover the Supplier's share from the Supplier.

4 BENCHMARK REVIEW

- 4.1 The Authority shall require the Benchmarker to produce, and to send to each Party for approval, a draft plan for the Benchmark Review within 10 Working Days after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker shall reasonably request in all the circumstances. The plan must include:
- (a) a proposed timetable for the Benchmark Review;
 - (b) a description of the information that the Benchmarker requires each Party to provide;
 - (c) a description of the benchmarking methodology to be used;
 - (d) a description that clearly illustrates that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives under Paragraph 2.1;
 - (e) an estimate of the resources required from each Party to underpin the delivery of the plan;
 - (f) a description of how the Benchmarker will scope and identify the Comparison Group;
 - (g) details of any entities which the Benchmarker proposes to include within the Comparison Group; and
 - (h) if in the Benchmarker's professional opinion there are no Comparable Services or the number of entities carrying out Comparable Services is insufficient to create a Comparison Group, a detailed approach for meeting the relevant benchmarking objective(s) under Paragraph 2.1 using a proxy for the Comparison Services and/or Comparison Group as applicable.
- 4.2 The Parties acknowledge that the selection and or use of proxies for the Comparison Group (both in terms of number and identity of entities) and Comparable Services shall be a matter for the Benchmarker's professional judgment.
- 4.3 Each Party shall give notice in writing to the Benchmarker and to the other Party within 10 Working Days after receiving the draft plan either approving the draft plan or suggesting amendments to that plan which must be reasonable. Where a Party suggests amendments to the draft plan pursuant to this Paragraph 4.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 4.1 and this Paragraph 4.3 shall apply to any amended draft plan.
- 4.4 Failure by a Party to give notice under Paragraph 4.3 shall be treated as approval of the draft plan by that Party. If the Parties fail to approve the draft plan within 30 Working Days of its first being sent to them pursuant to Paragraph 4.1 then the Benchmarker shall prescribe the plan.

- 4.5 Once the plan is approved by both Parties or prescribed by the Benchmarker, the Benchmarker shall carry out the Benchmark Review in accordance with the plan. Each Party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the Supplier fails to provide any information requested from it by the Benchmarker and described in the plan, such failure shall constitute a material Default for the purposes of Clause 27.1(c) (*Rectification Plan Process*).
- 4.6 Each Party shall co-operate fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the Services.
- 4.7 Either Party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
- 4.8 Once it has received the information it requires, the Benchmarker shall:
- (a) finalise the sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The final selection of the Comparison Group (both in terms of number and identity of entities) and of the Comparable Services shall be a matter for the Benchmarker's professional judgment;
 - (b) derive the Equivalent Services Data by applying the adjustment factors listed in Paragraph 4.9 and from an analysis of the Comparable Services;
 - (c) derive the relative value for money of the charges payable for the Comparable Services using the Equivalent Services Data and from that derive the Upper Quartile;
 - (d) derive the median service levels relating to the Comparable Services using the Equivalent Services Data;
 - (e) compare the value for money of the Charges attributable to the Benchmarked Services (having regard in particular to the applicable Performance Indicators and Target Service Levels) to the value for money of the Upper Quartile;
 - (f) compare the Performance Indicators and Target Service Levels attributable to the Benchmarked Services (having regard to the Charges and Service Credits) with the median service levels using the Equivalent Services Data; and
 - (g) determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.
- 4.9 The Benchmarker shall have regard to the following matters when performing a comparative assessment of a Benchmarked Service and a Comparable Service in order to derive Equivalent Services Data:

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

5 BENCHMARK REPORT

- 5.1 The Benchmarker shall be required to prepare a Benchmark Report and deliver it simultaneously to both Parties, at the time specified in the plan approved under Paragraph 4, setting out its findings. The Benchmark Report shall:
- (a) include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;
 - (b) include other findings (if any) regarding the quality and competitiveness or otherwise of those Services;
 - (c) if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Charges, Performance Indicators and/or Target Performance Levels, that would be required to make that Benchmarked Service or those Benchmarked Services as a whole Good Value; and
 - (d) illustrate the method used for any normalisation of the Equivalent Services Data
- 5.2 The Benchmarker shall act as an expert and not as an arbitrator.
- 5.3 If the Benchmark Report states that any Benchmarked Service is not Good Value or that the Benchmarked Services as a whole are not Good Value, then the Supplier shall (subject to Paragraphs 5.5 and 5.6) implement the changes set out in the Benchmark Report as soon as reasonably practicable within timescales agreed with the Authority but in any event within no more than 3 months. Any associated changes to the Charges shall take effect only from the same date and shall not be retrospective.
- 5.4 The Supplier acknowledges and agrees that Benchmark Reviews shall not result in any increase to the Charges, disapplication of the Performance Indicators or any reduction in the Target Performance Levels.

- 5.5 The Supplier shall be entitled to reject any Benchmark Report if the Supplier reasonably considers that the Benchmarking has not followed the procedure for the related Benchmark Review as set out in this Schedule in any material respect.
- 5.6 The Supplier shall not be obliged to implement any Benchmark Report to the extent this would cause the Supplier to provide the Services at a loss (as determined, by reference to the Financial Model), or to the extent the Supplier cannot technically implement the recommended changes.
- 5.7 In the event of any Dispute arising over whether the Benchmarking has followed the procedure for the related Benchmark Review under Paragraph 5.5 and/or any matter referred to in Paragraph 5.6, the Dispute shall be referred to Expert Determination. For the avoidance of doubt in the event of a Dispute between the Parties, the Authority shall continue to pay the Charges to the Supplier in accordance with the terms of this Agreement and the Performance Indicators and Target Performance Levels shall remain unchanged pending the conclusion of the Expert Determination.
- 5.8 On conclusion of the Expert Determination:
- (a) if the Expert determines that all or any part of the Benchmark Report recommendations regarding any reduction in the Charges shall be implemented by the Supplier, the Supplier shall immediately repay to the Authority the difference between the Charges paid by the Authority up to and including the date of the Expert's determination and the date upon which the recommended reduction in Charges should have originally taken effect pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and
 - (b) if the Expert determines that all or any part of the Benchmark Report recommendations regarding any changes to the Performance Indicators and/or Target Performance Levels shall be implemented by the Supplier:
 - (i) the Supplier shall immediately implement the relevant changes;
 - (ii) the Supplier shall immediately pay an amount equal to any Service Credits which would have accrued up to and including the date of the Expert's determination if the relevant changes had taken effect on the date determined pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and
 - (iii) the relevant changes shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Agreement.
- 5.9 Any failure by the Supplier to implement the changes as set out in the Benchmark Report in accordance with the relevant timescales determined in accordance with Paragraph 5.3 (unless the provisions of Paragraph 5.6 and/or Paragraph 5.7 apply) or in accordance with Paragraph 5.8 shall, without prejudice to any other rights or remedies of the Authority, constitute a Supplier Termination Event.

ANNEX 1: APPROVED BENCHMARKERS

ANNEX 2: CONFIDENTIALITY AGREEMENT

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [date]

BETWEEN:

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

WHEREAS:

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

IT IS AGREED as follows:

1 Interpretation

- 1.1 In this Agreement, unless the context otherwise requires:

“Confidential Information” means:

- a) Information, including all personal data within the meaning of the Data Protection Act 1998, and however it is conveyed, provided by the Supplier to the Benchmarker pursuant to this Agreement that relates to:
 - (i) the Supplier; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;
- b) other Information provided by the Supplier pursuant to this Agreement to the Benchmarker that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Benchmarker’s attention or into the

Benchmarkers' possession in connection with the Permitted Purpose;

- c) discussions, negotiations, and correspondence between the Supplier or any of its directors, officers, employees, consultants or professional advisers and the Benchmarkers or any of its directors, officers, employees, consultants and professional advisers in connection with the Permitted Purpose and all matters arising therefrom; and

- d) Information derived from any of the above,

but not including any Information that:

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

“Information”

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

“Permitted Purpose”

has the meaning given to that expression in recital (B) to this Agreement.

1.2 In this Agreement:

- (a) a reference to any gender includes a reference to other genders;
- (b) the singular includes the plural and vice versa;

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

2 Confidentiality Obligations

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

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

3 Permitted Disclosures

3.1 The Benchmarker may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:

- (a) reasonably need to receive the Confidential Information in connection with the Permitted Purpose; and
 - (b) have been informed by the Benchmarker of the confidential nature of the Confidential Information; and
 - (c) have agreed to terms similar to those in this Agreement.
- 3.2 The Benchmarker shall be entitled to disclose Confidential Information to the Authority for the Permitted Purpose and to any Expert appointed in relation to a Dispute as referred to in paragraph 5.7 of schedule 7.3 (*Benchmarking*) to the Contract.
- 3.3 The Benchmarker shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Benchmarker.
- 3.4 Before making a disclosure pursuant to Clause 3.3, the Benchmarker shall, if the circumstances permit:
 - (a) notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
 - (b) ask the court or other public body to treat the Confidential Information as confidential.
- 4 General**
- 4.1 The Benchmarker acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
 - (a) to grant the Benchmarker any licence or rights other than as may be expressly stated in this Agreement;
 - (b) to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
 - (c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of this Agreement.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Benchmarker acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Benchmarker of any of the provisions of this Agreement. Accordingly, the Benchmarker acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Benchmarker to the Supplier for any breach of this Agreement shall be limited to five million pounds (£5,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

5 Notices

- 5.1 Any notice to be given under this Agreement (each a “Notice”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.

5.2 Any Notice:

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

[Address]

Attention: [Contact name and/or position, e.g. “The Finance Director”]

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

[Name] of [Organisation]
[Address]

Attention: []

6 Governing law

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

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

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

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

Signature:

Date:

Name:

Position:

For and on behalf of [*name of Benchmark*er]

Signature:

Date:

Name:

Position:

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 7.4

FINANCIAL DISTRESS

Financial Distress

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

- “Credit Rating Level” a credit rating level as specified in Annex 2;
- “Credit Rating Threshold” the minimum Credit Rating Level for the Supplier and the Guarantor as set out in Annex 3 and for each Key Sub-contractor as set out in Schedule 4.3 (*Notified Key Sub-contractors*); and
- “Rating Agencies” the rating agencies listed in Annex 1.

2 CREDIT RATING AND DUTY TO NOTIFY

- 2.1 The Supplier warrants and represents to the Authority for the benefit of the Authority that as at the Effective Date the long term credit ratings issued for the Supplier and the Guarantor by each of the Rating Agencies are as set out in Annex 3.
- 2.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if there is any downgrade in the credit rating issued by any Rating Agency for either the Supplier or the Guarantor (and in any event within 5 Working Days of the occurrence of the downgrade).
- 2.3 If there is any downgrade credit rating issued by any Rating Agency for either the Supplier or the Guarantor, the Supplier shall ensure that the Supplier’s auditors or Guarantor’s auditors (as the case may be) thereafter provide the Authority within 10 Working Days of the end of each Contract Year and within 10 Working Days of written request by the Authority (such requests not to exceed 4 in any Contract Year) with written calculations of the quick ratio for the Supplier or the Guarantor as the case may be as at the end of each Contract Year or such other date as may be requested by the Authority. For these purposes the “quick ratio” on any date means:

$$\frac{A + B + C}{D}$$

where:

- A is the value at the relevant date of all cash in hand and at the bank of the Supplier or the Guarantor (as the case may be);
- B is the value of all marketable securities held by the Supplier or the Guarantor (as the case may be) determined using closing prices on the Working Day preceding the relevant date;
- C is the value at the relevant date of all account receivables of the Supplier or the Guarantor (as the case may be); and
- D is the value at the relevant date of the current liabilities of the Supplier or the Guarantor (as the case may be).
- 2.4 The Supplier shall:

- (a) regularly monitor the credit ratings of the Supplier, the Guarantor and each Key Sub-contractor with the Rating Agencies; and
 - (b) promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event or Key Sub-contractor Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-contractor Financial Distress Event (and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event, the Key Sub-contractor Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-contractor Financial Distress Event).
- 2.5 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraph 3.1(a), the credit rating of the Supplier, the Guarantor or relevant Key Sub-contractor (as the case may be) shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Supplier, the Guarantor or relevant Key Sub-contractor (as the case may be) at or below the applicable Credit Rating Level.

3 CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

3.1 In the event of:

- (a) the credit rating of the Supplier, the Guarantor or any Key Sub-contractor dropping below the applicable Credit Rating Threshold;
- (b) the Supplier, the Guarantor or any Key Sub-contractor issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier, the Guarantor or any Key Sub-contractor;
- (d) the Supplier, the Guarantor or any Key Sub-contractor committing a material breach of covenant to its lenders;
- (e) a Key Sub-contractor notifying the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; or
- (f) any of the following:
 - (i) commencement of any litigation against the Supplier, the Guarantor or any Key Sub-contractor with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m;
 - (ii) non-payment by the Supplier, the Guarantor or any Key Sub-contractor of any financial indebtedness;
 - (iii) any financial indebtedness of the Supplier, the Guarantor or any Key Sub-contractor becoming due as a result of an event of default; or

- (iv) the cancellation or suspension of any financial indebtedness in respect of the Supplier, the Guarantor or any Key Sub-contractor,

in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Agreement;

then, immediately upon notification of the Financial Distress Event (or if the Authority becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in Paragraphs 3.3 to 3.6.

- 3.2 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1(e), the Authority shall not exercise any of its rights or remedies under Paragraph 3.3 without first giving the Supplier 10 Working Days to:

- (a) rectify such late or non-payment; or
- (b) demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.

- 3.3 The Supplier shall (and shall procure that the Guarantor and/or any relevant Key Sub-contractor shall):

- (a) at the request of the Authority, meet the Authority as soon as reasonably practicable (and in any event within 3 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Agreement; and
- (b) where the Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 3.3(a)) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement:
 - (i) submit to the Authority for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing); and
 - (ii) provide such financial information relating to the Supplier or the Guarantor as the Authority may reasonably require.

- 3.4 The Authority shall not withhold its approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Authority does not approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Authority within 5 Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by the Authority or referred to the Dispute Resolution Procedure under Paragraph 3.5.
- 3.5 If the Authority considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Supplier's obligations in accordance with the Agreement, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.
- 3.6 Following approval of the Financial Distress Service Continuity Plan by the Authority, the Supplier shall:
- (a) on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Agreement;
 - (b) where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 3.6(a), submit an updated Financial Distress Service Continuity Plan to the Authority for its approval, and the provisions of Paragraphs 3.4 and 3.5 shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and
 - (c) comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 3.7 Where the Supplier reasonably believes that the relevant Financial Distress Event under Paragraph 3.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 3.6.

4 TERMINATION RIGHTS

The Authority shall be entitled to terminate this Agreement under Clause 33.1(b) (*Termination by the Authority*) if:

- (a) the Supplier fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2.4(b);
- (b) the Parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 3.3 to 3.5; and/or

- (c) the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 3.6(c).

5 PRIMACY OF CREDIT RATINGS

5.1 Without prejudice to the Supplier's obligations and the Authority's rights and remedies under Paragraph 2, if, following the occurrence of a Financial Distress Event pursuant to any of Paragraphs 3.1(b) to 3.1(f), the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

- (a) the Supplier shall be relieved automatically of its obligations under Paragraphs 3.3 to 3.6; and
- (b) the Authority shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 3.3(b)(ii).

ANNEX 1: RATING AGENCIES



ANNEX 2: CREDIT RATING LEVELS

I

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

ANNEX 3: CREDIT RATINGS AND CREDIT RATING THRESHOLDS

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] ¹

* As at the effective date

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 7.5

FINANCIAL REPORTS AND AUDIT RIGHTS

Financial Reports and Audit Rights

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Annual Contract Report”		the annual contract report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
“Audit Agents”	(a)	the Authority’s internal and external auditors;
	(b)	the Authority’s statutory or regulatory auditors;
	(c)	the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
	(d)	HM Treasury or the Cabinet Office;
	(e)	any party formally appointed by the Authority to carry out audit or similar review functions; and
	(f)	successors or assigns of any of the above;
“Contract Amendment Report”		the contract amendment report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
“Final Reconciliation Report”;		the final reconciliation report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
“Financial Model”		the Contract Inception Report, the latest Annual Contract Report or the latest Contract Amendment Report, whichever has been most recently approved by the Authority in accordance with Paragraph 2 of Part B;
“Financial Reports”		the Contract Inception Report and the reports listed in the table in Paragraph 1.1 of Part B;
“Financial Representative”		a reasonably skilled and experienced member of the Supplier’s staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports;
“Financial Transparency Objectives”		has the meaning given in Paragraph 1 of Part A;
“Material Change”		a Change which:
	(a)	materially changes the profile of the Charges; or
	(b)	varies the total Charges payable during the

**“Open Book
Data”**

Term (as forecast in the latest Financial Model)
by:

- (i) 5% or more; or
- (ii) £1m or more;

complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:

- (a) the Supplier’s Costs broken down against each Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;
- (b) operating expenditure relating to the provision of the Services including an analysis showing:
 - (i) the unit costs and quantity of consumables and bought-in services;
 - (ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;
 - (iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier’s Profit Margin; and
 - (iv) Reimbursable Expenses;
- (c) Overheads;
- (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- (e) the Supplier Profit achieved over the Term and on an annual basis;
- (f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
- (g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
- (h) the actual Costs profile for each Service Period.

PART A: FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA

1 FINANCIAL TRANSPARENCY OBJECTIVES

The Supplier acknowledges that the provisions of this Schedule are designed (inter alia) to facilitate, and the Supplier shall co-operate with the Authority in order to achieve, the following objectives:

Understanding the Charges

- (a) for the Authority to understand any payment sought from it by the Supplier including an analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Personnel in providing the Services and the Supplier Profit Margin;
- (b) for both Parties to be able to understand the Financial Model and Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;
- (c) to facilitate the use of Guaranteed Maximum Price with Target Cost pricing mechanisms (where relevant as referred to in Schedule 7.1 (*Charges and Invoicing*));

Agreeing the impact of Change

- (d) for both Parties to agree the quantitative impact of any Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Supplier's Charges;
- (e) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

Continuous improvement

- (f) for the Parties to challenge each other with ideas for efficiency and improvements; and
 - (g) to enable the Authority to demonstrate that it is achieving value for money for the tax payer relative to current market prices,
- (together the "Financial Transparency Objectives").

2 OPEN BOOK DATA

2.1 The Supplier acknowledges the importance to the Authority of the Financial Transparency Objectives and the Authority's need for complete transparency in the way in which the Charges are calculated.

2.2 During the Term, and for a period of 7 years following the end of the Term, the Supplier shall:

- (a) maintain and retain the Open Book Data; and
- (b) disclose and allow the Authority and/or the Audit Agents access to the Open Book Data.

PART B: FINANCIAL REPORTS

1 PROVISION OF THE FINANCIAL REPORTS

1.1 The Supplier shall provide

- (a) the Contract Inception Report on or before the Effective Date; and
- (b) during the Term the following financial reports to the Authority, in the frequency specified below:

Financial Report	When to be provided
Contract Amendment Report	Within 1 month of a Material Change being agreed between the Supplier and the Authority
Quarterly Contract Report	Within 1 month of the end of each Quarter
Annual Contract Report	Within 1 month of the end of the Contract Year to which that report relates
Final Reconciliation Report	Within 6 months after the end of the Term

1.2 The Supplier shall provide to the Authority the Financial Reports in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Authority to the Supplier on or before the Effective Date for the purposes of this Agreement. The Authority shall be entitled to modify the template for any Financial Report by giving written notice to the Supplier, including a copy of the updated template.

1.3 A copy of each Financial Report shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.

1.4 Each Financial Report shall:

- (a) be completed by the Supplier using reasonable skill and care;
- (b) incorporate and use the same defined terms as are used in this Agreement;
- (c) quote all monetary values in pounds sterling;
- (d) quote all Costs as exclusive of any VAT; and
- (e) quote all Costs and Charges based on current prices.

1.5 Each Annual Contract Report and the Final Reconciliation Report shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Financial Report), acting with express authority, as:

- (a) being accurate and not misleading;
- (b) having been prepared in conformity with generally accepted accounting principles within the United Kingdom;
- (c) being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and
- (d) compliant with the requirements of Paragraph 1.6.

1.6 The Supplier shall:

- (a) prepare each Financial Report using the same methodology as that used for the Contract Inception Report;
- (b) ensure that each Annual Contract Report and each Contract Amendment Report (if any) is a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;
- (c) the Final Reconciliation Report is a true and fair reflection of the Costs; and
- (d) not have any other internal financial model in relation to the Services inconsistent with the Financial Model.

1.7 During the Term, and for a period of 18 months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Authority may have on any of the Financial Reports and/or Open Book Data.

1.8 If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:

- (a) the Costs incurred (or those forecast to be incurred) by the Supplier; and/or
- (b) the forecast Charges for the remainder of the Term,

the Supplier shall, as soon as practicable, notify the Authority in writing of the event in question detailing the actual or anticipated effect. For the avoidance of doubt, notifications provided in accordance with this Paragraph 1.8 shall not have the effect of amending any provisions of this Agreement.

2 FINANCIAL MODEL

2.1 Following the delivery by the Supplier of each Annual Contract Report and any Contract Amendment Report:

- (a) the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;
- (b) the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant Financial Report and the Contract Inception Report or immediately preceding Annual Contract Report or Contract Amendment Report (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of the Authority; and

- (c) the Authority shall either within 10 Working Days of the meeting referred to in Paragraph 2.1(a) notify the Supplier that:
 - (i) the relevant Financial Report contains errors or omissions or that further explanations or supporting information is required, in which event the Supplier shall make any necessary modifications to the Financial Report and/or supply the Authority with such supporting evidence as is required to address the Authority's concerns within 10 Working Days of such notification and the Authority shall following receipt of such amended Financial Report and/or supporting information, approve or reject such Financial Report; or
 - (ii) the Authority has approved the relevant Financial Report.
- 2.2 Following approval by the Authority of the relevant Financial Report in accordance with Paragraph 2.1(c), that version shall become, with effect from the date of such approval, the current approved version of the Financial Model for the purposes of this Agreement, a version of which shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.
- 2.3 If the Parties are unable to reach agreement on any Financial Report within 30 Working Days of its receipt by the Authority, the matter shall be referred for determination in accordance with Schedule 8.3 (*Dispute Resolution Procedure*).
- 3 Discussion of Quarterly Contract Reports and FINAL RECONCILIATION REPORT**
- 3.1 Following the delivery by the Supplier of each Quarterly Contract Report, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.
- 3.2 Following the delivery by the Supplier of the Final Reconciliation Report, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.
- 4 Key Sub-contractors**
- 4.1 The Supplier shall, if requested by the Authority, provide (or procure the provision of) a report or reports including the level of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Key Sub-contractors.
- 4.2 Without prejudice to Paragraph 1.1 of Part C, the Supplier shall:
 - (a) be responsible for auditing the financial models/reports of its Key Sub-contractors and for any associated costs and expenses incurred or forecast to be incurred; and
 - (b) on written request by the Authority, provide the Authority or procure that the Authority is provided with:
 - (i) full copies of audit reports for the Key Sub-contractors. The Authority shall be entitled to rely on such audit reports; and

- (ii) further explanation of, and supporting information in relation to, any audit reports provided.

PART C: AUDIT RIGHTS

1 AUDIT RIGHTS

- 1.1 The Authority, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of 18 months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Agreement, including for the following purposes:
- (a) to verify the integrity and content of any Financial Report;
 - (b) to verify the accuracy of the Charges and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges and payments);
 - (c) to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
 - (d) to verify the Certificate of Costs and/or the Open Book Data;
 - (e) to verify the Supplier's and each Key Sub-contractor's compliance with this Agreement and applicable Law;
 - (f) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - (g) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Key Sub-contractors or their ability to perform the Services;
 - (h) to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - (i) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;
 - (j) to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
 - (k) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - (l) to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
 - (m) to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;

- (n) to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
 - (o) to review the accuracy and completeness of the Registers;
 - (p) to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
 - (q) to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
 - (r) to review the Supplier's compliance with the Standards;
 - (s) to inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or
 - (t) to review the integrity, confidentiality and security of the Authority Data.
- 1.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Agreement, the Authority may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.
- 1.3 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.

2 CONDUCT OF AUDITS

- 2.1 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 2.2 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:
- (a) all information requested by the Authority within the permitted scope of the audit;
 - (b) reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - (c) access to the Supplier System; and
 - (d) access to Supplier Personnel.

- 2.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.
- 2.4 The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an audit.
- 2.5 The Authority shall ensure that the Audit Rights are used and the Audits conducted in such a way so as to preserve the Supplier's and Third Party's Confidential Information, Commercially Sensitive Information and IPRs. The Authority shall indemnify the Supplier in relation to any loss suffered as a result of the Authority's unlawful disclosure or the infringement of the same.
- 2.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 2, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

3 USE OF SUPPLIER'S INTERNAL AUDIT TEAM

- 3.1 As an alternative to the Authority's right pursuant to Paragraph 1.1 to exercise an audit either itself or through its Audit Agents, the Authority may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Paragraph 1.1.
- 3.2 Following the receipt of a request from the Authority under Paragraph 3.1 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:
 - (a) the resultant audit reports; and
 - (b) all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

4 RESPONSE TO AUDITS

- 4.1 If an audit undertaken pursuant to Paragraphs 1 or 3 identifies that:
 - (a) the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
 - (b) there is an error in a Financial Report, the Supplier shall promptly rectify the error;
 - (c) the Authority has overpaid any Charges, the Supplier shall pay to the Authority:
 - (i) the amount overpaid;

- (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and
- (iii) the reasonable costs incurred by the Authority in undertaking the audit,

the Authority may exercise its right to deduct such amount from the Charges if it prefers; and

- (d) the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority.

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 7.6

ANTICIPATED SAVINGS

ANTICIPATED SAVINGS

[To be refined with Shortlisted Potential Suppliers]

This Schedule defines the key benefit categories in which savings are anticipated.

Ref.	Benefit Category	Indicative amount (£k)	Timescale

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8.1

GOVERNANCE

Governance

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Board Member”	the initial persons/ roles appointed by the Authority and Supplier to the Boards as set out in Annex 1 and any replacements from time to time agreed by the Parties in accordance with Paragraph 3.3;
“Boards”	the Service Management Board, Project Board, Change Management Board and Technical Design Authority and “Board” shall mean any of them;
“Change Management Board”	the body described in Paragraph 6;
“Project Managers”	the individuals appointed as such by the Authority and the Supplier in accordance with Paragraph 1; and
Project Board	The body described in paragraph 5
“Service Management Board”	the body described in Paragraph 4; and
“Technical Design Authority”	the body described in Paragraph 7.

2 MANAGEMENT OF THE SERVICES

- 2.1 The Supplier and the Authority shall each appoint a project manager for the purposes of the implementation of the solution and a Contract and Service Manager for the purposes of this Agreement through whom the Services shall be managed at a day-to-day.
- 2.2 Both Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Agreement can be fully realised.

3 BOARDS

Establishment and structure of the Boards

- 3.1 The Boards shall be established by the Authority for the purposes of this Agreement on which both the Supplier and the Authority shall be represented.
- 3.2 In relation to each Board, the:

- (a) Authority Board Members;
- (b) Supplier Board Members;
- (c) frequency that the Board shall meet (unless otherwise agreed between the Parties);
- (d) location of the Board's meetings; and
- (e) planned start date by which the Board shall be established,

shall be as set out in Annex 1.

- 3.3 In the event that either Party wishes to replace any of its appointed Board Members, that Party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority Board Member has at all times a counterpart Supplier Board Member of equivalent seniority and expertise.

Board meetings

- 3.4 Each Party shall ensure that its Board Members shall make all reasonable efforts to attend Board meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Board meeting, that person shall use all reasonable endeavours to ensure that:
- (a) a delegate attends the relevant Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and
 - (b) that he/she is debriefed by such delegate after the Board Meeting.
- 3.5 A chairperson shall be appointed by the Authority for each Board as identified in Annex 1. The chairperson shall be responsible for:
- (a) scheduling Board meetings;
 - (b) setting the agenda for Board meetings and circulating to all attendees in advance of such meeting;
 - (c) chairing the Board meetings;
 - (d) monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings;
 - (e) ensuring that minutes for Board meetings are recorded and disseminated electronically to the appropriate persons and to all Board meeting participants within seven Working Days after the Board meeting; and
 - (f) facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.

- 3.6 The Parties shall ensure, as far as reasonably practicable, that all Boards shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

4 ROLE OF THE SERVICE AND CONTRACT MANAGEMENT BOARD

The Service/ Contract Management Board shall be responsible for the executive management of the Services and Performance of the Contract and shall:

- (a) be accountable for comprehensive oversight of the Services and for the senior management of the operational relationship between the Parties;
- (b) Organise review meetings at agreed intervals
- (c) receive reports from the Authority or Supplier on matters such as issues relating to delivery of existing Services and performance against Performance Indicators, possible future developments and defined contractual agreements;
- (d) review service management;
- (e) consider and resolve Disputes (including Disputes as to the cause of a Delay or the performance of the Services) in the first instance and if necessary escalate the Dispute to the Programme Board; and
- (f) ensure that this Agreement is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by the Authority and the commercial benefit derived by the Supplier;
- (g) provide guidance and authorisation or rejection on relevant Changes, and ensure changes are clearly defined and understood
- (h) identify risks and issues relating to or arising out of the performance of the Services and provisional owners of these risks.
- (i) effectively manage risks and issues across the Services,
- (j) ensure correct payments are made to the supplier in a timely way from all payees

5 ROLE OF THE PROJECT BOARD

5.1 The Project Board shall:

- (a) provide level guidance, leadership, strategy and appropriate direction for the overall delivery of the Services;
- (b) be accountable for project success or failure
- (c) carry out the specific obligations attributed to it in Paragraph 5.2.

5.2 The Project Board shall:

- (a) ensure that this Agreement is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by the Authority and the commercial benefit derived by the Supplier;
- (b) receive and review progress updates on implementation activities;
- (c) consider and resolve Disputes (including Disputes as to the cause of a Delay in the first instance and if necessary escalate the Dispute.

6 ROLE OF THE CHANGE MANAGEMENT BOARD

6.1 The Change Management Board shall assess the impact and approve or reject all Change Requests. Changes which will have a significant impact on the Services shall be escalated to the Project Board.

6.2 The Change Management Board shall:

- (a) analyse and record the impact of all Changes, specifically whether the proposed Change:
 - (i) has an impact on other areas or aspects of this Agreement and/or other documentation relating to the Services;
 - (ii) has an impact on the ability of the Authority to meet its agreed business needs within agreed time-scales;
 - (iii) will raise any risks or issues relating to the proposed Change; and
 - (iv) will provide value for money in consideration of any changes to the Financial Model, future Charges and/or Performance Indicators and Target Performance Levels;
- (b) provide recommendations, seek guidance and authorisation from the Programme Board as required; and
- (c) approve or reject (close) all proposed Changes
- (d) Determine if the change has been delivered to a sufficient quality as defined to the letter of the requirements to agree payment
- (e) Maintain a change log
- (f) Promote any changes to the Contract Panel to ensure any required contract variations are progressed

7 ROLE OF THE TECHNICAL DESIGN AUTHORITY

7.1 The Technical Board shall be accountable to the Programme Board for oversight of the technology used in the Supplier Solution and ensuring that technological choices are made to maximise the long term value of the Supplier Solution as a business asset of the Authority.

7.2 The Technical Board shall:

- (a) ensure compliance with the Standards;
- (b) grant dispensations for variations from such compliance where appropriate;
- (c) assure the coherence and consistency of the systems architecture for the Supplier Solution;
- (d) monitor developments in new technology and reporting on their potential benefit to the Services;
- (e) provide advice, guidance and information on technical issues; and
- (f) assure that the technical architecture of the Supplier Solution is aligned to the Service Requirements and has sufficient flexibility to cope with future requirements of the Authority.

8 CONTRACT MANAGEMENT MECHANISMS

- 8.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Agreement.
- 8.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Authority, processes for:
 - (a) the identification and management of risks;
 - (b) the identification and management of issues; and
 - (c) monitoring and controlling project plans.

- 8.3 The Risk Register shall be updated by the Supplier and submitted for review by the Risk Management Board.

Where supplier performance is found to be deficient, the Contractor will agree a clear performance management recovery plan. This will be reviewed at agreed intervals to ensure both Parties are assured of progress and resolution.

9 ANNUAL REVIEW

- 9.1 An annual review meeting shall be held throughout the Term on a date to be agreed between the Parties.
- 9.2 The meetings shall be attended by the CLS Project Manager and Support Services Manager of the Supplier and the MMO Contract and Service manager of the Authority and any other persons considered by the Authority necessary for the review.

ANNEX 1: SERVICE MANAGEMENT BOARD REPRESENTATION AND STRUCTURE

Authority Members of Service Management Board	[REDACTED]
Supplier Members of Service Management Board	[REDACTED]
Start Date for Service Management Board meetings	[REDACTED]
Frequency of Service Management Board meetings	[REDACTED]
Location of Service Management Board meetings	[REDACTED]

Project Board Representation and Structure

Authority members of Programme Board	[REDACTED]
Supplier members of Programme Board	[REDACTED]
Start date for Programme Board meetings	Contract Effective Date
Frequency of Programme Board meetings	Weekly
Location of Programme Board meetings	[REDACTED]

Change Management Board Representation and Structure

Authority Members of Change Management Board	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
Supplier Members of Change Management Board	[REDACTED] [REDACTED]
Start Date for Change Management Board meetings	3 months after acceptance into live service
Frequency of Change Management Board meetings	Quarterly or as required
Location of Change Management Board meetings	[REDACTED] [REDACTED]

Technical Design Authority Representation and Structure

Authority Members of Technical Board	[REDACTED]
Supplier Members of Technical Board	[REDACTED] [REDACTED] [REDACTED]
Start Date for Technical Board meetings	Contract Effective Date
Frequency of Technical Board meetings	Ad-hoc
Location of Technical Board meetings	[REDACTED] [REDACTED] [REDACTED]

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8.2

CHANGE CONTROL PROCEDURE

Change Control Procedure

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Authority Change Manager”	the person appointed to that position by the Authority from time to time and notified in writing to the Supplier or, if no person is notified, the Authority Representative;
“Change Request”	a written request for a Contract Change which shall be substantially in the form of Annex 1;
“Change Communication”	any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;
“Fast-track Change”	any Contract Change which the Parties agree to expedite in accordance with Paragraph 8;
“Impact Assessment”	an assessment of a Change Request in accordance with Paragraph 5;
“Impact Assessment Estimate”	has the meaning given in Paragraph 4.3;
“Receiving Party”	the Party which receives a proposed Contract Change; and
“Supplier Change Manager”	the person appointed to that position by the Supplier from time to time and notified in writing to the Authority or, if no person is notified, the Supplier Representative.

2 GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

- 2.1 This Schedule sets out the procedure for dealing with Changes.
- 2.2 Operational Changes shall be processed in accordance with Paragraph 9. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.
- 2.3 The Parties shall deal with Contract Change as follows :
 - (a) either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;
 - (b) unless this Agreement otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 5 before the Contract Change can be either approved or implemented;

- (c) the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;
 - (d) the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;
 - (e) save as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2; and
 - (f) a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.
- 2.4 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in Schedule 6.2 (*Testing Procedures*), and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify Milestones and/or a Key Milestone and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.
- 2.5 Until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2, then:
- (a) unless the Authority expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and
 - (b) any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Agreement.
- 2.6 The Supplier shall:
- (a) within 10 Working Days of the Authority's signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
 - (b) thereafter provide to the Authority such further copies of the updated Agreement as the Authority may from time to time request.

3 COSTS

3.1 Subject to Paragraph 3.3:

- (a) the costs of preparing each Change Request shall be borne by the Supplier; and

- (b) the costs incurred by the Supplier in undertaking an Impact Assessment shall be borne by the Party making the Change Request provided that the Authority shall not be required to pay any such costs if:
 - (i) such costs are below £20,000 (twenty thousand pounds sterling);
 - (ii) the Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services; or
 - (iii) such costs exceed those in the accepted Impact Assessment Estimate.
- 3.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Schedule 7.1 (*Charges and Invoicing*). The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.
- 3.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.
- 4 CHANGE REQUEST**
- 4.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Annex 1 and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.
- 4.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within 10 Working Days of the date of issuing the Change Request.
- 4.3 If the Authority issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within 10 working days of the date of receiving the Change Request an estimate (“**Impact Assessment Estimate**”) of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Authority within 10 working days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Authority.
- 4.4 If the Authority accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Authority as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Authority and provided that sufficient information is received by the Authority to fully understand:
 - (a) The nature of the request for clarification; and

- (b) The reasonable justification for the request;

the time period to complete the Impact Assessment shall be extended by the time taken by the Authority to provide that clarification. The Authority shall respond to the request for clarification as soon as is reasonably practicable.

5 IMPACT ASSESSMENT

5.1 Each Impact Assessment shall be completed in good faith and shall include:

- (a) details of the proposed Contract Change including the reason for the Contract Change; and
- (b) details of the impact of the proposed Contract Change on the Services, the Optional Services (if any) and the Supplier's ability to meet its other obligations under this Agreement;
- (c) any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:
 - (i) the Services Description, the Performance Indicators and/or the Target Performance Levels;
 - (ii) the format of Authority Data, as set out in the Services Description;
 - (iii) the Milestones, Implementation Plan and any other timetable previously agreed by the Parties;
 - (iv) other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority's IT infrastructure;
- (d) details of the cost of implementing the proposed Contract Change;
- (e) details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
- (f) a timetable for the implementation, together with any proposals for the testing of the Contract Change;
- (g) details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
- (h) such other information as the Authority may reasonably request in (or in response to) the Change Request.

5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Clause 23 (*Protection of Personal Data*).

- 5.3 Subject to the provisions of Paragraph 5.4, the Authority shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Impact Assessment, it.
- 5.4 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within 5 Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Authority within 10 Working Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this Paragraph 5.4 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.
- 5.5 The calculation of costs for the purposes of Paragraphs 5.1(d) and (e) shall:
- (a) be based on the Financial Model;
 - (b) facilitate the Financial Transparency Objectives;
 - (c) include estimated volumes of each type of resource to be employed and the applicable rate card;
 - (d) include full disclosure of any assumptions underlying such Impact Assessment;
 - (e) include evidence of the cost of any assets required for the Change; and
 - (f) include details of any new Sub-contracts necessary to accomplish the Change.

6 AUTHORITY'S RIGHT OF APPROVAL

- 6.1 Within 15 Working Days of receiving the Impact Assessment from the Supplier or within 10 Working Days of receiving the further information that it may request pursuant to Paragraph 5.4, the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:
- (a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;
 - (b) in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or

- (c) in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within 5 Working Days of such request. Subject to Paragraph 5.4, on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract Change within 10 Working Days.
- 6.2 If the Authority approves the proposed Contract Change pursuant to Paragraph 6.1 and it has not been rejected by the Supplier in accordance with Paragraph 7, then it shall inform the Supplier and the Supplier shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Authority's signature the Change Authorisation Note shall constitute (or, where the Authority has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Agreement.
- 6.3 If the Authority does not sign the Change Authorisation Note within 10 Working Days, then the Supplier shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within 5 Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

7 SUPPLIER'S RIGHT OF APPROVAL

Following an Impact Assessment, if:

- (a) the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:
 - (i) materially and adversely affect the risks to the health and safety of any person; and/or
 - (ii) require the Services to be performed in a way that infringes any Law; and/or
- (b) the Supplier demonstrates to the Authority's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within 5 Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 4.3.

8 FAST-TRACK CHANGES

- 8.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.
- 8.2 If:

- (a) the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed 4 in any 12 month period; and
- (b) both Parties agree the value of the proposed Contract Change over the remaining Term and any period for which Termination Services may be required does not exceed **£20,000** and the proposed Contract Change is not significant (as determined by the Authority acting reasonably),

then the Parties shall confirm to each other in writing that they shall use the process set out in Paragraphs 4, 5, 6 and 7 but with reduced timescales, such that any period of 15 Working Days is reduced to 5 Working Days, any period of 10 Working Days is reduced to 2 Working Days and any period of 5 Working Days is reduced to 1 Working Day.

- 8.3 The Parties may agree in writing to revise the parameters set out in Paragraph 8.2 from time to time or that the Fast-track Change procedure shall be used in relation to a particular Contract Change notwithstanding that the total number of Contract Changes to which such procedure is applied will then exceed 4 in a 12 month period.

9 OPERATIONAL CHANGE PROCEDURE

- 9.1 Any Operational Changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:

- (a) have an impact on the business of the Authority;
- (b) require a change to this Agreement;
- (c) have a direct impact on use of the Services; or
- (d) involve the Authority in paying any additional Charges or other costs.

- 9.2 The Authority may request an Operational Change by submitting a written request for Operational Change (“RFOC”) to the Supplier Representative.

- 9.3 The RFOC shall include the following details:

- (a) the proposed Operational Change; and
- (b) the time-scale for completion of the Operational Change.

- 9.4 The Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.

- 9.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Authority when the Operational Change is completed.

10 COMMUNICATIONS

For any Change Communication to be valid under this Schedule, it must be sent to either the Authority Change Manager or the Supplier Change Manager, as applicable. The provisions of Clause 44 (*Notices*) shall apply to a Change Communication as if it were a notice.

ANNEX 1: CHANGE REQUEST FORM

CR NO.:	TITLE:	TYPE OF CHANGE:
CONTRACT:		REQUIRED BY DATE:
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED (<i>OPTIONAL FIELD</i>):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
SUPPLIER REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT):		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

ANNEX 2: CHANGE AUTHORISATION NOTE

CR NO.:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF CHANGE:	REQUIRED BY DATE:
[KEY MILESTONE DATE: <i>[if any]</i>]		
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE BASIS):		
SIGNED ON BEHALF OF THE AUTHORITY:		SIGNED ON BEHALF OF THE SUPPLIER:
Signature: _____		Signature: _____
Name: _____		Name: _____
Position: _____		Position: _____
Date: _____		Date: _____

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8.3

DISPUTE RESOLUTION PROCEDURE

Dispute Resolution Procedure

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“CEDR”	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
“Counter Notice”	has the meaning given in Paragraph 7.2;
“Expert”	in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 to act as an expert in relation to that Dispute;
“Expert Determination”	determination by an Expert in accordance with Paragraph 6;
“Mediation Notice”	has the meaning given in Paragraph 4.2;
“Mediator”	the independent third party appointed in accordance with Paragraph 5.2 to mediate a Dispute;
“Multi-Party Dispute”	a Dispute which involves the Parties and one or more Related Third Parties;
“Multi-Party Dispute Representatives”	has the meaning given in Paragraph 9.6;
“Multi-Party Dispute Resolution Board”	has the meaning given in Paragraph 9.6;
“Related Third Party”	<p>a party to:</p> <p>(a) another contract with the Authority or the Supplier which is relevant to this Agreement; or</p> <p>(b) a Sub-contract; and</p>
“Supplier Request”	a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

2 DISPUTE NOTICES

2.1 If a Dispute arises then:

- (a) the Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
- (b) if such attempts are not successful within a reasonable period, not being longer than 20 Working Days, either Party may issue to the other a Dispute Notice.

2.2 A Dispute Notice:

- (a) shall set out:
 - (i) the material particulars of the Dispute;
 - (ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
 - (iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and
- (b) may specify in accordance with the requirements of Paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority) or considers (in the case of the Supplier) that the Dispute is a Multi-Party Dispute, in which case Paragraph 2.3 shall apply.

2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to Paragraph 2.2(b), then:

- (a) if it is served by the Authority it shall be treated as a Multi-Party Procedure Initiation Notice; and
- (b) if it is served by the Supplier it shall be treated as a Supplier Request,

and in each case the provisions of Paragraph 9 shall apply.

2.4 Subject to Paragraphs 2.5 and 3.2 and so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:

- (a) first by commercial negotiation (as prescribed in Paragraph 4);
- (b) then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5); and
- (c) lastly by recourse to arbitration (as prescribed in Paragraph 7) or litigation (in accordance with Clause 46 (*Governing Law and Jurisdiction*)).

- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.
- 2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under Paragraph 8 (*Urgent Relief*).

3 EXPEDITED DISPUTE TIMETABLE

- 3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within 5 Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
- (a) in Paragraph 4.2(c), 10 Working Days;
 - (b) in Paragraph 5.2, 10 Working Days;
 - (c) in Paragraph 6.2, 5 Working Days; and
 - (d) in Paragraph 7.2, 10 Working Days.
- 3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within 2 Working Days after the deadline has passed, the Authority may set a revised deadline provided that it is no less than 5 Working Days before the end of the period of time specified in the applicable paragraphs (or 2 Working Days in the case of Paragraph 6.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

4 COMMERCIAL NEGOTIATION

- 4.1 Following the service of a Dispute Notice, then, so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Authority and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Authority's commercial representative and the Supplier's commercial or account representative.
- 4.2 If:

- (a) either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;
- (b) the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this Paragraph 4; or
- (c) the Parties have not settled the Dispute in accordance with Paragraph 4.1 within 30 Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation in accordance with Paragraph 5 (a “**Mediation Notice**”).

5 MEDIATION

- 5.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with the version of CEDR's Model Mediation Procedure which is current at the time the Mediation Notice is served (or such other version as the Parties may agree).
- 5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within 20 Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.
- 5.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 5.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Change Control Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

6 EXPERT DETERMINATION

- 6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an IT, accounting or financing nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 or, if applicable, mediation in accordance with Paragraph 5, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.
- 6.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 10 Working Days of the relevant request made pursuant to Paragraph 6.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:

- (a) if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);
- (b) if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
- (c) if the Dispute relates to a matter of a technical nature not falling within Paragraphs 6.2(a) or (b), on the instructions of the president (or equivalent) of:
 - (i) an appropriate body agreed between the Parties; or
 - (ii) if the Parties do not reach agreement on the relevant body within 15 Working Days of the relevant request made pursuant to Paragraph 6.1, such body as may be specified by the President of the Law Society on application by either Party.

6.3 The Expert shall act on the following basis:

- (a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- (b) the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- (c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 30 Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- (d) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within 20 Working Days of the Expert's determination being notified to the Parties;
- (e) the process shall be conducted in private and shall be confidential; and
- (f) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

7 ARBITRATION

- 7.1** Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 6, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 7.5.

- 7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have 15 Working Days following receipt of such notice to serve a reply (a “**Counter Notice**”) on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such 15 Working Day period.
- 7.3 If the Authority serves a Counter Notice, then:
- (a) if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 7.5 shall apply; or
 - (b) if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.
- 7.4 If the Authority does not serve a Counter Notice within the 15 Working Day period referred to in Paragraph 7.2, the Supplier may either commence arbitration proceedings in accordance with Paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.
- 7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 7.1 to 7.4:
- (a) the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“**LCIA**”) (subject to Paragraphs 7.5(e), (f) and (g));
 - (b) the arbitration shall be administered by the LCIA;
 - (c) the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
 - (d) if the Parties fail to agree the appointment of the arbitrator within 10 Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
 - (e) the chair of the arbitral tribunal shall be British;
 - (f) the arbitration proceedings shall take place in London and in the English language; and
 - (g) the seat of the arbitration shall be London.

8 URGENT RELIEF

Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

- (a) for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or
- (b) where compliance with Paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

9 MULTI-PARTY DISPUTES

- 9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 9 (the **"Multi-Party Dispute Resolution Procedure"**).
- 9.2 If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Supplier which sets out the Authority's determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice a **"Multi-Party Procedure Initiation Notice"**.
- 9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with Paragraph 7, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority.
- 9.4 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within 5 Working Days whether the Dispute is:
 - (a) a Multi-Party Dispute, in which case the Authority shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
 - (b) not a Multi-Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 8.
- 9.5 If the Authority has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.
- 9.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the **"Multi-Party Dispute Resolution Board"**) comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:
 - (a) the Authority;

- (b) the Supplier;
- (c) each Related Third Party involved in the Multi-Party Dispute; and
- (d) any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,

(together “**Multi-Party Dispute Representatives**”).

9.7 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:

- (a) the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
- (b) the Multi-Party Dispute Resolution Board shall first meet within 10 Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within 5 Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
- (c) in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.

9.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within 25 Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:

- (a) either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case Paragraph 5 shall apply;
- (b) either Party may request that the Multi-Party Dispute is referred to an expert in which case Paragraph 6 shall apply; and/or
- (c) subject to Paragraph 9.9, Paragraph 7 shall apply to the Multi-Party Dispute,

and in each case references to the “Supplier” or the “Parties” in such provisions shall include a reference to all Related Third Parties.

- 9.9 If a Multi-Party Dispute is referred to arbitration in accordance with Paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub-Contractor, by the Supplier.

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8.4

REPORTS AND RECORDS PROVISIONS

Reports and Records Provisions

1 TRANSPARENCY REPORTS

- 1.1 Within three (3) months of the Effective Date the Supplier shall provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) draft reports in accordance with Annex 1 (once approved, the “**Transparency Reports**”).
- 1.2 If the Authority rejects any draft Transparency Report, the Supplier shall submit a revised version of the relevant report for further approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1.
- 1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Agreement.

2. OTHER REPORTS

The Authority may require any or all of the following reports:

- (a) delay reports;
- (b) reports relating to Testing and tests carried out under Schedule 2.4 (*Security Management*) and Schedule 8.6 (*Business Continuity and Disaster Recovery*);
- (c) reports which the Supplier is required to supply as part of the Management Information;
- (d) annual reports on the Insurances;
- (e) security reports; and
- (f) Force Majeure Event reports.

2 RECORDS

- 2.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 1 and Annex 1 (together “**Records**”):
 - (a) in accordance with the requirements of The National Archives and Good Industry Practice;

- (b) in chronological order;
 - (c) in a form that is capable of audit; and
 - (d) at its own expense.
- 2.2 The Supplier shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.
- 2.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.
- 2.4 The Supplier shall, during the Term and a period of at least 7 years following the expiry or termination of this Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.
- 2.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least 7 years after the expiry or termination of this Agreement.
- 2.6 Without prejudice to the foregoing, the Supplier shall provide the Authority:
 - (a) as soon as they are available, and in any event within 60 Working Days after the end of the first 6 months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such 6 month period; and
 - (b) as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than 130 Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.

ANNEX 1: TRANSPARENCY REPORTS

TITLE	CONTENT	FORMAT	FREQUENCY
<i>(Performance)</i>			Monthly moving to quarterly
<i>(Charges)</i>			Monthly moving to quarterly
<i>(Major sub-contractors)</i>			Monthly moving to quarterly
<i>(Technical)</i>			Monthly moving to quarterly
<i>(Performance management)</i>			Monthly moving to quarterly

ANNEX 2: RECORDS TO BE KEPT BY THE SUPPLIER

The records to be kept by the Supplier are:

1. This Agreement, its Schedules and all amendments to such documents.
2. All other documents which this Agreement expressly requires to be prepared.
3. Records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel.
4. Notices, reports and other documentation submitted by any Expert.
5. All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and the underlying IT Environment and Supplier Equipment.
6. Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
7. All formal notices, reports or submissions made by the Supplier to the Authority Representative in connection with the provision of the Services.
8. All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.
9. Documents prepared by the Supplier in support of claims for the Charges.
10. Documents submitted by the Supplier pursuant to the Change Control Procedure.

11. Documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure.
12. Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and/or the Guarantor, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.
13. Invoices and records related to VAT sought to be recovered by the Supplier.
14. Financial records, including audited and un-audited accounts of the Guarantor and the Supplier.
15. Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
16. All documents relating to the insurances to be maintained under this Agreement and any claims made in respect of them.
17. All journals and audit trail data referred to in Schedule 2.4 (*Security Management Plan*).
18. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement.

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8.5

EXIT MANAGEMENT

Exit Management

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Emergency Exit”	any termination of this Agreement which is a: <ul style="list-style-type: none">(a) termination of the whole or part of this Agreement in accordance with Clause 33 (Termination Rights), except where the period of notice given under that Clause is greater than or equal to 6 months;(b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 33 (Termination Rights); or(c) wrongful termination or repudiation of this Agreement by either Party;
“Exclusive Assets”	those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;
“Exit Information”	has the meaning given in Paragraph 3.1;
“Exit Manager”	the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties' respective obligations under this Schedule;
“Net Book Value”	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Authority of the same date as this Agreement;
“Non-Exclusive Assets”	those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Services but which are also used by the Supplier or Key Sub-contractor for other purposes of material value;
“Ordinary Exit”	any termination of this Agreement which occurs:

	pursuant to Clause 33 (Termination Rights) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or
	as a result of the expiry of the Initial Term or any Extension Period;
“Registers”	the register and configuration database referred to in Paragraphs 2.1(a) and 2.1(b);
“Transferable Assets”	those of the Exclusive Assets which are capable of legal transfer to the Authority;
“Transferable Contracts”	the Sub-contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Authority or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation; and
“Transferring Contracts”	has the meaning given in Paragraph 6.2(c).

2 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

2.1 During the Term, the Supplier shall:

- (a) create and maintain a register of all:
 - (i) Assets, detailing their:
 - (A) make, model and asset number;
 - (B) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
 - (C) Net Book Value;
 - (D) condition and physical location; and
 - (E) use (including technical specifications); and
 - (ii) Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;

- (b) create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;
 - (c) agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and
 - (d) at all times keep the Registers up to date, in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.
- 2.2 The Supplier shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement.
- 2.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within 3 months of the Effective Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Schedule and each Party's compliance with it.

3 OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

- 3.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
- (a) details of the Service(s);
 - (b) a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
 - (c) an inventory of Authority Data in the Supplier's possession or control;
 - (d) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - (e) a list of on-going and/or threatened disputes in relation to the provision of the Services;

- (f) to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Agreement; and
 - (g) such other material and information as the Authority shall reasonably require, (together, the “Exit Information”).
- 3.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this Paragraph 3.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).
- 3.3 The Supplier shall:
 - (a) notify the Authority within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and
 - (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Authority.
- 3.4 The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than 4 updates in any 6 month period.
- 3.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
 - (a) prepare an informed offer for those Services; and
 - (b) not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

4 EXIT PLAN

- 4.1 The Supplier shall, within 3 months after the Effective Date, deliver to the Authority an Exit Plan which:
 - (a) sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Authority and/or its Replacement Supplier on the expiry or termination of this Agreement;
 - (b) complies with the requirements set out in Paragraph 4.2; and
 - (c) is otherwise reasonably satisfactory to the Authority.

- 4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.3 The Exit Plan shall set out, as a minimum:
- (a) how the Exit Information is obtained;
 - (b) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;
 - (c) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
 - (d) the management structure to be employed during the Termination Assistance Period;
 - (e) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
 - (f) how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
 - (g) the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in Annex 1 as are applicable);
 - (h) a timetable and critical issues for providing the Termination Services;
 - (i) any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
 - (j) how the Termination Services would be provided (if required) during the Termination Assistance Period;
 - (k) procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 9.1 (*Staff Transfer*); and
 - (a) how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.

- 4.4 The Parties acknowledge that the migration of the Services from the Supplier to the Authority and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.
- 4.5 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Supplier shall submit the revised Exit Plan to the Authority for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

Finalisation of the Exit Plan

- 4.6 Within 20 Working Days after service of a Termination Notice by either Party or 6 months prior to the expiry of this Agreement, the Supplier will submit for the Authority's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- 4.7 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days following its delivery to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

5 TERMINATION SERVICES

Notification of Requirements for Termination Services

- 5.1 The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least 4 months prior to the date of termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- (a) the date from which Termination Services are required;
 - (b) the nature of the Termination Services required; and
 - (c) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the date that the Supplier ceases to provide the Services.

- 5.2 The Authority shall have an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than 6 months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire. The Authority shall have the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Supplier to such effect.

Termination Assistance Period

- 5.3 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:
- (a) continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 5.1, provide the Termination Services;
 - (b) in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
 - (c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 5.3(b) without additional costs to the Authority;
 - (d) provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the Parties agree otherwise in accordance with Paragraph 5.5; and
 - (e) at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.
- 5.4 Without prejudice to the Supplier's obligations under Paragraph 5.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 5.3(b) without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.
- 5.5 If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) and/or the applicable Service Credits to take account of such adverse effect.

Termination Obligations

- 5.6 The Supplier shall comply with all of its obligations contained in the Exit Plan.

- 5.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), the Supplier shall:
- (a) cease to use the Authority Data;
 - (b) provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
 - (c) erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
 - (d) return to the Authority such of the following as is in the Supplier's possession or control:
 - (i) all copies of the Authority Software and any other software licensed by the Authority to the Supplier under this Agreement;
 - (ii) all materials created by the Supplier under this Agreement in which the IPRs are owned by the Authority;
 - (iii) any parts of the IT Environment and any other equipment which belongs to the Authority; and
 - (iv) any items that have been on-charged to the Authority, such as consumables;
 - (e) vacate any Authority Premises;
 - (f) provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after expiry or termination to:
 - (i) such information relating to the Services as remains in the possession or control of the Supplier; and
 - (ii) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 5.7(f)(ii).

- 5.8 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.
- 5.9 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

6 ASSETS, SUB-CONTRACTS AND SOFTWARE

- 6.1 Following notice of termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, without the Authority's prior written consent:
- (a) terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;
 - (b) (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
 - (c) terminate, enter into or vary any licence for software in connection with the Services.
- 6.2 Within 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 5.3(e), the Authority shall provide written notice to the Supplier setting out:
- (a) which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier ("**Transferring Assets**");
 - (i) which, if any, of:
 - (ii) the Exclusive Assets that are not Transferable Assets; and
 - (iii) the Non-Exclusive Assets,the Authority and/or the Replacement Supplier requires the continued use of; and
 - (b) which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the "**Transferring Contracts**"),

in order for the Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine

which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Services or Replacement Services.

- 6.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:
- (a) a Termination Payment is payable by the Authority to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or
 - (b) the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Agreement, in which case the Authority shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.
- 6.4 Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same.
- 6.5 Where the Supplier is notified in accordance with Paragraph 6.2(b) that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
- (a) procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
 - (b) procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 6.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 6.7 The Authority shall:
- (a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
 - (b) once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

- 6.8 The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.
- 6.9 The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to Paragraph 6.6 both:
- (a) in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
 - (b) in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the Supplier's failure to comply with Clauses 16 (Intellectual Property Rights) and/or Clause 17 (Transfer and Licences Granted by the Supplier).

7 SUPPLIER PERSONNEL

- 7.1 The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 9.1 (*Staff Transfer*) shall apply.
- 7.2 The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier.
- 7.3 During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Authority and/or the Replacement Supplier.
- 7.4 The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 7.5 The Supplier shall not for a period of 12 months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Authority and/or the Replacement Supplier, except that this paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

8 CHARGES

- 8.1 During the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services), the Authority shall pay the Charges to the Supplier in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.
- 8.2 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
- 8.3 Except as otherwise expressly specified in this Agreement, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

9 APPORTIONMENTS

- 9.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
- (a) the amounts shall be annualised and divided by 365 to reach a daily rate;
 - (b) the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
 - (c) the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 9.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 9.1 as soon as reasonably practicable.

ANNEX 1: SCOPE OF THE TERMINATION SERVICES

- 1 The Termination Services to be provided by the Supplier shall include such of the following services as the Authority may specify:
- (a) ceasing all non-critical Software changes (except where agreed in writing with the Authority);

- (b) notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
- (c) providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority and/or the Replacement Supplier after the end of the Termination Assistance Period;
- (d) delivering to the Authority the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the 12 month period immediately prior to the commencement of the Termination Services);
- (e) providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
- (f) with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
- (g) providing the Authority with any problem logs which have not previously been provided to the Authority;
- (h) providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of 12 months after the Termination Assistance Period;
- (i) providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
- (j) reviewing all Software libraries used in connection with the Services and providing details of these to the Authority and/or the Replacement Supplier;
- (k) making available to the Authority and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Authority (acting reasonably) at the time of termination or expiry;
- (l) assisting in establishing naming conventions for any new production site;
- (m) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- (n) generating a computer listing of the Source Code of [insert details of relevant Software] in a form and on media reasonably requested by the Authority;

- (o) agreeing with the Authority a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
- (p) delivering copies of the production databases (with content listings) to the Authority's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by the Authority;
- (q) assisting with the loading, testing and implementation of the production databases;
- (r) assisting in the execution of a parallel operation until the effective date of expiry or termination of this Agreement;
- (s) in respect of the maintenance and support of the Supplier System, providing historical performance data for the previous 24 months period;
- (t) assisting in the execution of a parallel operation of the maintenance and support of the Supplier System until the end of the Termination Assistance Period or as otherwise specified by the Authority (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);
- (u) providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;
- (v) answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;
- (w) agreeing with the Authority and/or the Replacement Supplier a plan for the migration of the Authority Data to the Authority and/or the Replacement Supplier;
- (x) providing access to the Authority and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding 6 months afterwards for the purpose of the smooth transfer of the Services to the Authority and/or the Replacement Supplier:
 - (i) to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its Sub-contractors (and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
 - (ii) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
- (y) knowledge transfer services, including:
 - (i) transferring all training material and providing appropriate training to those Authority and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;

- (ii) providing for transfer to the Authority and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
- (iii) providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors.

1.2 The Supplier shall:

- (a) provide a documented plan relating to the training matters referred to in Paragraph 1.1(k) for agreement by the Authority at the time of termination or expiry of this Agreement;
- (b) co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1(o), providing skills and expertise of a suitable standard; and
- (c) fully co-operate in the execution of the Authority Database migration plan agreed pursuant to Paragraph 1.1(w), providing skills and expertise of a reasonably acceptable standard.

1.3 To facilitate the transfer of knowledge from the Supplier to the Authority and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Authority and/or the Replacement Supplier.

1.4 The information which the Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to Paragraph 1.1(y) shall include:

- (a) copies of up-to-date procedures and operations manuals;
- (b) product information;
- (c) agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier;
- (d) key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule;
- (e) information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
- (f) details of physical and logical security processes and tools which will be available to the Authority; and
- (g) any relevant interface information.

- 1.5 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Supplier and/or the Authority access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:
- (a) any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 1.5 shall:
 - (i) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
 - (ii) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Authority deems reasonable; and
 - (b) the Authority and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8.6

BUSINESS CONTINUITY AND DISASTER RECOVERY

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Business Continuity Plan”	has the meaning given in Paragraph 2.2(a)(ii);
“Business Continuity Services”	has the meaning given in Paragraph 4.2(b);
“Disaster”	the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for period of [3 days] or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
“Disaster Recovery Plan”	has the meaning given in Paragraph 2.2(a)(iii);
“Disaster Recovery Services”	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
“Disaster Recovery System”	the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
“Related Service Provider”	any person who provides services to the Authority in relation to this Agreement from time to time which persons include as at the Effective Date.

2 BCDR PLAN

2.1 Within 40 Working Days from the Effective Date the Supplier shall prepare and deliver to the Authority for the Authority’s written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

- (a) ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and
- (b) the recovery of the Services in the event of a Disaster.

2.2 The BCDR Plan shall:

- (a) be divided into three parts:
 - (i) Part A which shall set out general principles applicable to the BCDR Plan;

- (ii) Part B which shall relate to business continuity (the “**Business Continuity Plan**”); and
 - (iii) Part C which shall relate to disaster recovery (the “**Disaster Recovery Plan**”); and
 - (b) unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4 and 5.
- 2.3 Following receipt of the draft BCDR Plan from the Supplier, the Authority shall:
- (a) review and comment on the draft BCDR Plan as soon as reasonably practicable; and
 - (b) notify the Supplier in writing that it approves or rejects the draft BCDR Plan no later than 20 Working Days after the date on which the draft BCDR Plan is first delivered to the Authority.
- 2.4 If the Authority rejects the draft BCDR Plan:
- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
 - (b) the Supplier shall then revise the draft BCDR Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft BCDR Plan to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 2.3 and this Paragraph 2.4 shall apply again to any resubmitted draft BCDR Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3 PART A OF THE BCDR PLAN AND GENERAL PRINCIPLES AND REQUIREMENTS

3.1 Part A of the BCDR Plan shall:

- (a) set out how the business continuity and disaster recovery elements of the Plan link to each other;
- (b) provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the Services and any services provided to the Authority by a Related Service Provider;
- (c) contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Service Provider with respect to issues concerning business continuity and disaster recovery where applicable;
- (d) detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Authority and any of its other Related Service Providers in each case as notified to the Supplier by the Authority from time to time;

- (e) contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;
- (f) contain a risk analysis, including:
 - (i) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - (ii) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
 - (iii) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider; and
 - (iv) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- (g) provide for documentation of processes, including business processes, and procedures;
- (h) set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Authority;
- (i) identify the procedures for reverting to “normal service”;
- (j) set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
- (k) identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the BCDR Plan; and
- (l) provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority’s business continuity plans.

3.2 The BCDR Plan shall be designed so as to ensure that:

- (a) the Services are provided in accordance with this Agreement at all times during and after the invocation of the BCDR Plan;
- (b) the adverse impact of any Disaster, service failure, or disruption on the operations of the Authority is minimal as far as reasonably possible;
- (c) it complies with the relevant provisions of ISO/IEC 27002 and all other industry standards from time to time in force; and
- (d) there is a process for the management of disaster recovery testing detailed in the BCDR Plan.

3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.

3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Agreement.

4 BUSINESS CONTINUITY PLAN - PRINCIPLES AND CONTENTS

4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Authority expressly states otherwise in writing:

- (a) the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
- (b) the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

4.2 The Business Continuity Plan shall:

- (a) address the various possible levels of failures of or disruptions to the Services;
- (b) set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the “**Business Continuity Services**”);
- (c) specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Business Continuity Plan; and
- (d) clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

5 DISASTER RECOVERY PLAN - PRINCIPLES AND CONTENTS

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

5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.

5.3 The Disaster Recovery Plan shall include the following:

- (a) the technical design and build specification of the Disaster Recovery System;

- (b) details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
 - (i) data centre and disaster recovery site audits;
 - (ii) backup methodology and details of the Supplier's approach to data back-up and data verification;
 - (iii) identification of all potential disaster scenarios;
 - (iv) risk analysis;
 - (v) documentation of processes and procedures;
 - (vi) hardware configuration details;
 - (vii) network planning including details of all relevant data networks and communication links;
 - (viii) invocation rules;
 - (ix) Service recovery procedures; and
 - (x) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
- (c) any applicable Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Disaster Recovery Plan;
- (d) details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- (e) access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- (f) testing and management arrangements.

6 REVIEW AND AMENDMENT OF THE BCDR PLAN

- 6.1 The Supplier shall review the BCDR Plan (and the risk analysis on which it is based):
- (a) on a regular basis and as a minimum once every 6 months;
 - (b) within three calendar months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 8; and

- (c) where the Authority requests any additional reviews (over and above those provided for in Paragraphs 6.1(a) and 6.1(b)) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.
- 6.2 Each review of the BCDR Plan pursuant to Paragraph 6.1 shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within the period required by the BCDR Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within 20 Working Days of the conclusion of each such review of the BCDR Plan, provide to the Authority a report (a "**Review Report**") setting out:
 - (a) the findings of the review;
 - (b) any changes in the risk profile associated with the Services; and
 - (c) the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.
- 6.3 Following receipt of the Review Report and the Supplier's Proposals, the Authority shall:
 - (a) review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
 - (b) notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than 20 Working Days after the date on which they are first delivered to the Authority.
- 6.4 If the Authority rejects the Review Report and/or the Supplier's Proposals:
 - (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and

- (b) the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 6.3 and this Paragraph 6.4 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 6.5 The Supplier shall as soon as is reasonably practicable after receiving the Authority's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.
- 7 TESTING OF THE BCDR PLAN**
- 7.1 The Supplier shall test the BCDR Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 7.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
- 7.2 If the Authority requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.
- 7.4 The Supplier shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
- 7.5 The Supplier shall, within 20 Working Days of the conclusion of each test, provide to the Authority a report setting out:
 - (a) the outcome of the test;
 - (b) any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and

(c) the Supplier's proposals for remedying any such failures.

- 7.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.
- 7.7 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Supplier of any of its obligations under this Agreement.
- 7.8 The Supplier shall also perform a test of the BCDR Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

8 INVOCATION OF THE BCDR PLAN

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

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8.7

CONDUCT OF CLAIMS

1 INDEMNITIES

- 1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Agreement (the “Indemnifier”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “Beneficiary”).
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Agreement (a “Claim”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.
- 1.3 Subject to Paragraph 2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
 - (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
 - (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute;
 - (c) the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (d) the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:
 - (a) the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
 - (b) the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or

- (c) the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

2 SENSITIVE CLAIMS

- 2.1 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a “**Sensitive Claim**”), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

3 RECOVERY OF SUMS

- 3.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
 - (a) an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
 - (b) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

4 MITIGATION

- 4.1 Each of the Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.

MODEL AGREEMENT SERVICES SCHEDULES

SCHEDULE 9.1

STAFF TRANSFER

Staff Transfer

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Former Supplier”	a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
“New Fair Deal”	<p>the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013 including:</p> <p>(i) any amendments to that document immediately prior to the Relevant Transfer Date;</p> <p>(ii) any similar pension protection in accordance with the Annexes D1-D3 inclusive to Part D of this Schedule as notified to the Supplier by the Authority;</p>
“Notified Sub-contractor”	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
“Replacement Sub-contractor”	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place or the Commencement Date where the incumbent the new contract;

“Service Transfer”	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;
“Service Transfer Date”	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
“Staffing Information”	<p>in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:</p> <ul style="list-style-type: none"> (a) their ages, dates of commencement of employment or engagement, gender and place of work; (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise; (c) the identity of the employer or relevant contracting Party; (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments; (e) their wages, salaries, bonuses and profit sharing arrangements as applicable; (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them; (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims); (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence; (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant

standard contracts if applied generally in respect of such employees); and

(j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

“Statutory Schemes” (pp) means the CSPS, NHSPS or LGPS as defined in the Annexes to Part D of this Schedule;

“Supplier's Final Supplier Personnel List” (qq) a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;

“Supplier's Provisional Supplier Personnel List” (rr) a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

“Transferring Authority Employees” those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;

“Transferring Former Supplier Employees” in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and

“Transferring Supplier Employees” those employees of the Supplier and/or the Supplier's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2 INTERPRETATION

Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

PART A: TRANSFERRING AUTHORITY EMPLOYEES AT COMMENCEMENT OF SERVICES

1 RELEVANT TRANSFERS

1.1 The Authority and the Supplier agree that:

- (a) the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Authority Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between the Authority and the Transferring Authority Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-contractor and each such Transferring Authority Employee.

1.2 The Authority shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Authority Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Authority; and (ii) the Supplier and/or any Notified Sub-contractor (as appropriate).

2 AUTHORITY INDEMNITIES

2.1 Subject to Paragraph 2.2, the Authority shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Authority in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee occurring before the Relevant Transfer Date;
- (b) the breach or non-observance by the Authority before the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Authority Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Authority Employees which the Authority is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing the Transferring Authority Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Authority Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
- (e) a failure of the Authority to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees arising before the Relevant Transfer Date;
- (f) any claim made by or in respect of any person employed or formerly employed by the Authority other than a Transferring Authority Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Authority in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Authority Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Supplier or any Sub-contractor to comply with its obligations under the Employment Regulations.

- 2.3 If any person who is not identified by the Authority as a Transferring Authority Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Authority Employee, that his/her contract of employment has been transferred from the Authority to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- (a) the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority; and
 - (b) the Authority may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Supplier and/or any Notified Sub-contractor, or take such other reasonable steps as the Authority considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):
- (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Authority shall indemnify the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

(ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority within 6 months of the Effective Date.

2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Authority nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

3 SUPPLIER INDEMNITIES AND OBLIGATIONS

3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority against any Employee Liabilities arising from or as a result of:

(a) any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee whether occurring before, on or after the Relevant Transfer Date;

(b) the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:

(i) any collective agreement applicable to the Transferring Authority Employees; and/or

(ii) any custom or practice in respect of any Transferring Authority Employees which the Supplier or any Sub-contractor is contractually bound to honour;

(c) any claim by any trade union or other body or person representing any Transferring Authority Employees arising from or connected with any failure by the Supplier or any Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

- (d) any proposal by the Supplier or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Authority Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Authority Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Supplier or any Sub-contractor to, or in respect of, any Transferring Authority Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Authority Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- (g) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees in respect of the period from (and including) the Relevant Transfer Date;
- (h) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Authority's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- (i) a failure by the Supplier or any Sub-Contractor to comply with its obligations under paragraph 2.8 above.

- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Authority whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Authority's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Authority Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Authority and the Supplier.

4 INFORMATION

The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority in writing such information as is necessary to enable the Authority to carry out its duties under regulation 13 of the Employment Regulations. The Authority shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Authority Employee as set down in:
- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
 - (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
 - (c) HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
 - (d) the New Fair Deal.

- 5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Change Control Procedure.

6 PENSIONS

6.1 The Supplier shall, and/or shall procure that each of its Sub-contractors shall, comply with:

- (a) **the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and**
- (b) Part D of the Pensions Annex to this Staff Transfer Schedule.

PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES

1 RELEVANT TRANSFERS

1.1 The Authority and the Supplier agree that:

- (a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-contractor and each such Transferring Former Supplier Employee.

1.2 The Authority shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Authority shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

2 FORMER SUPPLIER INDEMNITIES

2.1 Subject to Paragraph 2.2, the Authority shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
- (b) the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;

- (c) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- (d) a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- (e) any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (f) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Supplier and/or any Sub-contractor to comply with its obligations under the Employment Regulations.

- 2.3 If any person who is not identified by the Authority as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- (a) the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Supplier; and
 - (b) the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):
- (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

(ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority and, if applicable, the Former Supplier, within 6 months of the Effective Date.

2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

3 SUPPLIER INDEMNITIES AND OBLIGATIONS

3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority and/or the Former Supplier against any Employee Liabilities arising from or as a result of:

(a) any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;

(b) the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:

(i) any collective agreement applicable to the Transferring Former Supplier Employee; and/or

(ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;

(c) any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

- (d) any proposal by the Supplier or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Supplier or a Sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Supplier in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- (g) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
- (h) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- (i) a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above

- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

4 INFORMATION

The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and/or at the Authority's direction, the Former Supplier, in writing such information as is necessary to enable the Authority and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in:
- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
 - (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
 - (c) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
 - (d) the New Fair Deal.
- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

6 PROCUREMENT OBLIGATIONS

Notwithstanding any other provisions of this Part B, where in this Part B the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

7 PENSIONS

7.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with:

- (a) the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and
- (b) Part D the Pensions Annex to this Staff Transfer Schedule.

PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1 PROCEDURE IN THE EVENT OF TRANSFER

7.1 The Authority and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.

7.2 If any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- (a) the Supplier shall, and shall procure that the relevant Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier; and
- (b) the Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

7.3 If an offer referred to in Paragraph 1.2(b) is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

7.4 If by the end of the 15 Working Day period specified in Paragraph 1.2(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

the Supplier and/or the Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

8 INDEMNITIES

8.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Authority shall:

- (a) indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- (b) procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

8.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.

8.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Authority and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.

8.4 The indemnities in Paragraph 2.1:

- (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership,

pregnancy and maternity or sexual orientation, religion or belief; or

(B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

(ii) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in Paragraph 1.2(a) is made by the Supplier and/or any Sub-contractor to the Authority and, if applicable, Former Supplier within 6 months of the Effective Date.

9 PROCUREMENT OBLIGATIONS

Where in this Part C the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

PART D: PENSIONS

1 DEFINITIONS

In this Part D and Part E, the following words have the following meanings and they shall supplement Schedule 1: Definitions, and shall be deemed to include the definitions set out in the Annexes:

"Actuary"	a Fellow of the Institute and Faculty of Actuaries;
"Admission Agreement"	either or both of the CSPA Admission Agreement (as defined in Annex D1: CSPA) or the LGPS Admission Agreement) as defined in Annex D3: LGPS), as the context requires;
"Broadly Comparable"	<p>(a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and/or</p> <p>(b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,</p> <p>and "Broad Comparability" shall be construed accordingly;</p>
"CSPA"	the schemes as defined in Annex D1 to this Part D;
"Direction Letter"	has the meaning in Annex D2 to this Part D;
"Fair Deal Employees"	<p>any of:</p> <p>(i) Transferring Authority Employees;</p> <p>(ii) Transferring Former Supplier Employees; and/or</p> <p>(iii) employees who are not Transferring Authority Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Sub-Contractor, and whose employment is not terminated in accordance with the provisions of paragraphs 2.3 (d) of Parts A or B or paragraph 1.2</p>

(iv) where the Former Supplier becomes the Supplier employees;

"Fair Deal Schemes"

"Fund Actuary"

"LGPS"

"NHSPS"

████████████████████

[REDACTED]

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

[REDACTED]

2.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPA, Annex D2: NHSPA and/or Annex D3: LGPS shall apply, as appropriate.

2.2 The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.

2.3 The Supplier undertakes:

(a) to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and

- (b) to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.

3 PROVISION OF INFORMATION

3.1 The Supplier undertakes to the Authority:

- (a) to provide all information which the Authority may reasonably request concerning matters referred to in this Part D as expeditiously as possible; and
- (b) not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the Authority (such consent not to be unreasonably withheld or delayed).

4 INDEMNITIES

4.1 The Supplier undertakes to the Authority to indemnify and keep indemnified NHS Pensions, the Authority and/or any Replacement Supplier and/or any Replacement Sub-Contractor on demand from and against all and any Losses whatsoever:

- (a) arising out of or in connection with any liability towards all and any Fair Deal Employees in respect of service on or after the Relevant Transfer Date which arises from any breach by the Supplier of this Part D, and/or the CSPA Admission Agreement and/or the Direction Letter and/or the LGPS Admission Agreement; and/ or
- (b) which relates to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Fair Deal Schemes.

4.2 The Supplier hereby indemnifies NHS Pensions, the Authority and/or any Replacement Supplier and/or Replacement Sub-Contractor from and against all Losses suffered or incurred by it or them which arise from claims by Fair Deal Employees of the Supplier and/or of any Sub-Contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:

- (a) relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; and/or
- (b) arise out of the failure of the Supplier and/or any relevant Sub-Contractor to comply with the provisions of this Part D before the date of termination or expiry of this Contract.

4.3 The indemnities in this Part D and its Annexes:

- (a) shall survive termination of this Contract; and
- (b) shall not be affected by the caps on liability contained in Clause 25 (Limitation of Liability).

5 DISPUTES

5.1 The Dispute Resolution Procedure will not apply to this Part D and any dispute between the Authority and/or the Supplier, or between their respective actuaries, or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the Authority and/or the Supplier be referred to an independent Actuary:

- (a) who will act as an expert and not as an arbitrator;
- (b) whose decision will be final and binding on the Authority and/or the Supplier; and
- (c) whose expenses shall be borne equally by the Authority and/or the Supplier unless the independent Actuary shall otherwise direct.

6 THIRD PARTY RIGHTS

6.1 The Parties agree Clause 43 (Third Party Rights) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her by the Supplier under this Part D, in his or her or its own right under section 1(1) of the CRTPA.

6.2 Further, the Supplier must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Sub-Contractor in his or her own right under section 1(1) of the CRTPA.

7 BREACH

7.1 The Supplier agrees to notify the Authority should it breach any obligations it has under this Part D and agrees that the Authority shall be entitled to terminate its Contract for material Default in the event that the Supplier:

- (a) commits an irremediable breach of any provision or obligation it has under this Part D; or
- (b) commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Authority giving particulars of the breach and requiring the Supplier to remedy it.

8 TRANSFER TO ANOTHER EMPLOYER/ SUB- CONTRACTORS

8.1 Save on expiry or termination of this Contract, if the employment of any Fair Deal Employee transfers to another employer (by way of a transfer under the Employment Regulations) the Supplier shall or shall procure that any relevant Sub-Contractor shall:

- (a) consult with about, and inform those Fair Deal Employees of, the pension provisions relating to that transfer; and
- (b) procure that the employer to which the Fair Deal Employees are transferred (the "**New Employer**") complies with the provisions of this Part D and its

Annexes provided that references to the "Supplier" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Employees so transferred to the New Employer.

9 PENSION ISSUES ON EXPIRY OR TERMINATION

The provisions of Part E: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Contract.

10 BROADLY COMPARABLE PENSION SCHEMES

10.1 If either:

- (a) the terms of any of paragraphs 2.2 of Annex D1: CSPA, 5.2 of Annex D2: NHSPS and or 4 of Annex D3: LGPS apply; or
- (b) the Authority agrees, having considered the exceptional cases provided for in New Fair Deal, (such agreement not to be unreasonably withheld) that the Supplier (and/or its Sub-Contractors, if any) need not continue to provide the Fair Deal Employees, who continue to qualify for Fair Deal Protection, with access to the appropriate Statutory Scheme;

the Supplier must (and must, where relevant, procure that each of its Sub-Contractors will) ensure that, with effect from the Relevant Transfer Date or, if later, cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Authority.

10.2 Where the Supplier has set up a Broadly Comparable pension scheme or schemes pursuant to the provisions of paragraph 10, the Supplier shall (and shall procure that any of its Sub-Contractors shall):

- (a) supply to the Authority details of its (or its Sub-Contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability covering all relevant Fair Deal Employees, as soon as it is able to do so and in any event no later than twenty eight (28) days before the Relevant Transfer Date;
- (b) fully fund any such Broadly Comparable pension scheme on a past service reserve basis which is aligned to ~~in accordance with~~ the funding requirements set by that Broadly Comparable pension scheme's Actuary or by the Government Actuary's Department and is subject to the underpin for the period ending on the Service Transfer Date;

- (c) instruct any such Broadly Comparable pension scheme's Actuary to, and to provide all such co-operation and assistance in respect of any such Broadly Comparable pension scheme as the Replacement Supplier and/or NHS Pension and/or CSPS and/or the relevant Administering Authority and/or the Authority may reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection following a Service Transfer;
- (d) provide a replacement Broadly Comparable pension scheme with immediate effect for those Fair Deal Employees who are still employed by the Supplier and/or relevant Sub-Contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-Contractor's Broadly Comparable pension scheme is terminated;
- (e) allow and make all necessary arrangements to effect, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the relevant Statutory Scheme and as is relevant on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal. For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the appropriate Statutory Scheme to fund day for day service ("**Shortfall**"), the Supplier or the Sub-Contractor (as agreed between them) must pay the Statutory Scheme, as required, provided that in the absence of any agreement between the Supplier and any Sub-Contractor, the Shortfall shall be paid by the Supplier; and
- (f) indemnify the Authority and/or NHS Pension and/or CSPS and/or the relevant Administering Authority and/or on demand for any failure to pay the Shortfall as required under paragraph (e) above.

Annex D1: CSPA

1 DEFINITIONS

In this Annex D1: CSPA to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule J1: Definitions:

"CSPA Admission Agreement"	an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPA in respect of the Services;
"CSPA Eligible Employee"	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPA Admission Agreement;
"CSPA"	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; [the Designated Stakeholder Pension Scheme] ¹ and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014.

2 FUTURE SERVICE BENEFITS

- 2.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the CSPA that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the CSPA for service from (and including) the Relevant Transfer Date.

¹It is anticipated that the Designated Stakeholder Pension Scheme will no longer be available from September 2018

- 2.2 The Supplier undertakes that should it cease to participate in the CSPS for whatever reason at a time when it has CSPS Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation of participation remained a CSPS Eligible Employee with access to a pension scheme which is Broadly Comparable to the CSPS on the date the CSPS Eligible Employees ceased to participate in the CSPS.

Annex D2: NHSPS

1 DEFINITIONS

In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule J1: Definitions:

"Direction Letter"	an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Sub-Contractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Sub-Contractor in the NHSPS in respect of the NHSPS Eligible Employees;
"NHSPS Eligible Employees"	<p>each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:</p> <p>(a) their employment with the Authority, an NHS Body or other employer which participates automatically in the NHSPS; or</p> <p>(b) their employment with a Former Supplier who provides access to the NHSPS pursuant to an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal and were permitted to re-join the NHSPS, having been formerly in employment with the Authority, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),</p> <p>and, in each case, being continuously engaged for more than fifty per cent (50%) of their employed time in the delivery of services (the same as or similar to the Services).</p> <p>For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a</p>

	<p>result of being engaged in the Services and being covered by an "open" Direction Letter or other NHSPS "access" facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHSPS) is not an NHSPS Eligible Employee;</p>
"NHS Body"	<p>has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;</p>
"NHS Pensions"	<p>NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS;</p>
"NHSPS"	<p>the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations;</p>
"NHS Pension Scheme Arrears"	<p>any failure on the part of the Supplier or its Sub-Contractors (if any) to pay employer's contributions or deduct and pay across employee's contributions to the NHSPS or meet any other financial obligations under the NHSPS or any Direction Letter in respect of the NHSPS Eligible Employees;</p>
"NHS Pension Scheme Regulations"	<p>as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time;</p>
"NHS Premature Retirement Rights"	<p>rights to which any Fair Deal Employee (had they remained in the employment of the Authority, an NHS Body or other employer which participates automatically in the NHSPS) would have been or are entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;</p>

"Pension Benefits"

any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme; and

"Retirement Benefits Scheme"

a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004.

2 MEMBERSHIP OF THE NHSPS

- 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Sub-Contractors to which the employment of any NHSPS Eligible Employee compulsorily transfers as a result of the award of this Contract, if not an NHS Body or other employer which participates automatically in the NHSPS, must by or as soon as reasonably practicable after the Relevant Transfer Date, each secure a Direction Letter to enable the NHSPS Eligible Employees to retain either continuous active membership of or eligibility for, the NHSPS for so long as they remain employed in connection with the delivery of the Services under this Contract, and have a right to membership or eligibility of that scheme under the terms of the Direction Letter.
- 2.2 The Supplier must supply to the Authority by or as soon as reasonably practicable after the Relevant Transfer Date a complete copy of each Direction Letter.
- 2.3 The Supplier must ensure (and procure that each of its Sub-Contracts (if any) ensures) that all of its NHSPS Eligible Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter.
- 2.4 The Supplier will (and will procure that its Sub-Contractors (if any) will) comply with the terms of the Direction Letter, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health in respect of the NHSPS Eligible Employees for so long as it remains bound by the terms of any such Direction Letter.
- 2.5 Where any employee omitted from the Direction Letter supplied in accordance with paragraph 2 of this Annex are subsequently found to be an NHSPS Eligible Employee, the Supplier will (and will procure that its Sub-Contractors (if any) will) treat that person as if they had been an NHSPS Eligible Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
- 2.6 The Supplier will (and will procure that its Sub-Contractors (if any) will) as soon as reasonably practicable and at its (or its Sub-Contractor's) cost, obtain any guarantee, bond or indemnity that may from time to time be required by the Secretary of State for Health.

3 FUTURE SERVICE BENEFITS IN THE NHSPS

The Supplier will procure that with effect from the Relevant Transfer Date the NHSPS Eligible Employees shall be either eligible for or remain in continuous active membership of (as the case may be) the NHSPS for employment from (and including) the Relevant Transfer Date.

4 NHS PREMATURE RETIREMENT RIGHTS

From the Relevant Transfer Date until the Service Transfer Date, the Supplier must provide (and/or must ensure that its Sub-Contractors (if any) provide) NHS Premature Retirement Rights in respect of the NHSPS Eligible Employees that are identical to the benefits they would have received had they remained employees of the Authority, an NHS Body or other employer which participates automatically in the NHSPS.

5 BREACH AND CANCELLATION OF ANY DIRECTION LETTER(S) AND RIGHT OF SET-OFF

- 5.1 The Supplier agrees that the Authority is entitled to make arrangements with NHS Pensions for the Authority to be notified if the Supplier (or its Sub-Contractor) breaches the terms of its Direction Letter. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Authority in the event that it (or its Sub-Contractor) breaches the terms of its Direction Letter.
- 5.2 If the Authority is entitled to terminate the Contract or the Supplier (or its Sub-Contractor, if relevant) ceases to participate in the NHSPS for whatever other reason, the Authority may in its sole discretion, and instead of exercising its right to terminate this Contract where relevant, permit the Supplier (or any such Sub-Contractor, as appropriate) to offer Broadly Comparable Pension Benefits, on such terms as decided by the Authority. The provisions of paragraph 10 (Bulk Transfer Obligations in relation to any Broadly Comparable pension scheme) of Part D: Pensions shall apply in relation to any Broadly Comparable pension scheme established by the Supplier or its Sub-Contractors.
- 5.3 In addition to the Authority's right to terminate the Contract, if the Authority is notified by NHS Pensions of any NHS Pension Scheme Arrears, the Authority will be entitled to deduct all or part of those arrears from any amount due to be paid under this Contract or otherwise.

6 COMPENSATION

- 6.1 If the Supplier (or its Sub-Contractor, if relevant) is unable to provide the NHSPS Eligible Employees with either:
- (a) membership of the NHSPS (having used its best endeavours to secure a Direction Letter); or
 - (b) access to a Broadly Comparable pension scheme,
- the Authority may in its sole discretion permit the Supplier (or any of its Sub-Contractors) to compensate the NHSPS Eligible Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier (or Sub-Contractor as relevant) having consulted with a view to reaching agreement with any recognised trade union or, in the absence of such body, the NHSPS Eligible Employees. The Supplier must meet (or must procure that the relevant Sub-Contractor meets) the costs of the Authority determining whether the level of compensation offered is reasonable in the circumstances.
- 6.2 This flexibility for the Authority to allow compensation in place of Pension Benefits is in addition to and not instead of the Authority's right to terminate the Contract.

7 SUPPLIER INDEMNITIES

- 7.1 The Supplier must indemnify and keep indemnified the Authority and any Replacement Supplier against all Losses arising out of any claim by any NHSPS Eligible Employee that the provision of (or failure to provide) Pension Benefits and NHS Premature Retirement Rights from the Relevant Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.
- 7.2 The Supplier must indemnify and keep indemnified the Authority, NHS Pensions and any Replacement Supplier against all Losses arising out of the Supplier (or its Sub-Contractor) allowing anyone who is not an NHSPS Eligible Employee to join or claim membership of the NHSPS at any time during the Contract Period.

8 SUB-CONTRACTORS

- 8.1 If the Supplier enters into a Sub-Contract for the delivery of all or part or any component of the Services which will involve the transfer of employment of any NHSPS Eligible Employee it will impose obligations on its Sub-Contractor in identical terms as those imposed on the Supplier in relation to Pension Benefits and NHS Premature Retirement Rights by this Annex, including requiring that:
- (a) if the Supplier has secured a Direction Letter, the Sub-Contractor also secures a Direction Letter in respect of the NHSPS Eligible Employees for their future service with the Sub-Contractor as a condition of being awarded the Sub-Contract and the Supplier shall be responsible for ensuring that the Authority receives a complete copy of each such Sub-Contractor direction letter as soon as reasonably practicable; or
 - (b) if, in accordance with paragraph 5.2 of this Annex, the Supplier has offered the NHSPS Eligible Employees access to a pension scheme under which the benefits are Broadly Comparable to those provided under the NHSPS, the Sub-Contractor either secures a Direction Letter in respect of the NHSPS Eligible Employees or (with the prior consent of the Authority) provides NHSPS Eligible Employees with access to a scheme with Pension Benefits which are Broadly Comparable to those provided under the NHSPS whereupon the provisions of paragraph 10.2 of Part D above (Broadly Comparable Scheme) shall apply.
- 8.2 The Supplier shall procure that each Sub-Contractor provides indemnities to the Authority, NHS Pensions and/or any Replacement Supplier and/or Replacement Sub-Contractor that are identical to the indemnities set out in paragraph 7 of this Annex B. Where a Sub-Contractor fails to satisfy any claim made under such one or more indemnities, the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

Annex D3: LGPS

1 DEFINITIONS

(f) In this Annex D3: LGPS to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule J1: Definitions:

"Administering Authority"	in relation to the Fund [insert name], the relevant Administering Authority of that Fund for the purposes of the Local Government Pension Scheme Regulations 2013;
"Fund Actuary"	the actuary to a Fund appointed by the Administering Authority of that Fund;
"Fund"	[insert name], a pension fund within the LGPS;
"LGPS"	the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;
"LGPS Admission Agreement"	an admission agreement within the meaning in Schedule 1 of the Local Government Pension Scheme Regulations 2013;
"LGPS Admission Body"	an admission body (within the meaning of Part 3 of Schedule 2 of the Local Government Pension Scheme Regulations 2013);
"LGPS Eligible Employees"	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the LGPS Admission Agreement or otherwise any Fair Deal Employees who immediately before the Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the LGPS or of a scheme Broadly Comparable to the LGPS; and
"LGPS Regulations"	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS.

2 SUPPLIER TO BECOME AN LGPS ADMISSION BODY

- 2.1 Where the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date, the Supplier shall become an LGPS Admission Body and shall on or before the Relevant Transfer Date enter into a LGPS Admission Agreement with the Administering Authority which will have effect from and including the Relevant Transfer Date.

- 2.2 The LGPS Admission Agreement must ensure that all LGPS Eligible Employees covered by that Agreement who were active LGPS members immediately before the Relevant Transfer Date are admitted to the LGPS with effect on and from the Relevant Transfer Date. Any LGPS Eligible Employees who were eligible to join the LGPS but were not active LGPS members immediately before the Relevant Transfer Date must retain the ability to join the LGPS after the Relevant Transfer Date if they wish to do so.
- 2.3 The Supplier shall provide any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.
- 2.4 The Supplier shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Eligible Employees in any pension scheme other than the LGPS.

3 RIGHT OF SET-OFF

The Authority shall have a right to set off against any payments due to the Supplier under the Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Supplier (or from any relevant Sub-Contractor) under an LGPS Admission Agreement and shall pay such amount to the relevant Fund.

4 SUPPLIER CEASES TO BE AN LGPS ADMISSION BODY

If the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date and the Supplier either cannot or does not participate in the LGPS, the Supplier shall offer such LGPS Eligible Employee membership of a pension scheme Broadly Comparable to the LGPS.

5 DISCRETIONARY BENEFITS

Where the Supplier is an LGPS Admission Body, the Supplier shall award benefits to the LGPS Eligible Employees under the LGPS in circumstances where the LGPS Eligible Employees would have received such benefits had they still been employed by their previous employer. Where such benefits are of a discretionary nature, they shall be awarded on the basis of the previous employer's written policy in relation to such benefits at the time of the Relevant Transfer Date.

PART E: EMPLOYMENT EXIT PROVISIONS

1 PRE-SERVICE TRANSFER OBLIGATIONS

1.1 The Supplier agrees that within 20 Working Days of the earliest of:

- (a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
- (b) receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
- (c) the date which is 12 months before the end of the Term; and
- (d) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 month period),

it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.

1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:

- (a) the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
- (b) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

1.3 The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.

1.4 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

1.5 From the date of the earliest event referred to in Paragraph 1.1(a), 1.1(b) and 1.1(c), the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

- (b) make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including pensions and any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services;
- (c) the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up pursuant to the provisions of any of the Annexes to Part D (Pensions) of this Schedule 9 (Staff Transfer)(as appropriate); and
- (d) a description of the nature of the work undertaken by each employee by location.

- 1.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
- (a) the most recent month's copy pay slip data;
 - (b) details of cumulative pay for tax and pension purposes;
 - (c) details of cumulative tax paid;
 - (d) tax code;
 - (e) details of any voluntary deductions from pay; and
 - (f) bank/building society account details for payroll purposes.

2 EMPLOYMENT REGULATIONS EXIT PROVISIONS

- 2.1 The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.

- 2.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.
- 2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:
- (a) any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
 - (b) the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
 - (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and

- (ii) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel listlist, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
 - (e) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
 - (f) any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel list for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - (g) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- (a) arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
 - (b) arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Supplier's Final Supplier Personnel list claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel listlist, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- (a) the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
 - (b) the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the 15 Working Day period specified in Paragraph 2.5(b) has elapsed:
 - (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolvedthe Authority shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8:
 - (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or

- (ii) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
 - (b) shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date .
- 2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.
- 2.11 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel list before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- (a) the Supplier and/or any Sub-contractor; and
 - (b) the Replacement Supplier and/or the Replacement Sub-contractor.
- 2.12 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- (a) any act or omission of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;

- (b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
 - (ii) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- (d) any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and

- (ii) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
 - (g) a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and
 - (h) any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

ANNEX: LIST OF NOTIFIED SUB-CONTRACTORS

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 9.2

KEY PERSONNEL

Key Personnel

KEY ROLE	Name of KEY Personnel	Responsibilities/A uthorities	Phase of the project during which they will be a MEMBER OF Key Personnel	MINIMUM PERIOD in Key Role
██████████ ██████████ ██████████ 	██████████ ██████████ 	██████████████████ ██████████████████ 	██████████ 	██████████
██████████ ██████████ ██████████ 	██████████ 	██████████████████ ██████████████████ ██████████	██████████ 	██████████
██████████ ██████████ ██████████ 	██████████████ 	██████████████████ ██████████	██████████ 	██████████
██████████ ██████████ 	██████████ 	██████████████████ 	██████████ 	██████████
██████████ ██████████ 	██████████ 	██████████████████ 	██████████ 	██████████

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 10

GUARANTEE

Note: Not Used

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 11

PROCESSING PERSONAL DATA

1 Processing Personal Data

Definitions:

Annex: the Schedule of Processing, Personal Data and Data Subjects attached to this Data Protection Schedule.

Party: a Party to this Contract.

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer: takes the meaning given in the GDPR.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

Sub-processor: any third Party appointed to process Personal Data on behalf of the Contractor related to this Contract.

DATA PROTECTION SCHEDULE

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in the Annex by the Authority and may not be determined by the Contractor.
- 1.2 The Contractor shall notify the Authority promptly if, in its opinion, it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- 1.3 The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
 - (a) process that Personal Data only in accordance with the Annex, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that:
 - (i) the Contractor Personnel do not process Personal Data except in accordance with this Contract (and in particular the Annex);

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:

(A) are aware of and comply with the Contractor's duties under this clause;

(B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;

(C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and

(D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

(i) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and

(iv) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

(e) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

1.5 Subject to clause 1.6, the Contractor shall notify the Authority immediately if, in connection with Personal Data processed under this Contract, it:

(a) receives a Data Subject Access Request (or purported Data Subject Access Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory authority;

- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 1.6 The Contractor's obligation to notify under clause 1.5 shall include the provision of further information to the Authority in phases, as details become available.
- 1.7 Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
- (a) the Authority with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Authority following any Data Loss Event;
 - (e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 1.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause.
- 1.9 The Contractor shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor.
- 1.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
- (a) notify the Authority in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Authority;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this 1.11 such that they apply to the Sub-processor; and
 - (d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

- 1.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 1.13 The Authority may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Parties may amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

ANNEX A

Description	Details
Subject matter of the processing	The subject matter of the Processing is as set out in Volume 3 (Specification).
Duration of the processing	For the duration of the provision of the Services (or the relevant part thereof) pursuant to this Agreement including any Termination Assistance Period. The Contractor shall not Process data beyond expiry of the Initial Term and where relevant any Extension Period except as may be required as part of the exit activities to be undertaken during the Termination Assistance Period and then strictly in accordance with the provisions of Schedule 8.5 (Exit Management) and the Exit Plan.
Nature and purposes of the processing	<p>The Contractor shall process the data within the boundary of the Services the Contractor is providing as set out in Schedule 2.1 (Services Description) and in accordance with the relevant Standards including, without limitation:</p> <ul style="list-style-type: none"> • ISO2700 <p>It shall be the responsibility of the Contractor to engage with the Authority, and the data owners within the Authority, to establish and agree the bounds of the Processing they are permitted to undertake.</p> <p>Processing activities to be undertaken in the delivery of the Services shall include:</p> <ul style="list-style-type: none"> • Processing • Altering • Adapting • Storing • Disseminating • Disclosing by transmission • Disclosing by other means

	<p>The purpose of the Processing is strictly as may be required to deliver the Services to the Authority.</p> <p>The supplier is responsible for the collecting, cleansing, recording, storing and dissemination of VMS positional data in accordance with UK and EU regulations.</p>
Type of Personal Data	<p>The types of Personal Data to be Processed include, but may not be limited to:</p> <ul style="list-style-type: none"> ■ [REDACTED] <ul style="list-style-type: none"> ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] <ul style="list-style-type: none"> ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] <p>The Contractor must take steps to satisfy itself and consequently the Authority that it is fully aware of the types and uses of all Personal Data within its Processing remit, and that that data is stored, retrieved, manipulated, altered, shared, disclosed by transmission or otherwise disclosed in accordance with the provisions of this Agreement and the Data Protection Legislation.</p>
Categories of Data Subject	<p>The categories of Data Subject that may be processed on infrastructure within the scope of the Services to be delivered by the Contractor include:</p> <ul style="list-style-type: none"> ■ [REDACTED] ■ [REDACTED] ■ [REDACTED]

	<ul style="list-style-type: none"> • [REDACTED] ■ [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] ■ [REDACTED] •
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<p>The Contractor shall at all times comply with Defra and the Defra Group's data retention policies.</p> <p>The Contractor shall comply with its obligations set out in Schedule 8.5 (Exit Management). The Authority will be consulted by the Contractor at the end of the specified retention period to confirm whether Personal Data should continue to be retained or whether it should be destroyed.</p> <p>Where it is necessary to destroy Personal Data in order to comply with Authority retention periods, this must be done in accordance with Schedule 10 Data Protection</p>

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 12

SUSTAINABILITY

The Authority's Sustainability Policies

- 1 The Authority is the leading government organisation for sustainability and needs to minimise the risk of reputational damage arising from negative sustainability impacts of the Service(s) delivered by the Contractor and its Sub-contractors, across the three pillars of environmental, societal and economic sustainability.
- 2 The Contractor shall ensure that the provision of the Services does not detract from and, where possible, contributes to the Authority's efforts to achieve and comply with the Sustainability Policies.
- 3 For the purposes of Paragraph 2, Sustainability Policies shall mean:
 - (a) the 2020 GGC obligations, requiring the Authority amongst other obligations to:
 - (i) reduce GHG emissions, waste arising's and land fill, paper and water consumption and domestic flights;
 - (ii) sustain biodiversity and the natural environment;
 - (iii) adapt to climate change;
 - (iv) reduce the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment; and
 - (v) buy more sustainable and efficient products and services with the aim of achieving the best long-term, overall value for money for society;
 - (b) the One Public Estate programme that seeks to reduce and merge existing offices across central departments into a fewer number of large government hubs;
 - (c) the GPU TW3 programme, which seeks to reduce the government's need for office space, by changing work behaviours;
 - (d) the Closed Loop approach to providing the goods deployed in the Services such that they consist of an increasing proportion of materials that are recycled from waste produced by the Contractor or the Authority;
 - (e) the Authority's objective to reduce the costs of the sustainability impacts arising from the Authority's supply chain by 20%; where ICT lies alongside construction and car fleet as the three sectors with the highest impacts;
 - (f) the Environment Agency internal E:Mission programme that in addition to the GGC obligations seeks:
 - (i) to reduce air travel;
 - (ii) to reduce air pollution;

- (iii) to reduce land and water pollutants; and
 - (iv) to reduce land use change, arising in the Environment Agency's supply chain; and
 - (v) adoption by the Authority's Supply Chain of standards and best practices to provide sustainable workforces for delivering services.
 - (g) the Authority's organisational goals for:
 - (i) a cleaner and healthier environment which benefits people and the economy; and
 - (ii) a nation protected against natural threats and hazards with strong response and recovery capabilities;
 - (h) the Greening Government ICT Strategy according to which the Authority is required, amongst other commitments:
 - (i) to sustain its level 3 Maturity in deploying best practices for the sustainability of its ICT services;
 - (ii) to provide an annual assessment of the energy footprint of its ICT services;
 - (iii) to provide an annual report on the recycling and disposal of ICT assets;
 - (iv) to use hosting services which use data centres that are registered as participants in the EU Code of Conduct for Energy Efficient Data Centres (<http://iet.jrc.ec.europa.eu/energyefficiency/ict-codes-conduct/data-centres-energy-efficiency>) (the **Code**); and
 - (v) to use broadband services that deploy devices which comply with the EU CoC for Broadband services.
- 4 The Contractor shall ensure that by the Operational Service Commencement Date and thereafter throughout the Term, the Contractor Personnel are aware of the Sustainability Policies and the Contractor's role in helping the Authority achieve the Sustainability Policies.
- 5 The Authority shall notify the Contractor of any changes in its Sustainability Policies during the Term and any amendments to the Services will be agreed in accordance with the Change Control Procedure.
- 6 Every six (6) Months from the Operational Service Commencement Date the Contractor shall provide a report on the Sustainability Impacts of the Services (Annex A, report 1), setting out the key impacts, improvements made and actions taken not covered by other reports to reduce those impacts, and describing any new actions that are being taken to minimise future risks and maximise the contribution the Service makes to the Authority's Sustainability Policies.

Manufacture and Energy Efficiency of deployed assets

- 1 The Contractor shall provide evidence at the start, and throughout the Term, for any new ICT Assets and ICT Authority Assets deployed by itself or its Sub-contractors, that the models of Asset or Authority Asset (as applicable) deployed are, in so far as is reasonably practicable, constructed from recycled materials and components, with minimal use of Critical Materials, tools to minimise use of energy in operation and are recyclable with readily separable and re-useable components and constituent materials (plastics, metals, labels).
- 2 Unless agreed with Authority prior to deployment, in so far as is reasonably practicable, all new Asset Models deployed by the Contractor or its Sub-contractors should have equivalent or fewer and lower sustainability impacts than the model(s) being replaced, with lower levels of energy use and recycled/recovered materials and materials from renewable sources, and lower use of non-renewables and Critical Materials in their construction. Where the existing Asset Model was not originally supplied by the Contractor, all reasonable endeavours shall be used to obtain the information to demonstrate equivalent or lower impacts.
- 3 The Contractor shall, prior to the relevant Operational Service Commencement Date and then sufficiently ahead of deploying new assets models during the Term (to permit the Authority at least thirty (30) Working Days to consider, challenge and agree a replacement model if required), provide a New Asset Models Impacts report (Annex A, report 4) to the Authority of:
 - (a) the use made of:
 - (i) recycled materials and components;
 - (ii) materials taken from renewable sources; and
 - (iii) Critical Materials;
 - (b) the appropriate energy efficiency certification for the new Asset Model;
 - (c) any other environmental impacts from deploying and using the new Asset Model and disposing of the existing model; and
 - (d) how the new model will contribute to the targets set for reducing the sustainability impacts of deployed assets.
- 4 The Contractor shall provide by the Operational Service Commencement Date, and maintain during the Term, the following additional information on the Asset Register, as provided for in Schedule 8.5 (Exit Management), for each Asset Model using reasonable endeavours to obtain this information from contractor(s) of existing assets:
 - (a) proportion of recycled materials and components, and proportion of Critical Materials being hazardous substances and chemicals, and Conflict Minerals in the construction of the Asset Model;

- (b) GBS compliance or Energy Star or similar (ECMA, EPEAT) accreditation or demonstration of the energy efficiency and environmental impact of each asset type being deployed; and
 - (c) type of packaging and weight for new supplied Asset Model.
- 5 For all Assets and Authority Assets deployed for delivery of the Service at its commencement date and over the Term of this Agreement), the Contractor shall, and shall ensure that its Sub-contractors engaged in the provision of Assets do, comply with the Environmental Management and Energy Efficiency standards set out in Schedule 2.3 (Standards) and handle and use Critical Materials in accordance with the best practices set out there.
- 6 In operation of the service, all available power management facilities on assets are to be utilised to deliver the service, such that standby and other low power modes are activated to match availability to demand, paying due regard to performance levels as set out elsewhere in this Agreement.
- 7 In this regard each quarter, the Contractor shall provide the Authority with a Sustainable Operations report (Annex A, report 2). The report shall include the energy consumption of the assets deployed in providing the Services and making use of a sample of real asset energy readings and estimates as agreed with the Authority (during transition and then from time to time) provide:
 - (a) the energy consumption of assets deployed on-site, separately showing energy consumed by IT assets and by the cooling devices deployed; and
 - (b) the energy consumption by assets deployed off-site, separately showing energy consumed by IT assets and by the cooling devices deployed and deriving the PUE rating for each data centre.
- 8 All data centres used in the provision of the Services shall be operated with due regard for energy and cooling efficiency and in accordance with the Code (as defined in Paragraph 3(h)) and the best practices contained therein, either through the data centre being used for the hosting being a registered as Participant in the Code or through separate demonstration to the Authority of adoption of the mandatory best practices therein.
- 9 Performance Indicators for reducing data centre PUE over the Term and the energy consumption of assets on asset replacement are set out in Schedule 2.2 (Service Levels).
- 10 The Contractor shall provide the Authority with a copy of the annual energy return required by the Code at least five (5) Working Days prior to its submission.

Recycling and disposal of deployed assets

- 1 Notwithstanding obligations elsewhere in this Agreement, the Contractor shall follow the Waste Hierarchy in handling and reporting on the re-use and recycling of Assets and Authority Assets no longer required in delivering services, to ensure:

- (a) the secure removal of Authority's data and identity from those Assets and Authority Assets; and
 - (b) to minimise landfill and incineration resulting from the disposal of those Assets and Authority Assets, in line with any Performance Indicators set in Schedule 2.2 (Service Levels).
- 2 In order to reduce waste arising from the Services, the Contractor shall use all reasonable endeavours to prolong the life of Assets through repairs and replacement of broken components.
- 3 As part of the Sustainable Operations Report (Annex A, report 2), the Contractor shall provide the Authority with a quarterly report on Recycling and Disposals that will include data on:
 - (a) waste avoided, including:
 - (i) the number of asset repairs carried out for each deployed Asset or Authority Asset type (as applicable); and
 - (ii) the number of broken components replaced by type of component for each Asset type;
 - (b) the number of Assets and Authority Assets by type that become surplus to Service requirements or are broken beyond reasonable repair;
 - (c) the number of Assets and Authority Assets that are re-used elsewhere within the Services, re-used commercially or (if agreed with the Authority in writing in advance) sold/leased at reduced price for schools/charities/communities, including any funds generated for the Authority;
 - (d) the net number and weight of Assets and Authority Assets sent for recycling;
 - (e) weight of reclaimed components;
 - (f) weight of reclaimed materials, and what proportion are Hazardous substances subject to RoHS processes;
 - (g) weight of materials sent for incineration at heat generating plants/at non-heat generating plants; and
 - (h) weight of materials sent to landfill.

Supply, use and recycling/disposal of consumables

1 Packaging

- 1.1 In accordance with the UK Packaging Regulations and Producer responsibilities set out in Schedule 2.3 (Standards) the Contractor shall where possible to adopt the following processes for Assets it deploys to Authority Sites and seek adoption where possible by its Sub-contractors for their delivery of Assets to Authority Sites to:

- (a) use completely re-usable or recyclable packaging. Where possible any packaging that cannot be reused or recycled should be substituted with that which can;
 - (b) use packaging made of one hundred percent (100%) recycled materials in so far as this is reasonably practicable; and
 - (c) minimise the amount of packaging used and ensure it is reasonably sized to suit the Asset Model or consumable type being delivered while maintaining protection.
- 1.2 As part of the information provided for proposed new Asset Models, state the weight by type of packaging to be used (paper/card, plastic, polystyrene) in supplying and delivering the new Asset Model.
- 1.3 The Contractor or its Sub-contractor shall remove all packaging from the Authority Site after asset installation, and as part of the Sustainable Operations Report (Annex A, report 2) provide quarterly data on:
- (a) the weight of packaging disposed of;
 - (b) proportion recycled and the recycling routes taken;
 - (c) weight sent for landfill; and
 - (d) weight sent for incineration, by packaging type (paper/card, plastic, polystyrene).

2 Paper

- 2.1 The Contractor shall minimise use of paper in performing the Services.
- 2.2 The Contractor shall use reasonable endeavours to avoid the use of paper and card in executing the contract and where unavoidable ensure that any paper or card deployed in the performance of the Services (for example training materials, operating manuals and guides) should consist of one hundred percent (100%) recycled content and not be bleached with chlorine.

3 Not Used

Service GHG emissions

- 1 In supporting the Authority's requirement to reduce its and its Sub-contractors' GHG emissions, and working towards any Performance Indicators in Schedule 2.2 (Performance Levels), the Contractor shall avoid fuel emissions in transporting goods and in staff travel to Authority Sites for staff engaged in delivering Services wherever possible, and without exclusion, by:
- (a) arranging meetings using e-conferencing services where face to face meetings are not required by the Authority;

- (b) where possible rationalise journeys and minimise miles travelled in the transportation of goods to Authority Sites;
 - (c) providing online and webinar based training, minimising the need for travel to attend courses; and
 - (d) using electric/hybrid vehicles or the rail service rather than petrol or diesel powered vehicles.
- 2 To these ends as part of the quarterly Sustainable Operations report (Annex A, report 2) the Contractor shall report on the:
- (a) miles travelled by transport and fuel type, in delivering goods to Authority Sites;
 - (b) miles travelled by staff in visiting Authority Sites;
 - (c) resulting GHG emissions using agreed Conversion Factors; and
 - (d) the number of multi-lateral e-meetings i.e. with more than two attendees, held by type (audio, webinar, v/conferencing) their length and number of attendees.

Contractor Employment

- 1 The Contractor shall ensure that it and its Sub-contractors:
- (a) comply with the provisions of the Equality & Diversity Act (2010), and otherwise ensure the equality and diversity of its workforce in respect of the ratified International Labour Organisation conventions (http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102651) and the Modern Slavery Act 2015;
 - (b) pay staff fair wages (and shall pay its staff in the UK not less than the Foundation Living Wage Rate);
 - (c) implement fair shift arrangements, providing sufficient gaps between shifts, adequate rest breaks and reasonable shift length, and other best practices for staff welfare and performance such as contained within the Electronics Industry Code of Conduct (<http://www.eiccoalition.org/>) and the Social Accountability standard SA8000 (<http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&PageID=937>); and
 - (d) promote and, where applicable, use UK apprenticeship schemes.
- 2 Any changes to these provisions are to be reported in the Sustainable Operations report in sufficient time to enable the Authority to have at least ten (10) Working Days to consider the changes and either confirm their acceptability or agree any modifications.

Climate Change Adaptation

- 1 The Contractor shall ensure that it and its Sub-contractors:
 - (a) understand any risks to the Service from severe weather events such as flooding and extremes of temperature. And to that end shall provide an annual assessment to the Authority of those risks and any mitigations being employed as part of its Sustainable Operations report; and
 - (b) ensure that any identified risks are covered off in business continuity plans developed in accordance with continuity planning as set out in Schedule 8.6 (Business Continuity).

Contractor Sustainability

- 1 The Contractor shall actively pursue a reduction in the sustainability impacts of the Service, and those of organisations in its Sub-contractors for the Service, and demonstrate this through relevant accreditations including those that are mandated in Schedule 2.3 (Standards) or other evidence or equivalent measures taken.
- 2 The Contractor shall provide an annual Sustainable Organisation report (Annex A, report 3). This shall include:
 - (a) a review on the use of renewables in its energy supply arrangements for Assets and Authority Assets and hosting services deployed in delivering the Services (including Sub-contractors), and progress on any plans to increase the proportion of renewable energy in that supply (for example through changing energy contractor and/or use of combined heat and power technologies to enable heat generated by deployed assets to be used to generate power);
 - (b) a report to the Authority identifying any actions taken not covered by other reports to reduce the sustainability impacts of the organisation;
 - (c) evidence of its organisation's commitment to sustainability in all its operations and customer services setting out its sustainability policies, targets and practices that are currently in place and evidence of these being actively pursued by staff, indicating arrangements for staff engagement, and any achievements in improving sustainability;
 - (d) any support the Contractor organisation provides for local or regional communities in which it or its Sub-contractors has its facilities, and any proposals to provide further support to agree with the Authority before they are adopted. Such support could include, use of local contractors, community use of physical resources, use of assets no longer required for the Service, and local apprenticeships.
- 3 Additionally:
 - (a) In order to show progress in achieving its Sustainability Policy commitments the Authority may from time to time need to request information from the

Contractor to update that provided in the reports set out in this Schedule 11. This information will relate to improvements achieved through the delivery of the Services that will assist the Authority in implementing the Sustainability Policies and reducing the sustainability impacts of the Services. To that end the Contractor shall use reasonable endeavours provide to the Authority, within ten (10) Working Days of such a written request, information which the Authority requests in order that it can report progress to Ministers, the Cabinet Office and other senior Government bodies on the progress that it is making in delivering its Sustainability Policies.

- (b) In support of the Authority's Sustainability Policies to monitor and reduce the costs of the sustainability impacts of the Authority's supply chain and to comply with the Authority's ISO 14001 accreditation, the Contractor may be required from time to time to supply or verify environmental data and sustainability impacts for the Services, including impacts of contributions to the Services from any Sub-contractors, so that the Authority and/or its authorised agent (subject to the agreement of appropriate confidentiality provisions, such agreement not to be unreasonably withheld or delayed by the Contractor) can work out the costs of those sustainability impacts for the Services. The request for this data may be made by the Authority or an agent for the Authority. The aim of these impact and cost analysis will be to identify major impacts and to agree with the Contractor action plans for it and/or the Authority to implement to reduce those impacts through the Change Control Procedure.

ANNEX A

SUMMARY OF REPORTING REQUIREMENTS:

1 The Sustainability impacts of the Services Report (every six (6) Months) (Re: Paragraph 6) should include:

- (a) the key impacts identified;
- (b) improvements made;
- (c) actions underway or planned to reduce impacts; and
- (d) contributions made to the Authority's Sustainability policies and objectives

2 The Sustainable Operations Report (quarterly) should include:

Energy consumption and GHG emissions (Re: Paragraph 7)

the energy consumption of the assets deployed in providing the Services, and making use of a sample of real asset energy readings and estimates as agreed with the Authority (during transition and then from time to time) broken down by:

- (a) the energy consumption of assets deployed on-site, separately showing energy consumed by IT assets and by any cooling devices deployed; and deriving the PUE rating for each data centre/server room;
- (b) the energy consumption by assets deployed off-site, separately showing energy consumed by IT assets and by any cooling devices deployed and deriving the PUE rating for each data centre/server room;

Transport (Re: Para 2)

- (a) miles travelled by transport and fuel type, for goods delivery from contractor to Authority Sites;
- (b) miles travelled by staff in visiting Authority Sites from contractor sites or home;
- (c) resulting GHG emissions using agreed Conversion Factors;
- (d) the number of multi-lateral e-meetings i.e. with more than two attendees, held by type (audio, webinar, v/conferencing) their length and number of attendees;

Staffing arrangements (Re: Para 2)

- (e) Changes if any in contractor employment and staffing arrangements;

Climate Change mitigations (annually re-assessed) (Re: Para 1)

- (f) updates on risks to the Service from severe weather events and mitigations taken;

Recycling and Disposal (Re: Para 3 and 4.3.1)

- (g) waste avoided, including:
 - (i) the number of asset repairs carried out for each deployed Asset or Authority Asset type; and
 - (ii) the number of broken components replaced by type of component for each Asset or Authority Asset type;
- (h) the number of Assets and Authority Assets (as applicable) by type that become surplus to Service requirements or are broken beyond reasonable repair;
- (i) the number of Assets and Authority Assets that are re-used elsewhere within the Services, re-used commercially or (if agreed with the Authority in writing in advance) sold/leased at reduced price for schools/charities/communities, including any funds generated for the Authority;
- (j) the net number and weight of Assets and Authority Assets sent for recycling;
- (k) weight of reclaimed components;
- (l) weight of reclaimed materials, and what proportion are Hazardous substances subject to RoHS processes;
- (m) weight of materials sent for incineration at heat generating plants/at non-heat generating plants;
- (n) weight of materials sent to landfill;
- (o) a statement on the constitution of any Printing Consumables used stating the proportion that is formed of Critical Materials and the proportion of materials used that are sourced from recycled materials;
- (p) data on the recycling and disposal of Printing Consumables; and
- (q) data on the recycling and disposal of the packaging used for Printing Consumables.

Recycling and disposal of packaging (Re: Para 1.3)

- (r) the total weight of packaging disposed of;

- (s) weight recycled by recycling routes taken;
- (t) weight sent for landfill; and
- (u) weight sent for incineration, by packaging type (paper/card, plastic, polystyrene).

3 The Annual Sustainable Organisation Report (Re: Para 2) to include:

- (a) the use of renewables in the Contractor and Sub-contractors organisations;
- (b) any actions taken not covered by other reports to reduce the sustainability impacts of the organisation;
- (c) a review of the Contractor's adoption of sustainability policies and standards, targets and practices that are currently in place to reduce the sustainability impacts of its operations and evidence of these being actively pursued by staff, indicating arrangements for staff engagement, and any achievements in improving sustainability; and
- (d) any support the Contractor organisation provides for local or regional communities.

4 New Asset Model Impacts Report (at least thirty (30) days prior to deployment) (Re: Paragraph 3) should include:

- (a) the use made and proportion of total weight constituted of:
 - (i) recycled materials and components;
 - (ii) materials taken from renewable sources; and
 - (iii) critical materials;
- (b) the appropriate energy efficiency certification for the new Asset Model;
- (c) any other environmental impacts from deploying and using the new Asset Model and disposing of the existing Asset Model;
- (d) how the new Asset Model will contribute to the targets set for reducing the sustainability impacts of deployed assets; and
- (e) the weight by type of packaging to be used (paper/card, plastic, polystyrene).

