

DATED

20[ ]

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**THE NATIONAL MUSEUM OF THE ROYAL NAVY**

and

[ ]

**FRAMEWORK SERVICES AGREEMENT**

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

**BETWEEN**

- (1) **THE NATIONAL MUSEUM OF THE ROYAL NAVY** a company limited by guarantee and registered in England and Wales with number 6699696 and registered charity number 1126283 whose registered office is at HM Naval Base (P66), Portsmouth, Hampshire PO1 3NH as trustee of The Royal Naval Museum Portsmouth, a charity registered in England and Wales with charity number 1126283-1 who principal office is at HM Naval Base (P66), Portsmouth, Hampshire PO1 3NH ("**NMRN**"); and
- (2) [ ] a company registered in England and Wales with number [ ] whose registered office is at [ ] (the "**Supplier**").

**BACKGROUND**

- (A) NMRN wishes to enter into a framework agreement with the Supplier to provide the Services.
- (B) The Supplier is willing and able to provide the Services to NMRN on the terms and conditions set out in this Agreement.
- (C) This Agreement:
- (a) defines the overall relationship between NMRN and the Supplier;
  - (b) describes the objectives of the Services and the standard to which those Services are to be performed;
  - (c) provides a structure within which NMRN may call off Services; and
  - (d) sets out the terms to be incorporated into all Statements of Work.

**IT IS AGREED** as follows:

**1 INTERPRETATION**

**1.1 Definitions**

In this Agreement the following words and expressions shall have the following meanings:

**Additional Terms**

means any terms identifiable as additional terms in a Statement of Work or any document referenced in it;

**Agreement**

means the body of this agreement together with the schedules as each may be amended from time to time in accordance with the Change Control Procedure;

<b>Applicable Laws</b>	means all applicable laws, statutes, bye-laws, regulations, orders, regulatory policies, guidance or industry codes, rules of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notices of any regulatory body;
<b>Change Control Procedure</b>	means the procedure set out at Schedule 4;
<b>Charges</b>	means the charges for the Services as set out in Schedule 2 or an applicable Statement of Work;
<b>Commencement Date</b>	means the earlier of the: <ul style="list-style-type: none"> <li>(a) date of this Agreement; and</li> <li>(b) the first provision of any part of the Services to NMRN;</li> </ul>
<b>Confidential Information</b>	means all information in any medium or format (written, oral, visual or digital, and whether or not marked or described as “confidential”), together with all reproductions (hard copy or digital), extracts, summaries or analyses of such information in any medium or format made by or on behalf of a Party and which is directly or indirectly disclosed by or on behalf of the disclosing Party to the other Party in the course of their dealings relating to this Agreement, before or after the date of this Agreement;
<b>Control</b>	means the ability alone or with others to require compliance, whether as a result of shareholding, contract or otherwise;
<b>Data Protection Legislation</b>	means the Data Protection Act 1998 and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

<b>Deliverable(s)</b>	means all items, features or services in any form, including the software, codes, systems, networks, information technology, documents, specifications, data, reports, audio and video files, project plans, specifications and drawings (including drafts) to be delivered to NMRN by or on behalf of the Supplier as part of the Services;
<b>Documentation</b>	means all user manuals, operating manuals drawings, plans, and other documentation relating to the Services and the Vessel;
<b>Future Supplier</b>	means any party which provides services to NMRN the same as or similar to the Services or any part of the Services;
<b>Good Industry Practice</b>	the exercise of that degree of skill, and diligence as would be expected from an expert and experienced provider of the Services and, in relation to any Service set out in a Statement of Work, an expert supplier of those particular Services;
<b>Initial Period</b>	means the period of [12 months] beginning on the Commencement Date;
<b>Intellectual Property Rights</b>	means all inventions, patents, utility models, designs (both registered or unregistered and including rights relating to semi-conductor topographies), database rights, copyright and related rights and trade marks (both registered and unregistered), together with all rights to the grant of and applications for the same and including all similar or analogous rights and all other rights in the nature of intellectual and industrial property throughout the world and all future rights of such nature;
<b>Key Supplier Personnel</b>	means the Supplier Manager and any other individuals or roles set out in a Statement of Work or otherwise notified by NMRN to the Supplier;

<b>Losses</b>	means any costs and expenses (including management, legal and other professional costs and expenses), penalties, interest, liabilities, damages, awards, settlements or other losses incurred;
<b>Milestone</b>	means any date by which a Deliverable or aspect of the Services must be completed as specified in this Agreement, a Statement of Work or as otherwise agreed by the parties;
<b>NMRN Equipment</b>	means any equipment, systems, cabling or facilities provided directly or indirectly by NMRN and used directly or indirectly in the supply of the Services;
<b>NMRN Materials</b>	means any materials provided directly or indirectly by NMRN to the Supplier for incorporation in any Deliverable, or use in connection with any aspect of the Services including any documents, data, text, trade marks, brands, logos, information, specifications, drawings, diagrams, programs, codes, statistics and audio and video files;
<b>NMRN Policies</b>	means any NMRN policy notified to the Supplier from time to time;
<b>Personal Data</b>	shall have the meaning given to that term in the Data Protection Legislation;
<b>PO</b>	means a purchase order issued by NMRN;
<b>Prohibited Act</b>	means: <ul style="list-style-type: none"> <li>(a) the reassignment, removal or dismissal of any Supplier Employee from the provision of the Services;</li> <li>(b) the recruitment of any employee to provide any part of the Services; or</li> <li>(c) the material variation of any Supplier Employee's duties and/or the amount of time any Supplier Employee spends providing the Services;</li> </ul>

<b>Records</b>	means records or embodiments of Confidential Information (or any further information derived from the Confidential Information) in whatever medium including any document, electronic file, note, extract, analysis, model, prototype or other representation or means of recording or recovering information;
<b>Regulations</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
<b>Relevant Transfer</b>	means a relevant transfer for the purposes of the Regulations;
<b>Representatives</b>	means a Party's directors, officers, employees, agents, auditors, professional advisers and sub-contractors;
<b>Request for Services</b>	means a written request for Services under Clause 2;
<b>Services</b>	the services to be provided by the Supplier in relation to the Vessel or otherwise and which are set out in this Agreement and in Statements of Work agreed by the Parties under Clause 2;
<b>Site(s)</b>	means the site(s) where the Services will be provided;
<b>SOW End Date</b>	means the date set out in a Statement of Work for the end of the services outlined in that Statement of Work (and if no date is set out, the SOW End Date shall be deemed to be the date notified for the services to end by NMRN);
<b>SOW Start Date</b>	means the date set out in a Statement of Work for the start of the services outlined in that Statement of Work (and if no date is set out, the SOW Start Date shall be deemed to be the date of first provision to NMRN of any part of the services outlined in the Statement of Work);



<b>Statement of Work</b>	means a written document detailing the Services to be provided by the Supplier as agreed by NMRN under Clause 2;
<b>Supplier Employee(s)</b>	means any employee, consultant, agent or sub-contractor engaged or employed by the Supplier or any third party to provide a Deliverable or aspect of the Services;
<b>Supplier Manager</b>	means the Supplier's manager for the Services appointed pursuant to Clause 9.1.1;
<b>Supplier Material(s)</b>	means documents, notes, information, software, know-how, or other like material owned by the Supplier prior to the Commencement Date, or obtained by the Supplier independently from and otherwise than in connection with the Services;
<b>Technical Requirements</b>	means the technical requirements of NMRN as set out in a Statement of Work or if no description is provided, the standard technical and operational specification for such Deliverables and/or Services as would ordinarily apply to them by a supplier using Good Industry Practice;
<b>Third Party Materials</b>	means documents, notes, information, software, know-how, or other like material which is not owned by the Supplier and which is embedded and/or is otherwise necessary for the use and/or operation of the Deliverables and the Services;
<b>Vessel</b>	means [HMS Victory]; and
<b>Working Day</b>	means any day which is not a Saturday, a Sunday or a bank or public holiday in England.

## 1.2 Construction

- 1.2.1 In this Agreement, unless otherwise specified or the context otherwise requires:

- (a) reference to this Agreement or to any other document is a reference to this Agreement or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time as permitted by the provisions of this Agreement;
  - (b) reference to any law (except where the context otherwise requires) (i) shall be deemed to include any bye-laws, licences, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made under that law and (ii) shall be construed as referring to any law which replaces, re-enacts, amends or consolidates such law (with or without modification) at any time; and
  - (c) reference to any legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept, state of affairs or thing shall in respect of any jurisdiction other than England be deemed to include that which most closely approximates in that jurisdiction to the English legal term.
- 1.2.2 Any phrase in this Agreement introduced by the term “include”, “including”, “in particular” or similar expression shall be construed as illustrative and shall not limit the sense of the words preceding that term.
- 1.2.3 Headings used in this Agreement are for reference only and shall not affect its construction or interpretation.

### 1.3 Other references

In this Agreement a reference to:

- 1.3.1 “**person**” includes any individual, firm, company, corporation, body corporate, government, state or agency of state, trust or foundation, or any association, partnership or unincorporated body of two or more of the foregoing (whether or not having separate legal personality and wherever incorporated or established); and
- 1.3.2 “**written**” or “**in writing**” includes faxes, emails and any other permanent form of communication but not text messaging.

## 2 FRAMEWORK STRUCTURE

- 2.1 NMRN may during the term of this Agreement order Services from the Supplier using the process set out in this Agreement.
- 2.2 The Supplier’s appointment to provide the Services is not exclusive and NMRN is not under any obligation to order Services from the Supplier.
- 2.3 To call off Services, NMRN shall submit a Request for Services containing such information as it considers necessary from the Request for Services template in

paragraph 1 of Schedule 3. The Parties shall then follow the process in Clauses 2.3.1 to 2.3.4 below:

- 2.3.1 within 5 Working Days of the date of the Request for Services, the Supplier shall submit to NMRN a draft Statement of Work containing such information as is reasonably necessary for NMRN to properly consider the Supplier's proposed response. As a minimum, the draft Statement of Work shall contain the information set out in the Statement of Work template in paragraph 2 of Schedule 3;
  - 2.3.2 NMRN shall, when it has finished considering the proposal, confirm to the Supplier whether it approves or rejects the draft Statement of Work;
  - 2.3.3 if NMRN rejects the draft Statement of Work it shall provide reasons for the rejection and if it wishes shall provide the Supplier the opportunity to resolve the issues relating to the rejection and re-submit. If so, the Supplier shall fully take into account NMRN's reasons for rejection and prepare and submit a revised draft Statement of Work for approval by NMRN within 5 Working Days of the initial rejection; and
  - 2.3.4 a draft Statement of Work may be reviewed, amended and resubmitted a number of times prior to NMRN finally approving or rejecting the draft Statement of Work.
- 2.4 This Agreement shall govern all Services requested by NMRN using a Statement of Work.
- 2.5 Any forecasts NMRN provides to the Supplier are estimates only and are not binding.
- 2.6 The Supplier shall be under no obligation to provide (and NMRN shall not be under an obligation to buy) a Service until the Statement of Work for that Service is agreed between the Parties in accordance with Clause 2.7.
- 2.7 A Statement of Work shall be deemed to have been agreed between the Parties upon:
- 2.7.1 the signature by both Parties of a Statement of Work, which shall (unless agreed otherwise by NMRN) include:
    - (a) the minimum information set out in paragraph 2 of Schedule 3; and
    - (b) a valid PO number issued by NMRN;
  - 2.7.2 the issuing of a valid PO number by NMRN to the Supplier at the same time as providing the Request for Services (in which case the Request for Services shall be deemed to be a Statement of Work); or
  - 2.7.3 the confirmation of an agreed order for Services by email to the Supplier provided that the email:
    - (a) formally confirms the order of Services under this Agreement; and

- (b) includes as a minimum a description of the Services ordered, the Deliverables to be provided, the applicable Charges, the SOW Start Date, the SOW End Date, the Milestones and a PO number.

- 2.8 Unless expressly varied in any Statement of Work, all the terms of this Agreement are applicable to the Services performed under a Statement of Work.
- 2.9 Each Statement of Work prevails over, supersedes and excludes any terms or conditions contained in or referred to in any correspondence or document the Supplier generates (including any invoices or standard terms) whether before or after a Statement of Work.
- 2.10 If there is any conflict or inconsistency between the documents that make up the Statement of Work, the following order of precedence shall apply to the extent of the conflict or inconsistency:
  - 2.10.1 any Additional Terms; and
  - 2.10.2 this Agreement.
- 2.11 If the Parties wish to make a change to the Services, they shall comply with the Change Control Procedure.

### **3 COMMENCEMENT AND DURATION**

- 3.1 The term of this Agreement shall begin on the Commencement Date and, unless terminated pursuant to Clause 19, shall continue for the Initial Period and after that until terminated by either Party as follows:
  - 3.1.1 by NMRN giving the Supplier not less than one month's prior written notice (such notice not to expire before the last day of the Initial Period); or
  - 3.1.2 by the Supplier giving NMRN not less than [three months'] prior written notice (such notice not to be served before the last day of the Initial Period).
- 3.2 The term of an individual Statement of Work shall begin on the SOW Start Date and, unless terminated earlier under Clause 19 or an Additional Term, shall end on the SOW End Date.

### **4 PERFORMANCE OF SERVICES**

- 4.1 The Supplier shall provide the Services on the terms set out in this Agreement and the applicable Statement of Work including any services, functions and responsibilities (including any incidental services, functions or responsibilities) not expressly specified in this Agreement as within the scope of the Supplier's responsibilities but reasonably and necessarily required for, or related to, the proper performance and provision of the Services.
- 4.2 The Supplier acknowledges that it:

- 4.2.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of the NMRN Materials;
  - 4.2.2 has carried out all necessary due diligence before the Commencement Date; and
  - 4.2.3 has entered into this Agreement and any Statement of Work on its own due diligence.
- 4.3 The Supplier shall perform the Services in accordance with any dates specified for such performance in the applicable Statement of Work, as maybe amended from time to time by agreement between the parties via the Change Control Procedure. Services which do not have specified dates for completion shall be provided by the Supplier as soon as possible but in any event, within a reasonable period of time.
- 4.4 In performing the Services, the Supplier shall:
- 4.4.1 apply such time, attention, resources, trained personnel and skill as is necessary for due and proper performance of the Services in accordance with Good Industry Practice;
  - 4.4.2 attend and participate in on-going reviews of performance at such premises and such intervals as NMRN requires;
  - 4.4.3 comply with all NMRN Policies and all reasonable directions given by or on behalf of NMRN;
  - 4.4.4 co-operate with any other suppliers who provide NMRN with goods or services;
  - 4.4.5 comply with all Applicable Laws;
  - 4.4.6 let NMRN know promptly upon becoming aware of any matter which may affect the Supplier's ability to provide the Services in accordance with this Agreement and/or any Statement of Work, including meeting any Service Levels, and give NMRN details of any proposed alternative arrangements to provide the Services (which shall be subject to NMRN's prior written approval);
  - 4.4.7 ensure all written information given to NMRN is, when given, accurate and comprehensive; and
  - 4.4.8 promptly notify NMRN of any conflicts of interest which arise.
- 4.5 The Supplier shall offer to NMRN and, if NMRN so requests, provide to NMRN at no extra charge within a commercially reasonable time any improvement, upgrade, update or service related to the Services developed by the Supplier or on its behalf in the ordinary course of business.

## **5 HEALTH AND SAFETY**

- 5.1 The Supplier shall produce a safety plan relating to the Services which shall be agreed with NMRN within a month of the Commencement Date. The plan shall be updated on an ongoing basis to comply with current Applicable Laws and Good Industry Practice in relation to health and safety relating to the Services.
- 5.2 The Supplier shall be responsible for the safety of all Supplier Employees whilst providing the Services and/or on the Site.
- 5.3 Unless otherwise agreed between the Parties, the Supplier shall be responsible for the care, protection and security of the Vessel until the termination or expiry of this Agreement.

## **6 DELAYS**

- 6.1 The Supplier shall promptly and at its own cost, in the event of any failure or delay in the Services:
  - 6.1.1 investigate the underlying causes of the failure or delay and preserve any data indicating the cause of failure or delay;
  - 6.1.2 take whatever action is necessary to minimise the impact of the failure or delay and prevent it from reoccurring;
  - 6.1.3 correct the failure and resume performance of the Services; and
  - 6.1.4 keep NMRN updated of the status of remedial efforts to correct the failure or delay in the Services.
- 6.2 Provided always that the Supplier complies with Clause 6.3, the Supplier shall not be liable for failing to provide the Services where this is due to a material failure by NMRN to provide access to the Site(s) or any NMRN Equipment in accordance with this Agreement.
- 6.3 Where the Supplier reasonably believes that NMRN's failure to comply with any of its obligations impacts on the Supplier's ability to provide the Services the Supplier shall:
  - 6.3.1 notify NMRN promptly in writing, providing reasonable details of the non-compliance and the impact the Supplier believes it is having; and
  - 6.3.2 continue to carry out the Supplier's duties as best as it can and take all reasonable steps to mitigate the effects of NMRN's failure.

## **7 NMRN'S RESPONSIBILITIES**

NMRN shall:

- 7.1.1 co-operate with the Supplier in all matters relating to the Services;
- 7.1.2 provide the Supplier Employees with such access to the Site and data, and such office accommodation and other facilities as may reasonably be

required by the Supplier and agreed in advance with NMRN in writing for the purposes of providing the Services; and

- 7.1.3 provide such NMRN Materials as NMRN considers reasonably necessary to enable the Supplier to perform the Services.

## **8 ACCEPTANCE**

- 8.1 From time to time the Services and/or Deliverables may require reasonable tests to ensure that the item is in operable condition and is capable of meeting the requirements set out in the applicable SOW, the Technical Requirements and any other criteria agreed between the parties.
- 8.2 The parties shall comply with the test and acceptance provisions set out in the applicable SOW or as otherwise agreed between the parties.

## **9 PERSONNEL INVOLVED IN PERFORMING THE SERVICES**

- 9.1 The Supplier shall:

- 9.1.1 without delay upon the agreement of a Statement of Work:

- (a) appoint the Supplier Manager in respect of the Statement of Work (who the Supplier agrees shall have authority to contractually bind the Supplier on all matters relating to the Services under that Statement of Work); and
- (b) allocate the Supplier Employees who shall be suitably skilled, experienced and qualified to carry out the Services;

- 9.1.2 subject to Clause 9.1.4, ensure that the same person acts as the Supplier Manager throughout the term of a Statement of Work;

- 9.1.3 ensure the availability of the Key Supplier Personnel to provide the Services on such days and at such times as NMRN may require; and

- 9.1.4 promptly inform NMRN of the absence or anticipated absence of the Supplier Manager or any Key Supplier Personnel and, if NMRN requires, provide suitably qualified replacements during period of absence.

- 9.2 The Supplier shall not make any changes to the Supplier Manager or the Key Supplier Personnel without the prior written approval of NMRN not to be unreasonably withheld or delayed.

- 9.3 NMRN shall be entitled to instruct the Supplier to remove promptly any of the Supplier Employees from the provision of the Services and to provide a replacement satisfactory to NMRN. Where such a request is made NMRN shall use reasonable endeavours to give reasons, if permitted. The Supplier shall provide a suitable replacement for such an individual without delay.

- 9.4 The Supplier shall procure that the Supplier Employees take all reasonable steps to safeguard their own safety and the safety of any other person who may be affected by their actions.
- 9.5 The Supplier shall be responsible for implementing any required disciplinary action with respect to any of the Supplier Employees, including those arising out of acts or omissions by Supplier Employees in relation to other individuals and/or whilst on the Site.

## **10 INTELLECTUAL PROPERTY RIGHTS**

- 10.1 Except as expressly set out in this Agreement and/or any Statement of Work:

10.1.1 NMRN shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors in the Supplier Materials or the Third Party Materials; and

10.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of NMRN or its licensors in the NMRN Materials.

### **10.2 Licence of NMRN Materials**

10.2.1 NMRN hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable, revocable licence during the term of each Statement of Work to use solely to the extent necessary to carry out its obligations under this Agreement in respect of a Statement of Work:

- (a) the NMRN Materials; and
- (b) if assigned to NMRN, the Deliverables from the date when the relevant rights are transferred to NMRN in accordance with Clause 10.3.

### **10.3 Assignment of Certain Deliverables**

10.3.1 Unless otherwise agreed by the Parties in a Statement of Work, the Supplier hereby assigns to NMRN, with full title guarantee, title to and all rights and interest in the Intellectual Property Rights in and to the Deliverables (excluding the Supplier Materials and the Third Party Materials) and shall procure that the first owner of the Intellectual Property Rights in and to the Deliverables assigns them to NMRN on the same basis. The assignment under this Clause 10.3.1 shall either take effect on the Commencement Date as a present assignment of existing rights or as a present assignment of future rights that shall take effect immediately on the coming into existence of the relevant Intellectual Property Rights in and to the Deliverables.

10.3.2 The Supplier shall waive or procure a waiver of any moral rights in any copyright works assigned to NMRN.



- 10.3.3 If requested by NMRN, the Supplier shall without charge to NMRN execute all documents and do all such further acts as NMRN may require to perfect the assignment under Clause 10.3.1 or shall procure that the first owner of the Intellectual Property Rights in and to the Deliverables does so on the same basis.

#### **10.4 Licence of Supplier Materials**

- 10.4.1 The Supplier hereby grants to NMRN a worldwide, non-exclusive, perpetual, irrevocable, sub-licensable, transferable and royalty-free licence to use, make copies of and make available the Supplier Materials which become embedded in any Deliverable or are used as part of the receipt of the Services to the extent necessary to use such Deliverable or Services for its business purposes (including licensing to third parties to whom NMRN outsources any part of its business).

#### **10.5 Licence of Third Party Materials**

- 10.5.1 The Supplier shall provide NMRN with a list of all Third Party Materials and shall procure that the owners or licensors of any Third Party Materials hereby grant a direct worldwide, non-exclusive, perpetual, irrevocable licence to NMRN to enable NMRN to use the Deliverables and Services as contemplated by this Agreement and/or any Statement of Work. If the Supplier cannot obtain for NMRN a licence of Third Party Materials materially in accordance with this Clause 10.5.1, the Supplier shall consult with NMRN on whether the rights that can be obtained are nevertheless acceptable to NMRN or whether the Supplier should seek to use an alternative provider of the Third Party Materials.
- 10.5.2 NMRN shall only be liable for the additional cost of procuring a licence of any Third Party Materials where this has been agreed in advance and in writing between the Parties.

#### **10.6 Infringement**

- 10.6.1 If the use or supply of the Services or any Deliverable or any hardware, software or other materials used in the supply of the Services or in any Deliverable (including the Supplier Materials) infringes or may be held to infringe any Intellectual Property Rights or other rights belonging to a third party, the Supplier shall, at NMRN's option and the Supplier's expense:
- (a) procure for NMRN the right to continue using or receiving the Services and/or Deliverables free from any liability for such infringement; or
  - (b) modify the Services and/or Deliverables in such a way as not to disrupt the Services or functionality of the Deliverables so as to avoid the infringement,

failing which, NMRN may terminate at its discretion this Agreement and/or the relevant Statement of Work immediately on written notice in respect of the affected Services and, without prejudice to any other right or remedy, shall be entitled to a refund of any Charges that have been paid in advance by NMRN.

## **11 DOCUMENTATION**

- 11.1 The Supplier shall, upon delivery of any part the Services and from time to time if required by NMRN, provide NMRN with copies of the associated Documentation containing sufficient up-to-date information for the proper use and maintenance of the Vessel and the Services. Such Documentation may be supplied in electronic form.
- 11.2 NMRN may make such further copies of the Documentation as are reasonably necessary for the use and maintenance of the Vessel and/or the Services and for training NMRN's personnel in use of the Vessel and/or the Services.

## **12 CHARGES**

- 12.1 The Charges for the Services and the manner in which the Charges are payable by NMRN are as set out in Schedule 2 and/or a Statement of Work (as applicable).
- 12.2 The Supplier may only issue invoices to NMRN in accordance with the terms of this Agreement and/or a Statement of Work. If no details as to invoicing are set out in the Statement of Work, then the Supplier may issue invoices following the satisfactory completion of all the Services and delivery of all the Deliverables required under the applicable Statement of Work.
- 12.3 Payment of an invoice (which is not the subject of a genuine dispute) by NMRN shall be made within 60 days from receipt of the invoice.
- 12.4 The Charges are fully inclusive of any expenses incurred by the Supplier and the Supplier Employees in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by the Supplier for the supply of the Services unless otherwise agreed with NMRN in writing or in the applicable Statement of Work.
- 12.5 All sums due under any Statement of Work are exclusive of VAT, if any, which shall be charged in addition in accordance with the relevant regulations in force at the time of making the relevant taxable supply and shall be paid against receipt of a valid VAT invoice. Unless otherwise expressly set out in this Agreement or agreed between the Parties in writing, the obligation to pay the Charges (and any applicable VAT) shall constitute NMRN's entire payment liability to the Supplier under this Agreement and each Statement of Work.
- 12.6 If following receipt of any invoice NMRN notifies the Supplier in writing of a genuine dispute concerning the Charges payable under an invoice (indicating in the notice the basis for its dispute), then NMRN shall pay any undisputed amount but shall be entitled to withhold the amount in dispute until the dispute is resolved by agreement.

The Supplier's obligations to provide the Services shall in no way be affected by any dispute in relation to the Charges or payment of them.

- 12.7 If NMRN fails to make payment in accordance with this Clause 12 then the Supplier shall be entitled to charge interest on the overdue amount at a rate of 2% per annum above the base rate of Barclays Bank from time to time in force from the date on which such amount fell due until payment, whether before or after judgment.

### 13 **WARRANTIES**

- 13.1 Each of the Parties warrants, represents and undertakes that:

13.1.1 it has the right to enter into this Agreement and each Statement of Work and carry out its obligations under this Agreement;

13.1.2 it holds all licences and consents necessary to carry out its obligations under this Agreement;

- 13.2 The Supplier warrants, represents and undertakes that:

13.2.1 it will not, in carrying out its obligations, put itself or NMRN in breach of Applicable Laws;

13.2.2 it is not at the time of entering into this Agreement insolvent and knows of no circumstance which would entitle any creditor to appoint a receiver or petition for winding up or to exercise any other rights over or against its assets;

13.2.3 NMRN's receipt and use of the Services (including the Deliverables (where applicable)) shall not infringe the Intellectual Property Rights of, nor any duty of confidentiality or privacy owed to, any third party;

13.2.4 it shall perform the Services promptly and with all due care, skill and diligence in a good and workmanlike manner and in line with Good Industry Practice;

13.2.5 the Services (including the Deliverables) shall fulfil the Technical Requirements;

13.2.6 all information provided by the Supplier in any relevant marketing materials, presentations, response to tender or other pre-contract documents were, on the date they were provided, true and accurate in all material respects;

13.2.7 before the SOW Start Date of any particular Statement of Work, it shall obtain and at all times maintain all necessary licences, permits and consents and there are no circumstances which could lead to any of such licences, permits or consents being revoked or not being renewed in whole or in part;

13.2.8 it shall ensure that no NMRN Equipment is used, moved or taken away from any Site without NMRN's prior written consent;

- 13.2.9 the Supplier Employees shall possess the qualifications, professional competence and experience to carry out the Services in accordance with Good Industry Practice;
  - 13.2.10 it will use its best endeavours to ensure the Supplier Employees are not engaged in and will not engage at any time in any unfair labour practice or implement or maintain employment conditions in violation of Applicable Laws; and
  - 13.2.11 it shall be responsible for any training of the Supplier Employees that may be required to enable the Supplier Employees to perform the Services, and NMRN shall not be liable for any charges, fees or expenses in relation to any such training.
- 13.3 The warranties, undertakings and representations in this Clause 13 are in addition to and will not detract from any warranties implied by law.
- 13.4 The Supplier repeats the warranties, representations and undertakings set out in this Clause 13 in respect of each Statement of Work under this Agreement.

#### **14 INDEMNITIES**

- 14.1 The Supplier shall indemnify NMRN from and against all costs and expenses (including management, legal and other professional costs and expenses), penalties, interest, liabilities, damages, awards, settlements or other losses awarded against, or incurred or paid by, NMRN arising out of or in connection with all claims, demands or actions as a result of or in connection with:
- 14.1.1 any alleged or actual infringement of any third party's Intellectual Property Rights or duty of confidentiality towards a third party or other rights arising out of the use or supply of the Services (including the Deliverables and the Supplier Materials);
  - 14.1.2 any breach by the Supplier or anyone acting on its behalf of Clause 17; or
  - 14.1.3 any fraud or fraudulent misrepresentation by the Supplier and/or any Supplier Employees.
- 14.2 NMRN shall as soon as reasonably practicable notify the Supplier if any claim is brought against NMRN in respect of any of the indemnities given by the Supplier under this Agreement. At its option, NMRN shall retain exclusive control of any litigation or negotiations arising from the claim and the Supplier shall at the request of NMRN afford to NMRN all reasonable assistance for the purpose of contesting any such litigation or negotiations and shall be repaid all costs and disbursements (on a solicitor and client basis) reasonably incurred in so doing.

#### **15 INSURANCE**

- 15.1 The Supplier shall at all times and at its own cost, effect and maintain sufficient insurances with a recognised and reputable insurer to meet its liabilities under this

Agreement and in any case not less than the insurances specified in Schedule 1 for the term of this Agreement, each Statement of Work and for a period of three years after expiry or termination of this Agreement or the last Statement of Work (whichever is the later), for whatever reason.

- 15.2 Within 14 days of a request by NMRN, the Supplier shall provide proof by way of certificates or other reasonable evidence that it maintains such insurances.
- 15.3 All of the insurances described in this Clause 15 shall be effected with a recognised and reputable insurer and the Supplier shall ensure that NMRN may benefit from such insurances. The Supplier shall provide NMRN with at least 30 days prior written notice of any cancellation or material change to such insurances.
- 15.4 The maintenance of insurance required by this Agreement is the sole responsibility of the Supplier. If the Supplier at any time neglects or refuses to provide or cause to be provided the insurance required by this Agreement, or should such insurance be cancelled, NMRN shall have the right to procure the relevant insurance and the cost thereof shall be deducted from monies then due or thereafter to become due to the Supplier.
- 15.5 In addition to the insurances listed at Schedule 1, the Supplier shall comply and shall procure that its permitted sub-contractors comply with any and/or all applicable statutory insurance requirements.

## 16 **DATA PROTECTION**

- 16.1 If the supplier processes Personal Data on behalf of NMRN in connection with the Services, the Supplier shall:
  - 16.1.1 only process Personal Data in accordance with express instructions from NMRN, whether set out in this Agreement, a Statement of Work or otherwise notified to the Supplier in writing and the Supplier shall, immediately at the request of NMRN:
    - (a) stop processing all or any of the Personal Data;
    - (b) correct any Personal Data;
    - (c) assist NMRN in responding to any enquiry by any applicable regulators.
  - 16.1.2 unless otherwise agreed in writing, only process Personal Data to the extent and in such manner as is necessary for the provision of the Services.
  - 16.1.3 implement appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. Such measures shall be appropriate to the harm that might result from unauthorised or unlawful processing or accidental loss, destruction or

damage to Personal Data and to the nature of the Personal Data to be protected. The Supplier shall store and carry out any transfers of Personal Data in a secure manner and such transfers are only on the express instructions of NMRN;

- 16.1.4 promptly notify NMRN if it received a request from an individual to have access to Personal Data or any other complaint or request relating to NMRN's obligations under Data Protection Legislation and provide full cooperation and assistance to NMRN in relation to such complaint or request.

## **17 CONFIDENTIALITY**

### **17.1 Each Party shall:**

- 17.1.1 use the Confidential Information of the other Party disclosed to it (by whoever disclosed) only for the proper performance of its duties under this Agreement without disclosing the Confidential Information to a third party;
- 17.1.2 not without the disclosing Party's written consent disclose or permit the disclosure of the Confidential Information disclosed to it;
- 17.1.3 only make such Records as are strictly necessary for the proper performance of its duties under this Agreement and clearly mark all Records as confidential;
- 17.1.4 take all necessary and proper security precautions (and at least as great as those it takes to safeguard its own confidential information) to safeguard every part of the Confidential Information to prevent it from being disclosed or otherwise made available to any third party except as permitted by this Agreement; and
- 17.1.5 without keeping any copies, delete or deliver to the disclosing Party, within three days of receipt of a request to do so made at any time, all Records.

- 17.2 The receiving Party may disclose Confidential Information of the disclosing Party to those of its employees, officers and professional advisers who need to have access to it. Where NMRN has consented to the disclosure of Confidential Information, it shall ensure that before disclosure is made, the receiving Party shall have obtained from such employees, officers and professional advisers binding obligations of confidence no less onerous than those set out in this Agreement. The receiving Party undertakes to enforce such undertakings and to be responsible for breaches of the undertakings by such persons.

### **17.3 The provisions of Clause 17.1 shall not apply to Confidential Information that:**

- 17.3.1 the receiving Party can prove, using written records, was known to the receiving Party or in its possession before that information was acquired from, or from some person on behalf of, the disclosing Party;

- 17.3.2 is in or enters the public domain through no wrongful default of the receiving Party or any person on its behalf, provided that this Clause 17.3.2 shall only apply from the date that the relevant Confidential Information enters the public domain;
- 17.3.3 the receiving Party receives from a third party without similar obligations of confidence in circumstances where the third party did not obtain that information as a result of a breach of an obligation of confidence;
- 17.3.4 is required to be disclosed by any Applicable Laws or by order of any Court of competent jurisdiction or any government body, agency or regulatory body (including Ofcom or the Financial Conduct Authority), provided that the receiving Party shall use all reasonable endeavours:
- (a) to give the disclosing Party as much written notice of the disclosure as it reasonably can to enable the other Party to seek a protective order or other action protecting the Confidential Information from disclosure;
  - (b) to furnish only that portion of the Confidential Information that it is legally obliged to disclose; and
  - (c) to consult with the disclosing Party with a view to agreeing the timing and content of any such disclosure;
- 17.3.5 the receiving Party can prove was independently developed by any of the receiving Party's employees who have not had any direct or indirect access to, or use or knowledge of, the Confidential Information imparted by the disclosing Party; or
- 17.3.6 because of its nature is not capable of protection as confidential information even if it remains secret.
- 17.4 The receiving Party shall notify the disclosing Party promptly if it becomes aware that any of the Confidential Information falls within the provisions of Clause 17.3.
- 17.5 If the receiving Party has reasonable grounds to believe that the disclosing Party is involved in activity that constitutes an offence under the Bribery Act 2010, it may disclose relevant Confidential Information to the Serious Fraud Office (or other relevant government body) without informing the disclosing Party of such disclosure.
- 17.6 If this Agreement is terminated, the receiving Party shall promptly return or destroy at the request of the disclosing Party all Confidential Information of the disclosing Party.
- 18 STEP IN RIGHTS**
- 18.1 NMRN may provide or engage and pay a third party to provide the Services or any part of the Services if the Supplier breaches this Agreement or fails to deliver the Services in accordance with this Agreement.

- 18.2 NMRN may deduct its reasonable costs in providing or procuring the provision of the Services pursuant to Clause 18.1 from any sums due to the Supplier, or recover those sums from the Supplier as a debt.
- 18.3 So that NMRN or a third party can provide the Services or any part of the Services, the Supplier shall make available to NMRN and the third party all relevant materials, including documentation, information, premises, data, employees, agents and sub-contractors and other assets previously used by the Supplier to provide the Services.
- 18.4 NMRN may require the Supplier to resume provision of the Services once NMRN is satisfied on reasonable grounds that the Supplier is able to resume provision of the Services in accordance with this Agreement.

## 19 **TERMINATION**

- 19.1 This Agreement (and/or any Statement of Work) may be terminated with immediate effect:
- 19.1.1 by NMRN by notice in writing to the Supplier if the Supplier is in material, persistent or continuing breach of any of its obligations under the terms of this Agreement or any Statement of Work and, where such breach is remediable, fails to remedy such breach within 30 days of a written notice to do so;
  - 19.1.2 by the Supplier by notice in writing to NMRN if NMRN is in material breach of this Agreement and, where such breach is remediable, fails to remedy such breach within 30 days of written notice to do so.
- 19.2 Either Party may (without prejudice to its other rights) terminate this Agreement and all Statements of Works by giving written notice to the other Party (the “**Defaulting Party**”) if any of the following occurs or arises:
- 19.2.1 the Defaulting Party stops or suspends, or declares any intention to stop or suspend, its business or payment of its debts or any class of its debts generally or is or becomes unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or otherwise becomes insolvent;
  - 19.2.2 a receiver or administrative receiver is appointed in respect of the Defaulting Party or the whole or any part of its assets or undertaking, the Defaulting Party requests the appointment of such a person or any step is taken to enforce any charge, mortgage or other security interest over all or any part of its assets or undertaking or any of the same is or becomes enforceable;
  - 19.2.3 a notice is issued for the purposes of convening a meeting to approve the placing of the Defaulting Party in administration or liquidation, or a petition is presented or an order made for the administration or liquidation of the Defaulting Party or the Defaulting Party otherwise becomes subject to dissolution proceedings;



- 19.2.4 a voluntary arrangement under section 1 of the Insolvency Act 1986 (as amended by the Insolvency Act 2000), a scheme of arrangement under section 895-901 of the Companies Act 2006 or any other arrangement, compromise or composition of the Defaulting Party's debts, or any class of its debts, is proposed or made by or with the Defaulting Party;
- 19.2.5 a judgment, order or award made against the Defaulting Party is outstanding or if any distress, execution, sequestration or similar process is levied on or commenced against any of the assets of the Defaulting Party; or
- 19.2.6 any circumstance arises or event occurs in relation to the Defaulting Party or any of its assets in any country or territory in which it carries on business or to the jurisdiction of whose courts it or any of its assets is subject which corresponds with or has an effect equivalent or similar to any of those stated in Clauses 19.2.1 to 19.2.5 (inclusive),

and any such termination shall take effect either immediately or at such other date as may be specified in the written notice.

- 19.3 If at any time during the term of this Agreement the Supplier is subject to a Change of Control, NMRN shall be entitled to terminate this Agreement and all Statement of Works absolutely without liability by notice in writing having immediate effect. For the purposes of this Agreement, "**Change of Control**" means a change of Control of the Supplier.
- 19.4 NMRN may terminate this Agreement and/or a Statement of Work for convenience at any time by giving the Supplier not less than thirty (30) days' prior written notice.

## 20 **CONSEQUENCES OF TERMINATION OF THE AGREEMENT**

- 20.1 The expiry or the termination of this Agreement shall, if NMRN so elects and at NMRN's sole discretion, be without prejudice to the continuation in full force and effect of all or any Statements of Work in effect as at the date of such expiry or termination.
- 20.2 If this Agreement is terminated or for any reason expires:
  - 20.2.1 the provisions of Schedule 5 shall come into effect with regard to the Services, or the particular Services so terminated (as the case may be), and each Party shall co-operate fully with the other and any Future Supplier to ensure an orderly migration of the Services;
  - 20.2.2 each Party shall cease using the other Party's Confidential Information in relation to this Agreement and/or the terminated Statement of Work;
  - 20.2.3 each Party shall on written request return to the other Party all property and Confidential Information belonging to the other Party that is in its possession, custody or control;

- 20.2.4 each Party shall, at the other Party's sole option and on written request, either return or destroy all records, documentation, data, and any other information and all copies thereof which are owned or licensed by the other Party (unless such licence is expressly stated to be perpetual) in relation to this Agreement, and on the other Party's request, such Party shall certify in writing that it has complied with this Clause 20.2.4; and
- 20.2.5 the provisions of Clause 23 shall apply.
- 20.3 The termination of this Agreement for any reason whatsoever, or its expiry:
- 20.3.1 shall not affect any provision comprised in this Agreement which is expressed to survive or to operate in the event of the termination of this Agreement (which shall include Clauses 1, 4, 10, 12, 14, 15, 16, 17, 19, 22, and 23); and
- 20.3.2 shall not prejudice or affect the rights of either Party against the other in respect of any breach of this Agreement or a Statement of Work or in respect of any monies payable by one Party to the other in respect of any period prior to termination or expiry. This Clause 20.3.2 shall not affect any rights contained in this Agreement which expressly allows a Party to withhold payment in specified circumstances.
- 21 CONSEQUENCES OF TERMINATION OF A STATEMENT OF WORK**
- 21.1 If a Statement of Work is terminated or for any reason expires (but the Agreement is not terminated or has not for any reason expired):
- 21.1.1 the provisions of Schedule 5 shall come into effect with regard to the Services, or the particular Services so terminated (as the case may be), and each Party shall co-operate fully with the other and any Future Supplier to ensure an orderly migration of the Services;
- 21.1.2 each Party shall cease using the other Party's Confidential Information in relation to the terminated Statement of Work;
- 21.1.3 each Party shall on written request return to the other Party all tangible property and Confidential Information belonging to the other Party that is in its possession, custody or control in relation to the terminated Statement of Work;
- 21.1.4 each Party shall, at the other Party's sole option and on written request, either return or destroy all records, documentation, data, and any other information and all copies thereof which are owned or licensed by the other Party (unless such licence is expressly stated to be perpetual) in relation to the terminated Statement of Work, and on the other Party's request, such Party shall certify in writing that it has complied with this Clause 21.1.4; and
- 21.1.5 the provisions of Clause 23 shall apply.

21.2 The termination of a Statement of Work for any reason whatsoever, or its expiry:

21.2.1 shall not affect any provision comprised in this Agreement which is expressed to survive or to operate in the event of the termination of a Statement of Work (which shall include Clauses 1, 4, 10, 12, 14, 15, 16, 17, 19, 22, and 23); and

21.2.2 shall not prejudice or affect the rights of either Party against the other in respect of any breach of this Agreement or that Statement of Work or in respect of any monies payable by one Party to the other in respect of any period prior to termination or expiry. This Clause 21.2.2 shall not affect any rights contained in this Agreement which expressly allows a Party to withhold payment in specified circumstances.

## 22 **LIABILITY**

22.1 Neither Party shall be liable to the other for any indirect or consequential loss or damage whatsoever (even if that Party was aware of the possibility of such loss or damage to the other).

22.2 Subject to Clause 22.4, the liability of each Party in respect of each incident or series of connected incidents under or in connection with the Agreement or each Statement of Work (as applicable), whether arising from contract, negligence or otherwise, will be limited to the higher of:

22.2.1 £10,000,000;

22.2.2 200% of the amounts paid and/or payable during the term of the Agreement or that particular Statement of Work (as applicable); or

22.2.3 the amount that should be recoverable by that Party under the policies of insurance required by Clause 15.

22.3 The limitations and exclusions of liability set out in Clauses 22.1 and 22.2 shall not apply in respect of any liability which may arise under the heads of loss expressly included at Clause 22.4 nor under any of the following clauses:

22.3.1 Clause 14;

22.3.2 Clause 15;

22.3.3 Clause 16;

22.3.4 Clause 17; and

22.3.5 Clause 23.

22.4 Nothing in this Agreement excludes or limits the liability of either Party for the following:

22.4.1 NMRN's obligation to pay the Charges;

- 22.4.2 death or personal injury caused as a result of its negligence;
- 22.4.3 the Supplier's repudiatory breach of this Agreement;
- 22.4.4 liability arising out of fraudulent misrepresentation or fraudulent concealment;
- 22.4.5 any indemnity granted under this Agreement (including those in Clauses 14 and 23);
- 22.4.6 any physical damage to any NMRN property (regardless of whether such loss or damage is direct, indirect, consequential or otherwise);
- 22.4.7 any wilful misconduct or abandonment of the Services by the Supplier and/or the Supplier Employees; and
- 22.4.8 any other liability which cannot be excluded or limited by Applicable Laws.

## 23 **EMPLOYMENT LIABILITIES**

### 23.1 For the purposes of this Agreement:

- 23.1.1 **"Termination Cost"** means pay and benefits for any period of notice, statutory and/or contractual redundancy pay and any other payment which the Supplier agrees to or is required to pay arising on the termination of any Supplier Employee including any compensation awarded by any court or tribunal in respect of any termination or any settlement payment associated with such termination or any related proceedings;
- 23.1.2 **"Termination Event"** means the date of notice of termination of this Agreement and/or a particular Statement of Work or otherwise the commencement of the period of 6 months prior to the expiry of this Agreement; and
- 23.1.3 **"Termination Services"** means the services set out in paragraph 2 of Schedule 5.

- 23.2 The Supplier shall be solely responsible for the direct payment of any salary, bonus or other emoluments to the Supplier Employees.
- 23.3 The Supplier shall be responsible for the payment of all tax and applicable National Insurance contributions in respect of the Supplier Employees and shall indemnify and keep indemnified NMRN in respect of such payments as well as any other Losses which may arise due to any failure to pay or delay in making such payments to Her Majesty's Revenue and Customs.
- 23.4 Following the occurrence of a Termination Event, the Supplier will not carry out a Prohibited Act without the prior written consent of NMRN.

- 23.5 The Supplier shall be solely responsible for any Termination Cost in relation to the Supplier Employees and agrees to indemnify and keep indemnified NMRN and any Future Supplier in respect of the same.
- 23.6 The Supplier shall indemnify and keep indemnified NMRN and any Future Supplier in full for and against all Losses howsoever arising which are incurred or suffered by NMRN or any Future Supplier in relation to any claim made by or in respect of the Supplier Employees and any person employed or formerly employed or engaged or formerly engaged by the Supplier for which it is alleged NMRN or any Future Supplier may be liable by virtue of this Agreement and/or the Regulations, whether following a Relevant Transfer or not.
- 23.7 The Parties agree that following a Termination Event, they will both comply with the requirements of the Regulations if there is deemed to be a Relevant Transfer.
- 23.8 If there is deemed to be a Relevant Transfer following a Termination Event, the Supplier shall perform and discharge all of its obligations in respect of the Supplier Employees and their representatives for their own account up to and including the date of the Relevant Transfer and shall indemnify NMRN together with any Future Supplier, in full against any Losses arising from or in connection with:
- 23.8.1 any failure by the Supplier to perform and discharge its obligations under this Clause 23.8; and/or
- 23.8.2 any act or omission of the Supplier in respect of any of the Supplier Employees at any time up to the date of a Relevant Transfer.

## 24 **AUDIT**

- 24.1 The Supplier will maintain, in line with Good Industry Practice, complete, accurate and up to date records and supporting documents in connection with this Agreement (including the Supplier's compliance and any amounts payable by NMRN) ("**Audit Records**"). The Supplier will retain the Audit Records for the term of this Agreement and thereafter for as long as is required by Applicable Laws (and not less than a period of at least six years after each SOW End Date).
- 24.2 The Supplier will provide NMRN or NMRN's nominated advisor at no charge, with all reasonable:
- 24.2.1 access to and copies of the Audit Records;
- 24.2.2 access to all relevant information, premises, data, Representatives and assets at all locations from which the Supplier's obligations are being carried out; and
- 24.2.3 assistance in carrying out the audit.
- 24.3 If an audit reveals:

24.3.1 a defect in the performance of the Supplier's obligations, the Supplier will promptly carry out such action as NMRN reasonably require to correct that defect, at no charge to NMRN; or

24.3.2 any overcharge, the Supplier will repay the amount of the overcharge to NMRN;

and in each case, the Supplier will also reimburse NMRN's reasonable costs of the audit. The Supplier will pay any amounts the Supplier owes to NMRN under this Clause 24.3 within 30 days of the audit results being notified to the Supplier.

## 25 **BRIBERY**

25.1 For the purposes of this Agreement:

25.1.1 **"Anti-Corruption Policy"** means:

- (a) standards at least equivalent to those in NMRN's bribery and corruption policy; and
- (b) any other policy and procedure of ours in relation to corporate gifts, entertainment, and bribery issued or made available to the Supplier by NMRN from time to time; and

25.1.2 **"Malpractice"** means any malpractice including any fraud or breach of Anti-Corruption Policy.

25.2 The Supplier will comply, and use all reasonable endeavours to ensure the Supplier's Representatives comply, with the Anti-Corruption Policy and with all applicable anti-bribery and anti-corruption legislation.

25.3 Where the Supplier have reasonable grounds to believe that there has been any Malpractice by the Supplier, any of the Supplier's Representatives, or by any of NMRN's Representatives, the Supplier will promptly notify NMRN.

25.4 Without prejudice to any other remedy NMRN may have, if NMRN has reasonable grounds to believe that the Supplier or any of the Supplier's Representatives has breached this Clause 25, NMRN may:

25.4.1 suspend the Services pending an investigation;

25.4.2 withhold payment of any Charges falling due to the Supplier; and/or

25.4.3 terminate this Agreement with immediate effect by notice to the Supplier.

25.5 If NMRN exercises NMRN's right in Clauses 25.4.1 and/or 25.4.2, NMRN will permit the Supplier to resume delivery of the Services if it is established within 1 month that the Supplier or the Supplier's Representatives were not responsible for any Malpractice and NMRN will then pay the Supplier any withheld amounts.

## **26 ASSIGNMENT AND SUBCONTRACTING**

- 26.1 The Supplier shall not, without NMRN's prior written consent, assign, sublicense, subcontract, mortgage or otherwise transfer or dispose of the whole or any part of this Agreement. Any consent, if given, shall not affect the Supplier's obligations or liabilities under this Agreement.
- 26.2 The Supplier shall not engage sub-contractors (other than those set out in a Statement of Work) to provide any material part of the Services without NMRN's prior written consent.
- 26.3 The Supplier shall procure that any sub-contractors engaged by it in the provision of the Services agree to terms equivalent to Clause 9 in respect of their personnel.
- 26.4 The Supplier shall allow NMRN access to its permitted sub-contractors for technical discussions provided that the proposed agenda for such discussions and the outcome shall be promptly notified to the Supplier. NMRN shall notify any changes or proposals identified during such discussions to the Supplier who shall process them in accordance with the Change Control Procedure.
- 26.5 NMRN can assign or novate this Agreement and/or any Statement of Work (in whole or part) to any entity which takes over responsibility for all or part of NMRN's business or any other third party. If it does, the Supplier shall promptly execute any document reasonably required by NMRN to effect the novation.

## **27 ANNOUNCEMENTS**

The Supplier shall not make any announcement in relation to this Agreement or otherwise publicise its existence or its contents or use or refer to NMRN in any disclosure without the prior written consent of NMRN.

## **28 GENERAL**

### **28.1 Amendments**

No amendment of this Agreement shall be effective unless it is in writing and signed by both Parties.

### **28.2 Waivers and Remedies**

28.2.1 Except as otherwise stated in this Agreement, the rights and remedies of each Party under this Agreement:

- (a) are in addition to and not exclusive of any other rights or remedies under this Agreement or the general law; and
- (b) may be waived only in writing and specifically.

28.2.2 Delay in exercising or non-exercise of any right under this Agreement is not a waiver of that or any other right.

28.2.3 Partial exercise of any right under this Agreement shall not preclude any further or other exercise of that right or any other right under this Agreement.

28.2.4 Waiver of a breach of any term of this Agreement shall not operate as a waiver of breach of any other term or any subsequent breach of that term.

### **28.3 Time for payment under Indemnities**

A Party giving an indemnity under this Agreement shall be liable to make payment under the indemnity on demand from the time when the liability being indemnified is incurred by the other Party, whether or not the other Party has satisfied or discharged the liability.

### **28.4 Severance**

28.4.1 If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect the legality, validity or enforceability in that jurisdiction (or any other jurisdiction) of any other provision of this Agreement.

28.4.2 Whilst the Parties consider the provisions contained in this Agreement reasonable, if any one or more of the provisions are adjudged alone or together to be illegal, invalid or unenforceable, the Parties shall negotiate in good faith to modify any such provision(s) so that to the greatest extent possible they achieve the same effect as would have been achieved by the invalid or unenforceable provision(s).

### **28.5 Entire Agreement**

28.5.1 This Agreement:

- (a) constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement; and
- (b) supersedes and extinguishes any prior drafts, agreements, undertakings, understandings, promises or conditions, whether oral or written, express or implied between the Parties relating to such subject matter.

28.5.2 Each Party acknowledges to the other that it has not been induced to enter into this Agreement by nor has it relied upon any representation, promise, assurance, warranty or undertaking (whether in writing or not) by or on behalf of the other Party or any other person save for those contained in this Agreement. Accordingly, each of the Parties acknowledges and agrees that the only remedy available to it in respect of the subject matter of this Agreement shall be for breach of contract under the terms of this Agreement and it shall have no right of action against any other Party in respect of any such representation, promise, assurance, warranty or undertaking.



28.5.3 This Clause shall not exclude any liability which either Party would otherwise have to the other or any right which either of them may have to rescind this Agreement in respect of any statements made fraudulently by the other prior to the execution of this Agreement or any rights which either of them may have in respect of fraudulent concealment by the other.

28.5.4 In the event of a conflict between any of the terms of this Agreement, the conflict shall be resolved according to the following descending order of priority, (i) the clauses of the relevant Statement of Work, (ii) the clauses of this Agreement, then (iii) the Schedules.

## **28.6 No Partnership/Agency**

Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the Parties, or to authorise either Party to act as agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **28.7 Rights of Third Parties**

A person who is not a Party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any provision of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## **28.8 Notices**

28.8.1 All notices between the Parties with respect to this Agreement and/or a Statement of Work shall be in writing and signed by or on behalf of the Party giving it. In the case of any notice given by email, the notice shall state that it is given as a notice under this Agreement and/or a Statement of Work and an email so marked shall be deemed to be signed for the purposes of this clause.

28.8.2 Any notice referred in Clause 28.8.1 must be served:

- (a) by delivering it by hand; or
- (b) by first class pre-paid post or special or recorded delivery (or other "proof of delivery" or "proof of posting" service that Royal Mail may from time to time offer;
- (c) by email, provided that a copy is also sent by post as provided in clause (b),

28.8.3 Notices shall be sent to the address and for the attention of the relevant Party whose details are set out in this Clause 28.8 (or as otherwise notified from time to time):

**For NMRN**

Address: HM Naval Base (P66), Portsmouth, Hampshire PO1 3NH

Marked for the attention of: Andrew Baines

Email: Andrew.Baines@NMRN.org.uk

**For the Supplier**

Address: [please insert]

Marked for the attention of: [please insert].

28.8.4 Notices shall be deemed to have been received:

- (a) if delivered by hand, on the day of delivery;
- (b) if sent by first class pre-paid post or special or recorded delivery (or other “proof of delivery” or “proof of posting” service that Royal Mail may from time to time offer), two Working Days after posting, exclusive of the day of posting; and
- (c) if sent by email, at the time of transmission unless sent after 17.00 in the place of receipt in which case it shall be deemed to have been received on the next business day in the place of receipt (provided that a copy has also been sent by post as set out in Clause 28.8.2(b)).

28.8.5 Any notice or communication given under this Agreement shall not be validly served if sent by email or text messaging via mobile phone.

**28.9 Governing Law**

This Agreement and any dispute or claim arising out of or in connection with it (including any non-contractual claims or disputes) shall be governed by and construed in accordance with the laws of England and Wales.

**28.10 Jurisdiction**

In relation to any legal action or proceedings (a) arising out of or in connection with this Agreement or its implementation or effect or (b) relating to any non-contractual obligations arising out of or in connection with this Agreement, each of the Parties irrevocably submits to the exclusive jurisdiction of the English courts and waives any objection to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum.

Signed for and on behalf of )  
The Supplier: )

\_\_\_\_\_  
(Signature of director)  
Director

\_\_\_\_\_  
(name of director)

Signed for and on behalf of )  
NMRN: )

\_\_\_\_\_  
(Signature of director)  
Director

\_\_\_\_\_  
(name of director)

## **SCHEDULE 1      INSURANCE**

1      The insurance coverage to be maintained by the Supplier is as follows:

1.1      All risks property damage insurance

To cover the Supplier's and the Supplier Employees' operations and to be written on a replacement cost basis for all materials, plant, machinery and property of whatever nature incorporated or for incorporation in, or use in connection with the Services for the full sum payable by NMRN under each Statement of Work with Losses, if any, payable to NMRN as their interest may appear or as they may direct.

1.2      Comprehensive general liability/third party insurance

To cover legal liability for all operations of the Supplier and the Supplier Employees to be effected for a combined single limit of not less than £10 million in respect of any one occurrence, the number of occurrences being unlimited in any annual period of insurance but £10 million in respect of any one occurrence to include contractual and product liability cover, cover for death or injury to third parties and loss or damage to property of third parties and pollution liability;

1.3      Employer's liability insurance

To cover claims presented by or on behalf of employees or servants of the Supplier and related to employer's liability whether the claim arises under statute or otherwise. The minimum limit of liability shall be not less than £10 million per calendar year.

1.4      Ship Repairers Legal Liability Insurance

To cover claims in respect of all sums that they may become legally liable to pay to NMRN (including claimant's costs and expenses) as damages in respect of accidental;

- (a)      death or bodily injury, sickness, illness or disease contracted by any person;
- (b)      loss or damage to property including to the vessel as a direct result of the work being performed under this contract;
- (c)      interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities;

during the period of insurance and arising out of or in connection with any major restoration task relating to the Vessel. The limit of liability shall be not less than £10 million in respect of any one occurrence, the number of occurrences being unlimited.

## **SCHEDULE 2            CHARGES**

The Charges are as follows:

[INSERT STANDARD CHARGES DETAILS]

### SCHEDULE 3      STATEMENT OF WORK

#### 1      REQUEST FOR SERVICES TEMPLATE

<b>Service Request under Agreement between NMRN and [insert Supplier name] dated [insert date]</b>	
Date	
Description of the specific services, software and/or hardware required by NMRN (including any Technical Requirements)	
Timetable for delivery of the services, software and/or hardware	
Description of any specific milestones which NMRN requires the Supplier to meet	
Details of any Key Supplier Personnel NMRN wish to be deployed in the delivery of the services, software or hardware	
Details of any materials provided for additional information	
NMRN business owner	

#### 2      STATEMENT OF WORK TEMPLATE

<b>Statement of Work under Agreement between NMRN and [insert Supplier name] dated [insert date]</b>	
Date	
Project name	
Description of Services, Software and/or Hardware to be provided under this Statement of Work (including the Technical Requirements) <b>[please append relevant document to SOW if necessary]</b>	
Timetable	SOW Start Date:

	SOW End Date:
Charges	
PO Number	
Supplier Manager	
Key Supplier Personnel	
Acceptance Procedure and Criteria	
Liquidated damages for delays	[The Supplier shall pay any liquidated damages or make any refund due to NMRN within 30 days of the end of the month during which they accrued.]
Additional Terms	

## **SCHEDULE 4            CHANGE CONTROL**

This Schedule 4 describes the processes under which all changes shall be addressed under this Agreement and each Statement of Work.

In this Schedule the following terms shall have the following meanings:

### **“Change”**

means any variation, revision or alteration to this Agreement or any Statement of Work (including the introduction of a new service) which shall be introduced in accordance with the Change Control Procedure set out in this Schedule 4;

### **“Change Proposal”**

means a description of the proposed Change which shall include, where appropriate, feasibility, impact on the Services, impact on the Charges, resource requirements, implementation timescale and any such other matter which is relevant to the proposed Change; and

### **“Change Request”**

means a request made by either Party for a Change.

## **1            GENERAL PROVISIONS**

- 1.1 Neither Party shall introduce a Change except in accordance with the Change Control Procedure set out in this Schedule. Changes shall only be deemed agreed when the authorised representative of NMRN gives its authorisation in writing to a Change Proposal.
- 1.2 The Supplier shall not unreasonably withhold or delay its agreement to any Change. NMRN may agree or not agree to any Change in its absolute discretion.
- 1.3 The Supplier shall be responsible for progressing all Changes in accordance with timescales agreed between NMRN and Supplier.
- 1.4 The Supplier shall provide NMRN with a summary of Changes requested including a status report of Changes in progress.
- 1.5 Where a Change impacts on the Services, the cost of the Change may vary the Charges for the Services set out in this Agreement or the Statement of Work, provided that such Change has been agreed by both Parties in accordance with this Change Control Procedure.

## **2            CHANGE PROCEDURE**

- 2.1 To initiate a Change a Party shall submit to the other a Change Request containing a reasonably sufficient level of detail to properly describe the requested Change.



- 2.2 The Supplier shall provide an initial response to any Change Request within ten (10) Working Days, which shall confirm the time required for the Supplier to produce a Change Proposal.
- 2.3 Following consideration of the Change Request, the Supplier shall provide NMRN with the Change Proposal as soon as reasonably practicable and in any event within fifteen Working Days of the Change Request.
- 2.4 The Supplier shall amend the Change Proposal as reasonably requested by NMRN during the process of agreeing a Change.
- 2.5 NMRN and the Supplier shall work together to manage the Change once agreed and any subsequent implementation.
- 2.6 Unless otherwise agreed by NMRN (in its absolute discretion) no charges shall be payable for the consideration and agreement of any Change.

## **SCHEDULE 5                      EXIT MANAGEMENT**

### **1                      COMMENCEMENT AND COMPLETION OF THE TERMINATION SERVICES**

1.1        In the event of expiry or termination of this Agreement and/or a particular Statement of Work for whatever reason, the Parties shall meet to agree in good faith:

1.1.1       a timetable for the provision of the Termination Services (set out in paragraph 2 below), which shall commence no later than two weeks following service of the notice to terminate this Agreement and/or a Statement of Work, or three months before the expiry of this Agreement and/or the Statement of Work and shall be completed no later than 14 days thereafter; and

1.1.2       a timetable for the migration of the Services to a Future Supplier, such that migration shall be completed by the end of the migration period, as agreed between the Parties.

1.2        The timetables prepared pursuant to paragraph 1.1 shall include:

1.2.1       proposed cut over dates for the hand-over of the supply of each element of the Services;

1.2.2       provision for redirection of billing and billing cut off, and related apportionment issues;

1.2.3       any dependencies of Supplier and NMRN on achieving those cut over dates; and

1.2.4       such other details as the Parties consider appropriate.

1.3        In preparing the timetables detailed in paragraph 1.1 above, the Parties shall have regard to:

1.3.1       the need to minimise any disruption to NMRN's ability to use the Services during the migration period; and

1.3.2       migration of key technical skills.

### **2                      TERMINATION SERVICES**

The Termination Services shall comprise the following:

#### **2.1                    Tendering Assistance**

2.1.1       The Supplier shall within a reasonable time of a request from NMRN provide to NMRN:

(a)        such information in its possession or control relating to the Services as is reasonably necessary to enable NMRN to prepare an invitation to tender for third parties interested in providing such services to NMRN; and

- (b) such reasonable co-operation as is necessary to enable potential Future Suppliers to perform a technical verification or due diligence exercise in relation to the manner in which Services are provided.
- 2.1.2 For the avoidance of doubt, the Supplier has no obligation to assist in NMRN's evaluation of tenders submitted by potential Future Suppliers or to play any part in the negotiation process.
- 2.1.3 NMRN shall not disclose any of the items referred to in paragraph 2.1.1 to any Future Suppliers unless that Future Supplier has signed a confidentiality undertaking in a form no less onerous than the terms of Clause 17. In the event of a suspected breach by such Future Supplier of such undertaking (as it relates to information of the Supplier), NMRN shall promptly inform the Supplier of the fact and nature of such breach and the information supplied to such Future Supplier and their identity.
- 2.1.4 **Supply of information, data and records** - The Supplier shall:
  - (a) supply to NMRN an up to date copy of database information both electronic (Excel or a similar format) and hard copy;
  - (b) supply to NMRN details of the resource requirements used by the Supplier to provide the Services;
  - (c) document the transfer of knowledge and management systems from the Supplier to NMRN, coupled with final handover sign off; and
  - (d) agree a procedure with NMRN for redirecting billing and billing cut-off, and related apportionment issues; and
  - (e) release any source code and related Documentation for any Bespoke Software.
- 2.1.5 **Access to staff** - The Supplier shall afford to NMRN (or a Future Supplier, as the case may be) reasonable access to the Supplier Employees within normal working hours who have been engaged in the provision of the Services and as NMRN may reasonably require in order to understand fully the manner in which the Services are delivered to NMRN.
- 2.1.6 **Assignment/novation of contracts and delivery of assets** - The Supplier shall:
  - (a) assign or novate contracts for the provision of Services to NMRN or a Future Supplier nominated by NMRN, where requested to do so by NMRN; and
  - (b) deliver to NMRN assets owned by NMRN which have been made available to Supplier within thirty (30) days.

### **3 PROVISION OF THE SERVICES DURING THE MIGRATION PERIOD**

- 3.1 The Supplier's obligations to provide Termination Services pursuant to this Schedule are without prejudice to its continuing obligations to provide the Services during the migration period until the cut over date for each element of the Services agreed pursuant to paragraph 1.1.2 of this Schedule 5.
- 3.2 In addition to its obligations to provide the Services in accordance with this Agreement and any Statement of Work during the migration period, the Supplier agrees that with effect from the date the notice to terminate this Agreement and/or the Statement of Work is served and during the migration period it shall not, without the prior written consent of NMRN:
- 3.2.1 make any change to the manner in which the Services are provided, except where such change is made at the request of NMRN; or
  - 3.2.2 enter into any new agreement for the provision of equipment or services related to the provision of the Services.

### **4 NO CHARGE FOR TERMINATION SERVICES**

The Termination Services shall be provided by the Supplier at no additional charge to NMRN.

