

**DATED 02/12/2016**

**MINISTRY OF DEFENCE**

**and**

**ACCIDON'T LIMITED**

**LICENCE ACQUISITION TRAINING CONTRACT**

**Lot 6 – Delivery of Category B / B+E LAT (nationally at Phase 2 training establishments)**

**Contract Ref: RM3805 (Lot 6)**

**MoD Contract Number: CCDE16AAB (SO18369) (Lot 6)**

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This agreement is made on **01/01/2017**.

**BETWEEN:**

- (1) The Secretary of State for Defence, acting on behalf of the Crown (the "**Authority**");
- (2) **AcciDON'T Limited** which is a company registered in **Scotland** under company number **SC 196265** and whose registered office is at **Strathleven House, Vale Of Leven Industrial Estate, Dumbarton, G82 3PD** (the "**Supplier**").

**RECITALS:**

- A The Authority placed a contract notice 2016/S 179-321604 on 12/09/2016 (the "**OJEU Notice**") in the Official Journal of the European Union seeking tenders from providers of driving licence acquisition training services interested in entering into a contract for the supply of such services to the Authority.
- B NOT USED
- C On 14/09/2016 the Authority issued an invitation to tender (the "**Invitation to Tender**") for the provision of Licence Acquisition Training.
- D In response to the Invitation to Tender, the Supplier submitted the Tender to the Authority on 12/10/2016 through which it represented to the Authority that it is capable of delivering the Services in accordance with the Authority's requirements as set out in the Invitation to Tender and, in particular, the Supplier made representations to the Authority in the Tender in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.
- E On the basis of the Tender, the Authority selected the Supplier to enter into an agreement to provide the Services to the Authority from time to time in accordance with this Contract.

**A. PRELIMINARIES**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Contract, unless the context otherwise requires:
  - 1.2.1 the singular includes the plural and vice versa;
  - 1.2.2 reference to a gender includes the other gender and the neuter;
  - 1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
  - 1.2.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
  - 1.2.5 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
  - 1.2.6 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;

- 1.2.7 references to “**representations**” shall be construed as references to present facts, to “**warranties**” as references to present and future facts and to “**undertakings**” as references to obligations under this Contract;
- 1.2.8 references to “**Clauses**” and “**Schedules**” are, unless otherwise provided, references to the clauses and schedules of this Contract and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear; and
- 1.2.9 the headings in this Contract are for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 1.3 In the event of and only to the extent of any conflict between the Clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
  - 1.3.1 MoD Terms and Conditions listed in Schedule 21 (MoD DEFCONS and DEFFORMS);
  - 1.3.2 the Additional Clauses set out in Schedule 22 (Additional Clauses);
  - 1.3.3 the Clauses;
  - 1.3.4 the Schedules (except Schedule 19 (Tender), Schedule 21 (MOD DEFCONS and DEFFORMS), and Schedule 22 (Additional Clauses));
  - 1.3.5 Schedule 19 (Tender).

## 2. DUE DILIGENCE

- 2.1 The Supplier acknowledges that:
  - 2.1.1 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Contract;
  - 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
  - 2.1.3 it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
  - 2.1.4 it has undertaken all necessary due diligence and has entered into this Contract in reliance on its own due diligence alone.
- 2.2 The Supplier shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:
  - 2.2.1 any misinterpretation of the requirements of the Authority in this Contract;
  - 2.2.2 any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or
  - 2.2.3 failure by the Supplier to undertake its own due diligence.
- 2.3 The Supplier confirms it has had the opportunity to review the MoD Terms and Conditions and has raised all due diligence questions in relations to those documents with the Authority prior to the Commencement Date.
- 2.4 Where required by the Authority, the Supplier shall take such actions as are necessary to ensure that the MoD Terms and Conditions constitute legal, valid, binding, and enforceable obligations on the Supplier.

## 3. REPRESENTATIONS AND WARRANTIES

- 3.1 Each Party represents and warranties that:

- 3.1.1 it has full capacity and authority to enter into and to perform this Contract;
  - 3.1.2 this Contract is executed by its duly authorised representative;
  - 3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Contract; and
  - 3.1.4 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).
- 3.2 The Supplier represents and warrants that:
- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
  - 3.2.2 it has all necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into this Contract;
  - 3.2.3 its execution, delivery and performance of its obligations under this Contract does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;
  - 3.2.4 as at the Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, its Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract;
  - 3.2.5 if the Call Off Contract Charges payable under this Call Off Contract exceed or are likely to exceed five (5) million pounds, as at the Commencement Date it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
  - 3.2.6 it has and shall continue to have all necessary rights in and to the Third Party IPR, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Contract including the receipt of the Services by the Authority;
  - 3.2.7 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Authority's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Authority;
  - 3.2.8 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
  - 3.2.9 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and

- 3.2.10 for the Contract Period and for a period of twelve (12) months after the termination or expiry of this Contract, the Supplier shall not employ or offer employment to any staff of the Authority which have been associated with the provision of the Services without Approval or the prior written consent of the Authority, which shall not be unreasonably withheld.
- 3.3 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Contract.
- 3.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 3.1 and 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.5 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of breach of that provision by the Supplier which constitutes a material Default.

#### **4. NOT USED**

#### **5. CYBER ESSENTIALS SCHEME CONDITION**

- 5.1 Where the Authority has notified the Supplier that the award of this Contract is conditional upon receipt of a valid Cyber Essentials Scheme Basic Certificate equivalent, then on or prior to the execution of this Contract, as a condition for the award of this Contract, the Supplier shall deliver to the Authority evidence of the same.
- 5.2 Where the Supplier continues to Process Cyber Essentials Scheme Data during the Contract Period the Supplier shall deliver to the Authority evidence of renewal of a valid Cyber Essentials Scheme Basic Certificate or equivalent on each anniversary of the first applicable certificate obtained by the Supplier under Clause 5.1.
- 5.3 Where the Supplier is due to Process Cyber Essentials Scheme Data after the Commencement Date but before the end of the Contract Period, the Supplier shall deliver to the Authority evidence of:
- 5.3.1 a valid Cyber Essentials Scheme Basic Certificate or equivalent (before the Supplier Processes any such Cyber Essentials Scheme Data); and
- 5.3.2 renewal of a valid Cyber Essentials Scheme Basic Certificate or equivalent on each anniversary of the first Cyber Essentials Scheme certificate obtained by the Supplier under Clause 5.3.1.
- 5.4 In the event that the Supplier fails to comply with Clauses 5.2 or 5.3 (as applicable), the Authority reserves the right to terminate this Contract for material Default.

#### **B. DURATION OF CONTRACT**

#### **6. CONTRACT PERIOD**

- 6.1 This Contract shall take effect on the Commencement Date and shall expire, unless it is terminated earlier in accordance with the terms of this Contract or otherwise by operation of Law, either:
- 6.1.1 at the end of the Initial Period; or
- 6.1.2 where the Authority elects to extend the Initial Period in accordance with Clause 6.2 below, at the end of the Extension Period.
- 6.2 The Authority may extend the duration of this Contract for any period or periods up to a maximum of twelve (12) months in total from the expiry of the Initial Period by giving the Supplier no less than three (3) Months' written notice.



## **C. CONTRACT PERFORMANCE**

### **7. IMPLEMENTATION PLAN**

#### **7.1 Compliance with the Implementation Plan**

- 7.1.1 The Supplier shall comply with the Implementation Plan set out in Schedule 4 (Implementation Plan, Authority Responsibilities and Key Personnel).
- 7.1.2 The Supplier shall perform each of the Deliverables identified in the Implementation Plan by the applicable date assigned to that Deliverable in the Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is Achieved on or before its Milestone Date.
- 7.1.3 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and any other requirements of the Authority as set out in this Contract and report to the Authority on such performance.
- 7.1.4 Changes to the Implementation Plan shall only be made in accordance with the Variation Procedure. The Supplier shall not attempt to postpone any of the Milestones using the Variation Procedure or otherwise (except in the event of an Authority Cause which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).
- 7.1.5 Where so specified by the Authority in the Implementation Plan or elsewhere in this Contract, time in relation to compliance with a date, Milestone Date or period shall be of the essence and failure of the Supplier to comply with such date, Milestone Date or period shall be a material Default unless the Parties expressly agree otherwise.

#### **7.2 Formation of the Implementation Plan**

- 7.2.1 Where the Authority requires an Implementation Plan (or parts thereof) to be provided in draft by the Supplier prior to the commencement of the provision of the Services, the Supplier's draft must contain information at the level of detail necessary to manage the implementation stage effectively and as the Authority may require. The draft implementation plan shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.
- 7.2.2 The Supplier shall submit the draft implementation Plan to the Authority for Approval (such decision of the Authority to Approve or not shall not be unreasonably delayed or withheld) within a period of 5 working days from the Commencement Date. The Parties agree that the Approved Implementation Plan shall be the Implementation Plan for the purposes of Schedule 4 (Implementation Plan, Authority Responsibilities, and Key Personnel).
- 7.2.3 Subject to Clause 7.1.4, the Supplier shall keep the Implementation Plan under review in accordance with the Authority's instructions and ensure that it is maintained and updated on a regular basis as may be necessary to reflect the then current state of the provision of the Services. The Authority shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.

#### **7.3 Rectification of Delay in Implementation**

- 7.3.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Contract:
  - (a) it shall:
    - (i) notify the Authority as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay;
    - (ii) include in its notification an explanation of the actual or anticipated impact of the Delay;

- (iii) comply with the Authority's instructions in order to address the impact of the Delay or anticipated Delay; and
- (iv) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

## **8. SERVICES**

### **8.1 Provision of the Services**

- 8.1.1 The Supplier acknowledges and agrees that the Authority relies on the skill and judgment of the Supplier in the provision of the Services and the performance of its obligations under this Contract.
- 8.1.2 The Supplier shall ensure that the Services:
  - (a) comply in all respects with the Authority's description of the Services in Schedule 2 (Services) or elsewhere in this Contract; and
  - (b) are supplied in accordance with the provisions of this Contract and the Tender.
- 8.1.3 The Supplier shall perform its obligations under this Contract in accordance with:
  - (a) all applicable Law;
  - (b) Good Industry Practice;
  - (c) the Standards; and
  - (d) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 8.1.3(a) to (c).
- 8.1.4 The Supplier shall:
  - (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Contract;
  - (b) subject to Clause 23.1 (Variation Procedure), obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
  - (c) ensure that any services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the requirements of the Authority;
  - (d) ensure that the Supplier Assets will be free of all encumbrances (except as agreed in writing with the Authority);
  - (e) ensure that the Services are fully compatible with any Authority Property or Authority Assets used by the Supplier in connection with this Contract;
  - (f) minimise any disruption to the Sites and/or the Authority's operations when providing the Services;
  - (g) ensure that any Documentation and training provided by the Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
  - (h) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier and, on the Expiry

Date for any reason, to enable the timely transition of the supply of the Services (or any of them) to the Authority and/or to any Replacement Supplier;

- (i) assign to the Authority, or if it is unable to do so, shall (to the extent it is legally able to do so) hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Deliverables and/or the Services. Where any such warranties are held on trust, the Supplier shall enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
- (j) provide the Authority with such assistance as the Authority may reasonably require during the Contract Period in respect of the supply of the Services;
- (k) deliver the Services in a proportionate and efficient manner;
- (l) ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Supplier's obligations under this Contract; and
- (m) gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Contract.

8.1.5 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-Contractors and Supplier Personnel also do, or refrain from doing, such act or thing.

## **9. SERVICES**

### **9.1 Time of Delivery of the Services**

9.1.1 The Supplier shall provide the Services on the date(s) specified in the Implementation Plan or elsewhere in this Contract.

### **9.2 Location and Manner of Delivery of the Services**

9.2.1 Except where otherwise provided in this Contract, the Supplier shall provide the Services to the Authority through the Supplier Personnel at the Sites.

9.2.2 The Authority may inspect and examine the manner in which the Supplier provides the Services at the Sites and, if the Sites are not the Authority Premises, the Authority may carry out such inspection and examination during normal business hours and on reasonable notice.

### **9.3 Undelivered Services**

9.3.1 In the event that any of the Services are not Delivered in accordance with Clauses 8.1 (Provision of the Services), 9.1 (Time of Delivery of the Services) and 9.2 (Location and Manner of Delivery of the Services) ("**Undelivered Services**"), the Authority, without prejudice to any other rights and remedies of the Authority howsoever arising, shall be entitled to withhold payment of the applicable Contract Charges for the Services that were not so Delivered until such time as the Undelivered Services are Delivered.

9.3.2 The Authority may, at its discretion and without prejudice to any other rights and remedies of the Authority howsoever arising, deem the failure to comply with Clauses 8.1, (Provision of the Services), 9.1 (Time of Delivery of the Services) and 9.2 (Location and Manner of Delivery of the Services) and meet the relevant Milestone Date (if any) to be a material Default.

#### **9.4 Obligation to Remedy of Default in the Supply of the Services**

- 9.4.1 Subject to Clauses 34.9.2 and 34.9.3 (IPR Indemnity) and without prejudice to any other rights and remedies of the Authority howsoever arising (including under Clauses 9.3.2 (Undelivered Services) and 39 (Authority Remedies for Default)), the Supplier shall, where practicable:
- (a) remedy any breach of its obligations in Clauses 8.1 and 9 within three (3) Working Days of becoming aware of the relevant Default or being notified of the Default by the Authority or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred); and
  - (b) meet all the costs of, and incidental to, the performance of such remedial work.

#### **9.5 Continuing Obligation to Provide the Services**

- 9.5.1 The Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the provision of the Services, notwithstanding:
- (a) any withholding or deduction by the Authority of any sum due to the Supplier pursuant to the exercise of a right of the Authority to such withholding or deduction under this Contract;
  - (b) the existence of an unresolved Dispute; and/or
  - (c) any failure by the Authority to pay any Contract Charges.

#### **10. NOT USED**

#### **11. NOT USED**

#### **12. STANDARDS AND QUALITY**

- 12.1 The Supplier shall at all times during the Contract Period comply with the Standards and Schedule 7 (Standards) and maintain, where applicable, accreditation with the relevant Standards' authorisation body.
- 12.2 Throughout the Contract Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, or the receipt by the Authority, of the Services. The adoption of any such new or emergent standard, or changes to existing Standards, shall be agreed in accordance with the Variation Procedure. Any change to an existing Standard which is included in Schedule 7 (Standards) shall, in addition, require the Approval of the Authority.
- 12.3 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 (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.
- 12.4 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the Commencement Date, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard or Standards shall require Approval and shall be implemented within an agreed timescale.
- 12.5 Where a standard, policy or document is referred to in Schedule 7 (Standards) by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall agree the impact of such change.

#### **13. NOT USED**

#### **14. SERVICE LEVELS**

- 14.1 The Parties shall comply with the provisions of Part A (Service Levels) of Schedule 6 (Service Levels and Performance Monitoring).
- 14.2 The Supplier shall at all times during the Contract Period provide the Services to meet or exceed the Service Level Performance Measure for each Service Level Performance Criterion.
- 14.3 The Supplier acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of the Authority and that it shall entitle the Authority to the rights set out in Part A of Schedule 6 (Service Levels and Performance Monitoring).
- 14.4 NOT USED
- 14.5 NOT USED
- 14.6 Not more than once in each Contract Year the Authority may, on giving the Supplier at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Level Performance Criteria and the Supplier shall not be entitled to object to, or increase the Contract Charges as a result of, such changes, provided that:
  - 14.6.1 the total number of Service Level Performance Criteria does not exceed seven (7); and
  - 14.6.2 the principal purpose of the change is to reflect changes in the Authority's business requirements and/or priorities or to reflect changing industry standards.

## 15. CRITICAL SERVICE LEVEL FAILURE

- 15.1 On the occurrence of a Critical Service Level Failure the Authority shall be entitled to withhold and retain as compensation for the Critical Service Level Failure a sum equal to any Contract Charges which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Critical Service Level Failure**"), provided that the operation of this Clause 15.1 shall be without prejudice to the right of the Authority to terminate this Contract and/or to claim damages from the Supplier for material Default as a result of such Critical Service Level Failure
- 15.2 The Supplier:
  - 15.2.1 agrees that the application of Clause 15.1 is commercially justifiable where a Critical Service Level Failure occurs; and
  - 15.2.2 acknowledges that it has taken legal advice on the application of Clause 15.1 and has had the opportunity to price for that risk when calculating the Contract Charges.

## 16. NOT USED

## 17. DISRUPTION

- 17.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- 17.2 The Supplier shall immediately inform the Authority of any actual or potential industrial action, whether such action be by the Supplier Personnel or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Contract.
- 17.3 In the event of industrial action by the Supplier Personnel, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under this Contract.

- 17.4 If the Supplier's proposals referred to in Clause 17.3 are considered insufficient or unacceptable by the Authority acting reasonably then the Authority may terminate this Contract for material Default.
- 17.5 If the Supplier is temporarily unable to fulfil the requirements of this Contract owing to disruption of normal business solely due to an Authority Cause, then subject to Clause 18 (Supplier Notification of Authority Cause), an appropriate allowance by way of an extension of time will be Approved by the Authority. In addition, the Authority will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

## **18. SUPPLIER NOTIFICATION OF AUTHORITY CAUSE**

- 18.1 Without prejudice to any other obligations of the Supplier in this Contract to notify the Authority in respect of a specific Authority Cause, the Supplier shall notify the Authority as soon as reasonably practicable (and in any event within two (2) Working Days of the Supplier becoming aware) that a Authority Cause has occurred or is reasonably likely to occur, giving details of:
- 18.1.1 the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Contract; and
  - 18.1.2 any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
  - 18.1.3 use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

## **19. CONTINUOUS IMPROVEMENT**

- 19.1 The Supplier shall have an ongoing obligation throughout the Contract Period to identify new or potential improvements to the provision of the Services in accordance with this Clause 19 with a view to reducing the Authority's costs (including the Contract Charges) and/or improving the quality and efficiency of the Services and their supply to the Authority. As part of this obligation the Supplier shall identify and report to the Authority once every twelve (12) months:
- 19.1.1 the emergence of new and evolving relevant technologies which could improve the Sites and/or the provision of the Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
  - 19.1.2 new or potential improvements to the provision of the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
  - 19.1.3 changes to the Sites, business processes and ways of working that would enable the Services to be provided at lower costs and/or at greater benefits to the Authority; and/or
  - 19.1.4 changes to the Sites, business processes and ways of working that would enable reductions in the total energy consumed annually in the provision of the Services.
- 19.2 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.
- 19.3 If the Authority wishes to incorporate any improvement identified by the Supplier, the Authority shall request a Variation in accordance with the Variation Procedure and the Supplier shall implement such Variation at no additional cost to the Authority.

## **D. CONTRACT GOVERNANCE**

## **20. PERFORMANCE MONITORING**

- 20.1 The Supplier shall comply with the monitoring requirements set out in Part B (Performance Monitoring) of Schedule 6 (Service Levels and Performance Monitoring).

## **21. REPRESENTATIVES**

- 21.1 Each Party shall have a representative for the duration of this Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Contract.
- 21.2 The initial Supplier Representative shall be the person notified to the Authority in writing by the Supplier within (5) Working Days of the Commencement Date. Any change to the Supplier Representative shall be agreed in accordance with Clause 28 (Supplier Personnel).
- 21.3 The Authority shall notify the Supplier of the identity of the initial Authority Representative within five (5) Working Days of the Commencement Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

## **22. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA**

- 22.1 The Supplier shall keep and maintain for seven (7) years after the Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Contract including the Services provided under it, any Sub-Contracts and the amounts paid by the Authority.
- 22.2 The Supplier shall:
- 22.2.1 keep the records and accounts referred to in Clause 22.1 in accordance with Good Industry Practice and Law; and
  - 22.2.2 afford any Auditor access to the records and accounts referred to in Clause 22.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Contract Period and the period specified in Clause 22.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Contract including in order to:
    - (a) verify the accuracy of the Contract Charges and any other amounts payable by the Authority under this Contract (and proposed or actual variations to them in accordance with this Contract);
    - (b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;
    - (c) verify the Open Book Data;
    - (d) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
    - (e) identify or investigate an actual or suspected Prohibited Act, 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;
    - (f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Sub-Contractors or their ability to perform the Services;

- (g) 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;
  - (h) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
  - (i) 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;
  - (j) 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;
  - (k) review any Performance Monitoring Reports provided under Part B of Schedule 6 (Service Levels and Performance Monitoring) and/or other records relating to the Supplier's performance of the provision of the Services and to verify that these reflect the Supplier's own internal reports and records;
  - (l) verify the accuracy and completeness of any information delivered or required by this Contract;
  - (m) review the Supplier's quality management systems (including any quality manuals and procedures);
  - (n) review the Supplier's compliance with the Standards;
  - (o) 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
  - (p) review the integrity, confidentiality and security of the Authority Data.
- 22.3 The Authority shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Authority.
- 22.4 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:
- 22.4.1 all reasonable information requested by the Authority within the scope of the audit;
  - 22.4.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and
  - 22.4.3 access to the Supplier Personnel.
- 22.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 22, unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the audit.

## **23. CHANGE**

### **23.1 Variation Procedure**

- 23.1.1 Subject to the provisions of this Clause 23 and of Schedule 3 (Contract Charges, Payment and Invoicing), either Party may request a variation to this Contract provided that such variation does not amount to a material change of this Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".



- 23.1.2 A Party may request a Variation by completing, signing and sending the Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.
- 23.1.3 Where the Authority has so specified on receipt of a Variation Form from the Supplier, the Supplier shall carry out an impact assessment of the Variation on the Services (the “**Impact Assessment**”). The Impact Assessment shall be completed in good faith and shall include:
- (a) details of the impact of the proposed Variation on the Services and the Supplier's ability to meet its other obligations under this Contract;
  - (b) details of the cost of implementing the proposed Variation;
  - (c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Contract Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
  - (d) a timetable for the implementation, together with any proposals for the testing of the Variation; and
  - (e) such other information as the Authority may reasonably request in (or in response to) the Variation request.
- 23.1.4 The Parties may agree to adjust the time limits specified in the Variation Form to allow for the preparation of the Impact Assessment.
- 23.1.5 The receiving Party shall respond to the request within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Authority having regard to the nature of the Services and the proposed Variation.
- 23.1.6 In the event that:
- (a) the Supplier is unable to agree to or provide the Variation; and/or
  - (b) the Parties are unable to agree a change to the Contract Charges that may be included in a request of a Variation or response to it as a consequence thereof,
- the Authority may:
- (i) agree to continue to perform its obligations under this Contract without the Variation; or
  - (ii) terminate this Contract with immediate effect, except where the Supplier has already fulfilled part or all of the Services ordered in accordance with this Contract or where the Supplier can show evidence of substantial work being carried out to provide the Services under this Contract, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.
- 23.1.7 If the Parties agree the Variation, the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Contract.
- 23.1.8 Each Variation agreed by the Parties shall be recorded in Schedule 24 (Contract Control Sheet).

## **23.2 Legislative Change**

- 23.2.1 The Supplier shall neither be relieved of its obligations under this Contract nor be entitled to an increase in the Contract Charges as the result of a:
- (a) General Change in Law;

- (b) Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Commencement Date.
- 23.2.2 If a Specific Change in Law occurs or will occur during the Contract Period (other than as referred to in Clause 23.2.1(b)), the Supplier shall:
  - (a) notify the Authority as soon as reasonably practicable of the likely effects of that change including:
    - (i) whether any Variation is required to the provision of the Services, the Contract Charges or this Contract; and
    - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or meet the Service Level Performance Measures; and
  - (b) provide to the Authority with evidence:
    - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
    - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
    - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 19 (Continuous Improvement), has been taken into account in amending the Contract Charges.
- 23.2.3 Any change in the Contract Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 23.2.1(b)) shall be implemented in accordance with the Variation Procedure.

## **E. PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS**

### **24. CONTRACT CHARGES AND PAYMENT**

#### **24.1 Contract Charges**

- 24.1.1 In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Services, the Authority shall pay the undisputed Contract Charges in accordance with the pricing and the invoicing procedure in Schedule 3 (Contract Charges, Payment and Invoicing).
- 24.1.2 Except as otherwise provided, each Party shall bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 22 (Records, Audit Access and Open Book Data), 35.5 (Freedom of Information) and 35.6 (Protection of Personal Data).
- 24.1.3 If the Authority fails to pay any undisputed Contract Charges properly invoiced under this Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

#### **24.2 VAT**

- 24.2.1 The Contract Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a Valid Invoice.
- 24.2.2 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments

made to the Supplier under this Contract. Any amounts due under Clause 24.2 (VAT) shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.

#### **24.3 Retention and Set Off**

- 24.3.1 The Authority may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Authority.
- 24.3.2 If the Authority wishes to exercise its right pursuant to Clause 24.3.1 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Authority's reasons for retaining or setting off the relevant Contract Charges.
- 24.3.3 The Supplier shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.

#### **24.4 Foreign Currency**

- 24.4.1 Any requirement of Law to account for the Services in any currency other than Sterling, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Authority.
- 24.4.2 The Authority shall provide all reasonable assistance to facilitate compliance with Clause 24.4.1 by the Supplier.

#### **24.5 Income Tax and National Insurance Contributions**

- 24.5.1 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:
  - (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
  - (b) indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services by the Supplier or any Supplier Personnel.
- 24.5.2 In the event that any one of the Supplier Personnel is a Worker as defined in Schedule 1 (Definitions) who receives consideration relating to the Services, then, in addition to its obligations under Clause 24.5.1, the Supplier shall ensure that its contract with the Worker contains the following requirements:
  - (a) that the Authority may, at any time during the Contract Period, request that the Worker provides information which demonstrates how the Worker complies with the requirements of Clause 24.5.1, or why those requirements do not apply to it. In such case, the Authority may specify the information which the Worker must provide and the period within which that information must be provided;
  - (b) that the Worker's contract may be terminated at the Authority's request if:

- (i) the Worker fails to provide the information requested by the Authority within the time specified by the Authority under Clause 24.5.2(a); and/or
- (ii) the Worker provides information which the Authority considers is inadequate to demonstrate how the Worker complies with Clauses 24.5.1(a) or 24.5.1(b) or confirms that the Worker is not complying with those requirements; and
- (c) That the Authority may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

## **25. PROMOTING TAX COMPLIANCE**

- 25.1 This Clause 25 shall apply if the Contract Charges payable under this Contract exceed or are likely to exceed five (5) million pounds during the Contract Period. If, at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- 25.1.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
  - 25.1.2 promptly provide to the Authority:
    - (a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
    - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 25.2 In the event that the Supplier fails to comply with this Clause 25 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable, then the Authority reserves the right to terminate this Contract for material Default.

## **26. BENCHMARKING**

- 26.1 Notwithstanding the Supplier's obligations under Clause 19 (Continuous Improvement), the Authority shall be entitled to regularly benchmark the Contract Charges and level of performance by the Supplier of the supply of the Services, against other suppliers providing Services substantially the same as the Services during the Contract Period.
- 26.2 The Authority, acting reasonably, shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in Clause 26.1 above.
- 26.3 The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Authority in order to undertake the benchmarking and such information requirements shall be at the discretion of the Authority.
- 26.4 Where, as a consequence of any benchmarking carried out by the Authority, the Authority decides improvements to the Services should be implemented such improvements shall be implemented by way of the Variation Procedure at no additional cost to the Authority.

## **F. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS**

### **27. KEY PERSONNEL**

- 27.1 The Parties have agreed to the appointment of the Key Personnel. Part C of Schedule 4 (Implementation Plan, Authority Responsibilities and Key Personnel) lists the key roles ("**Key Roles**") and names of the persons who the Supplier shall appoint to fill those Key Roles at the Commencement Date.

- 27.2 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Contract Period.
- 27.3 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 27.4 The Supplier shall not remove or replace any Key Personnel unless:
- 27.4.1 requested to do so by the Authority;
  - 27.4.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
  - 27.4.3 the person's employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated for material breach of contract by the employee; or
  - 27.4.4 the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 27.5 The Supplier shall:
- 27.5.1 notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
  - 27.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
  - 27.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least three (3) Months' notice;
  - 27.5.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Services; and
  - 27.5.5 ensure that any replacement for a Key Role:
    - (a) has a level of qualifications and experience appropriate to the relevant Key Role; and
    - (b) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
  - 27.5.6 shall and shall procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Contract Period without Approval.
- 27.6 The Authority may require the Supplier to remove any Key Personnel that the Authority considers in any respect unsatisfactory. The Authority shall not be liable for the cost of replacing any Key Personnel.

## **28. SUPPLIER PERSONNEL**

### **28.1 Supplier Personnel**

- 28.1.1 The Supplier shall:
- (a) provide a list of the names of all Supplier Personnel requiring admission to Authority Premises, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;
  - (b) ensure that all Supplier Personnel:
    - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;

- (ii) are vetted in accordance with Good Industry Practice and, where applicable, the Standards;
    - (iii) obey all lawful instructions and reasonable directions of the Authority (including if so required by the Authority, the ICT Policy) and provide the Services to the reasonable satisfaction of the Authority; and
    - (iv) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements set out in Schedule 8 (Security);
  - (c) subject to Schedule 11 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;
  - (d) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
  - (e) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
  - (f) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
  - (g) procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the Expiry Date.
- 28.1.2 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:
- (a) refuse admission to the relevant person(s) to the Authority Premises; and/or
  - (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).
- 28.1.3 The decision of the Authority as to whether any person is to be refused access to the Authority Premises shall be final and conclusive.

## **28.2 Relevant Convictions**

- 28.2.1 For each member of Supplier Personnel who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Authority owes a special duty of care, the Supplier shall (and shall procure that the relevant Sub-Contractor shall):
- (a) carry out a check with the records held by the Department for Education (DfE);
  - (b) conduct thorough questioning regarding any Relevant Convictions; and
  - (c) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS),
- and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or an inappropriate record.
- 28.2.2 The Supplier shall ensure that no person who discloses that he has a Relevant Conviction, or who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the Services without Approval.

## **29. STAFF TRANSFER**

29.1 The Parties agree that:

29.1.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 11 (Staff Transfer) shall apply as follows;

- (a) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A of Schedule 11 (Staff Transfer) shall apply;
- (b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 11 (Staff Transfer) shall apply;
- (c) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A and B of Schedule 11 (Staff Transfer) shall apply; and
- (d) Part C of Schedule 11 (Staff Transfer) shall not apply;

29.1.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 11 (Staff Transfer) shall apply and Parts A and B of Schedule 11 (Staff Transfer) shall not apply; and

29.1.3 Part D of Schedule 11 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services;

29.2 The Supplier shall both during and after the Contract Period indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

### **30. SUPPLY CHAIN RIGHTS AND PROTECTION**

#### **30.1 Appointment of Sub-Contractors**

30.1.1 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:

- (a) manage any Sub-Contractors in accordance with Good Industry Practice;
- (b) comply with its obligations under this Contract in the Delivery of the Services; and
- (c) assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Contract.

#### **30.2 Appointment of Sub-Contractors**

30.2.1 The Authority has consented to the engagement of the Sub-Contractors listed in Schedule 17 (Sub-Contractors).

30.2.2 Where the Supplier wishes to enter into a new Sub-Contract or replace a Sub-Contractor, it must request and obtain the prior written consent of the Authority (the decision to consent or otherwise not to be unreasonably withheld or delayed). The Authority may reasonably withhold its consent to the appointment of a Sub-Contractor if it considers that:

- (a) the appointment of a proposed Sub-Contractor may prejudice the provision of the Services or may be contrary to its interests;
- (b) the proposed Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or

- (c) the proposed Sub-Contractor employs unfit persons.
- 30.2.3 The Supplier shall provide the Authority with the following information in respect of the proposed Sub-Contractor:
- (a) the Sub-Contract price expressed as a percentage of the total projected Contract Charges over the Contract Period; and
  - (b) the credit rating of the Sub-Contractor as provided by Dun and Bradstreet;
  - (c) the proposed Sub-Contractor's name, registered office and company registration number
  - (d) the scope of any Services to be provided by the proposed Sub-Contractor; and
  - (e) where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-Contract has been agreed on "arm's-length" terms.
- 30.2.4 If requested by the Authority following the Supplier's request for consent pursuant to Clause 30.2.2, the Supplier shall also provide:
- (a) a copy of the proposed Sub-Contract; and
  - (b) any further information reasonably requested by the Authority.
- 30.2.5 Except where the Authority has given its prior written consent under Clause 30.2.1, the Supplier shall ensure that each Sub-Contract shall include:
- (a) provisions which will enable the Supplier to discharge its obligations under this Contract;
  - (b) a right under CRTPA for the Authority to enforce any provisions under the Sub-Contract which confer a benefit upon the Authority;
  - (c) a provision enabling the Authority to enforce the Sub-Contract as if it were the Supplier;
  - (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-Contract to the Authority or any Replacement Supplier;
  - (e) obligations no less onerous on the Sub-Contractor than those imposed on the Supplier under this Contract in respect of:
    - (i) data protection requirements set out in Clauses 35.1 (Security Requirements), 35.2 (Protection of Authority Data) and 35.6 (Protection of Personal Data);
    - (ii) FOIA requirements set out in Clause 35.5 (Freedom of Information);
    - (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 8.1.4(l) (Provision of Services);
    - (iv) the keeping of records in respect of the Services being provided under the Sub-Contract, including the maintenance of Open Book Data;
    - (v) the conduct of audits set out in Clause 22 (Records, Audit Access & Open Book Data);
  - (f) provisions enabling the Supplier to terminate the Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 42 (Authority Termination Rights), 44



(Termination by Either Party) and 46 (Consequences of Expiry or Termination) of this Contract;

- (g) a provision restricting the ability of the Sub-Contractor to Sub-Contract all or any part of the provision of the Services provided to the Supplier under the Sub-Contract without first seeking the written consent of the Authority;
- (h) a provision, where a provision in Schedule 11 (Staff Transfer) imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, requiring the Sub-Contractor to provide such indemnity, undertaking or warranty to the Authority, Former Supplier or the Replacement Supplier as the case may be.

### **30.3 Supply Chain Protection**

30.3.1 The Supplier shall ensure that all Sub-Contracts contain a provision:

- (a) requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a Valid Invoice;
- (b) requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
- (c) requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by sub-clauses (a) and (b) directly above; and
- (d) conferring a right to the Authority to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.

30.3.2 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a Valid Invoice; and
- (b) on a quarterly basis, provide the Authority with a summary of its compliance with this Clause 30.3.2, such data shall be certified each quarter by a director of the Supplier as being accurate and not misleading.

30.3.3 Any invoices submitted by a Sub-Contractor to the Supplier shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Supplier failing to regard an invoice as valid and undisputed.

30.3.4 Notwithstanding any provision of Clauses 35.3 (Confidentiality) and 36 (Publicity and Branding) if the Supplier notifies the Authority that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

### **30.4 Cyber Essentials Scheme**

30.4.1 The Supplier shall ensure that all Sub-Contracts with Sub-Contractors who Process Cyber Essentials Data contain provisions no less onerous on the Sub-Contractors than those imposed on the Supplier under this Contract in respect of the Cyber Essentials Scheme under Clause 5.

### **30.5 Termination of Sub-Contracts**

- 30.5.1 The Authority may require the Supplier to terminate:
- (a) a Sub-Contract where:
    - (i) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Authority's right of termination pursuant to any of the termination events in Clause 42 (Authority Termination Rights) except Clause 42.7 (Termination Without Cause); and/or
    - (ii) the relevant Sub-Contractor or its Affiliates embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Services or otherwise; and/or
  - (b) a Sub-Contract where there is a Change of Control of the relevant Sub-Contractor, unless:
    - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
    - (ii) the Authority has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.

#### **30.6 NOT USED**

#### **30.7 Retention of Legal Obligations**

- 30.7.1 Notwithstanding the Supplier's right to Sub-Contract pursuant to this Clause 30 (Supply Chain Rights and Protection), the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

### **G. PROPERTY MATTERS**

#### **31. AUTHORITY PREMISES**

##### **31.1 Licence to occupy Authority Premises**

- 31.1.1 Any Authority Premises shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Contract. The Supplier shall have the use of such Authority Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Contract.
- 31.1.2 The Supplier shall limit access to the Authority Premises to such Supplier Personnel as is necessary to enable it to perform its obligations under this Contract and the Supplier shall co-operate (and ensure that the Supplier Personnel co-operate) with such other persons working concurrently on such Authority Premises as the Authority may reasonably request.
- 31.1.3 Save in relation to such actions identified by the Supplier in accordance with Clause 2(Due Diligence), should the Supplier require modifications to the Authority Premises, such modifications shall be subject to Approval and shall be carried out by the Authority at the Supplier's expense. The Authority shall undertake any modification work which it approves pursuant to this Clause

31.1.3 without undue delay. Ownership of such modifications shall rest with the Authority.

31.1.4 The Supplier shall observe and comply with such rules and regulations as may be in force at any time for the use of such Authority Premises and conduct of personnel at the Authority Premises as determined by the Authority, and the Supplier shall pay for the full cost of making good any damage caused by the Supplier Personnel other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

31.1.5 The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Supplier or the Supplier Personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the Authority retains the right at any time to use any Authority Premises in any manner it sees fit.

### **31.2 Security of Authority Premises**

31.2.1 The Authority shall be responsible for maintaining the security of the Authority Premises. The Supplier shall comply with any reasonable security requirements of the Authority while on the Authority Premises.

31.2.2 The Authority shall afford the Supplier upon Approval (the decision to Approve or not will not be unreasonably withheld or delayed) an opportunity to inspect its physical security arrangements.

## **32. AUTHORITY PROPERTY**

32.1 Where the Authority issues Authority Property free of charge to the Supplier such Authority Property shall be and remain the property of the Authority and the Supplier irrevocably licences the Authority and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Authority Property.

32.2 The Supplier shall not in any circumstances have a lien or any other interest on the Authority Property and at all times the Supplier shall possess the Authority Property as fiduciary agent and bailee of the Authority.

32.3 The Supplier shall take all reasonable steps to ensure that the title of the Authority to the Authority Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Authority's request, store the Authority Property separately and securely and ensure that it is clearly identifiable as belonging to the Authority.

32.4 The Authority Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Authority otherwise within five (5) Working Days of receipt.

32.5 The Supplier shall maintain the Authority Property in good order and condition (excluding fair wear and tear) and shall use the Authority Property solely in connection with this Contract and for no other purpose without Approval.

32.6 The Supplier shall ensure the security of all the Authority Property whilst in its possession, either on the Sites or elsewhere during the supply of the Services, in accordance with the Authority's reasonable security requirements from time to time.

32.7 The Supplier shall be liable for all loss of, or damage to the Authority Property, (excluding fair wear and tear), unless such loss or damage was solely caused by an Authority Cause. The Supplier shall inform the Authority immediately of becoming aware of any defects appearing in or losses or damage occurring to the Authority Property.

## **33. SUPPLIER EQUIPMENT**

- 33.1 The Supplier shall provide all the Supplier Equipment necessary for the provision of the Services.
- 33.2 The Supplier shall not deliver any Supplier Equipment nor begin any work on the Authority Premises without obtaining Approval.
- 33.3 The Supplier shall be solely responsible for the cost of carriage of the Supplier Equipment to the Sites and/or any Authority Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on the Expiry Date the Supplier shall be responsible for the removal of all relevant Supplier Equipment from the Sites and/or any Authority Premises, including the cost of packing, carriage and making good the Sites and/or the Authority Premises following removal.
- 33.4 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Authority shall be liable for loss of or damage to any of the Supplier's property located on Authority Premises which is due to the negligent act or omission of the Authority.
- 33.5 The loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Contract, including the Service Level Performance Measures.
- 33.6 The Supplier shall maintain all Supplier Equipment within the Sites and/or the Authority Premises in a safe, serviceable and clean condition.
- 33.7 The Supplier shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
  - 33.7.1 remove from the Authority Premises any Supplier Equipment or any component part of Supplier Equipment which in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with this Contract; and
  - 33.7.2 replace such Supplier Equipment or component part of Supplier Equipment with a suitable substitute item of Supplier Equipment.
- 33.8 Where a failure of Supplier Equipment or any component part of Supplier Equipment causes two (2) or more Service Failures in any six (6) Month period, the Supplier shall notify the Authority in writing and shall, at the Authority's request (acting reasonably), replace such Supplier Equipment or component part thereof at its own cost with a new item of Supplier Equipment or component part thereof (of the same specification or having the same capability as the Supplier Equipment being replaced).

## **H. INTELLECTUAL PROPERTY AND INFORMATION**

### **34. INTELLECTUAL PROPERTY RIGHTS**

#### **34.1 Allocation of title to IPR**

- 34.1.1 Save as expressly granted elsewhere under this Contract:
  - (a) the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:
    - (i) the Supplier Background IPR;
    - (ii) the Third Party IPR; and
    - (iii) the Project Specific IPR.
  - (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including the:
    - (i) Authority Background IPR; and
    - (ii) Authority Data.

- 34.1.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 34.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 34.1.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

**34.2 Licences granted by the Supplier: Project Specific IPR**

- 34.2.1 The Supplier hereby grants to the Authority, or shall procure the direct grant to the Authority of, a perpetual, royalty-free, irrevocable, non-exclusive licence to use the Project Specific IPR including but not limited to the right to copy, adapt, publish and distribute such Project Specific IPR.

**34.3 Licences granted by the Supplier: Supplier Background IPR**

- 34.3.1 The Supplier hereby grants to the Authority a perpetual, royalty-free and non-exclusive licence to use the Supplier Background IPR for any purpose relating to the Services (or substantially equivalent Services) or for any purpose relating to the exercise of the Authority's (or, if the Authority is a Central Government Body, any other Central Government Body's) business or function.
- 34.3.2 At any time during the Contract Period or following the Expiry Date, the Supplier may terminate a licence granted in respect of the Supplier Background IPR under Clause 34.3.1 by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if there is a Authority Cause which constitutes a material breach of the terms of Clauses 34.3.1 which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Authority written notice specifying the breach and requiring its remedy.
- 34.3.3 In the event the licence of the Supplier Background IPR is terminated pursuant to Clause 34.3.2, the Authority shall:
- (a) immediately cease all use of the Supplier Background IPR;
  - (b) at the discretion of the Supplier, return or destroy documents and other tangible materials that contain any of the Supplier Background IPR, provided that if the Supplier has not made an election within six (6) months of the termination of the licence, the Authority may destroy the documents and other tangible materials that contain any of the Supplier Background IPR; and
  - (c) ensure, so far as reasonably practicable, that any Supplier Background IPR that is held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing Supplier Background IPR.

**34.4 Authority's right to sub-license**

- 34.4.1 The Authority shall be freely entitled to sub-license the rights granted to it pursuant to Clause 34.2.1 (Licences granted by the Supplier: Project Specific IPR).
- 34.4.2 The Authority may sub-license:
- (a) the rights granted under Clause 34.3.1 (Licences granted by the Supplier: Supplier Background IPR) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
    - (i) the sub-license is on terms no broader than those granted to the Authority; and

- (ii) the sub-licence only authorises the third party to use the rights licensed in Clause 34.3.1 (Licences granted by the Supplier: Supplier Background IPR) for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or, if the Authority is a Central Government Body, any other Central Government Body's) business or function; and
- (b) the rights granted under Clause 34.3.1 (Licences granted by the Supplier: Supplier Background IPR) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Project Specific IPR provided that the sub-licence is on terms no broader than those granted to the Authority.

### **34.5 Authority's right to assign/novate licences**

#### **34.5.1 The Authority:**

- (a) shall be freely entitled to assign, novate or otherwise transfer its rights and obligations under the licence granted to it pursuant to Clause 34.2.1 (Licences granted by the Supplier: Project Specific IPR); and
- (b) may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to Clause 34.3.1 (Licences granted by the Supplier: Supplier Background IPR) to:
  - (i) a Central Government Body; or
  - (ii) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.
- (c) Where the Authority is a Central Government Body, any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 34.2.1 (Licences granted by the Supplier: Project Specific IPR) and/or Clause 34.3.1 (Licences granted by the Supplier: Supplier Background IPR). If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licences granted in Clause 34.2.1 (Licences granted by the Supplier: Project Specific IPR) and Clause 34.3.1 (Licences granted by the Supplier: Supplier Background IPR).
- (d) If a licence granted in Clause 34.2.1 (Licences granted by the Supplier: Project Specific IPR) and/or Clause 34.3.1 (Licences granted by the Supplier: Supplier Background IPR) is novated under Clause 34.5.1(b) or there is a change of the Authority's status pursuant to Clause 34.5.1(c) (both such bodies being referred to as the "**Transferee**"), the rights acquired by the Transferee shall not extend beyond those previously enjoyed by the Authority.

### **34.6 Third Party IPR**

- 34.6.1 The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR grant a direct licence to the Authority on terms at least equivalent to those set out in Clause 34.3.1 (Licences granted by the Supplier: Supplier Background IPR) and Clause 34.5.1(b) (Authority's right to assign/novate licences). If the Supplier cannot obtain for the Authority a licence materially in accordance with the licence terms set out in Clause 34.3.1 (Licences granted by the Supplier: Supplier Background IPR) and Clause 34.5.1(b) (Authority's right to assign/novate licences) in respect of any such Third Party IPR, the Supplier shall:

- (a) notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative providers which the Supplier could seek to use; and
- (b) only use such Third Party IPR if the Authority Approves the terms of the licence from the relevant third party.

#### **34.7 Licence granted by the Authority**

- 34.7.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Authority Background IPR and the Authority Data solely to the extent necessary for providing the Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:
- (a) any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 35.3 (Confidentiality); and
  - (b) the Supplier shall not without Approval use the licensed materials for any other purpose or for the benefit of any person other than the Authority.

#### **34.8 Termination of licenses**

- 34.8.1 Subject to Clauses 34.3.2 and/or 34.3.3 (Licences granted by the Supplier: Supplier Background IPR), all licences granted pursuant to this Clause 34 (Intellectual Property Rights) (other than those granted pursuant to Clause 34.6 (Third Party IPR) and 34.7.1 (Licence granted by the Authority)) shall survive the Expiry Date.
- 34.8.2 The Supplier shall, if requested by the Authority grant (or procure the grant) to the Replacement Supplier of a licence to use any Supplier Background IPR and/or Third Party IPR on terms equivalent to those set out in Clause 34.3.1 (Licences granted by the Supplier: Supplier Background IPR) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.
- 34.8.3 The licence granted pursuant to Clause 34.7.1 (Licence granted by the Authority ) and any sub-licence granted by the Supplier in accordance with Clause 34.7.1 (Licence granted by the Authority) shall terminate automatically on the Expiry Date and the Supplier shall:
- (a) immediately cease all use of the Authority Background IPR and the Authority Data (as the case may be);
  - (b) at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Background IPR and the Authority Data, provided that if the Authority has not made an election within six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Background IPR and the Authority Data (as the case may be); and
  - (c) ensure, so far as reasonably practicable, that any Authority Background IPR and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Authority Background IPR and/or Authority Data.

#### **34.9 IPR Indemnity**

- 34.9.1 The Supplier shall at during and after the Contract Period, on written demand indemnify the Authority against all Losses incurred by, awarded against or agreed to be paid by the Authority (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.

- 34.9.2 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:
- (a) procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or
  - (b) replace or modify the relevant item with non-infringing substitutes provided that:
    - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
    - (ii) the replaced or modified item does not have an adverse effect on any other Services;
    - (iii) there is no additional cost to the Authority; and
    - (iv) the terms and conditions of this Contract shall apply to the replaced or modified Services.
- 34.9.3 If the Supplier elects to procure a licence in accordance with Clause 34.9.2(a) or to modify or replace an item pursuant to Clause 34.9.2(b), but this has not avoided or resolved the IPR Claim, then:
- (i) the Authority may terminate this Contract by written notice with immediate effect; and
  - (ii) without prejudice to the indemnity set out in Clause 34.9.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute services including the additional costs of procuring, implementing and maintaining the substitute items.

## **35. SECURITY AND PROTECTION OF INFORMATION**

### **35.1 Security Requirements**

- 35.1.1 The Supplier shall comply with the requirements of Schedule 8 (Security).

### **35.2 Protection of Authority Data**

- 35.2.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 35.2.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise Approved by the Authority.
- 35.2.3 To the extent that the Authority Data is held and/or Processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority and in the format (if any) specified by the Authority and in any event as specified by the Authority from time to time in writing.
- 35.2.4 The Supplier shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- 35.2.5 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site at an Approved location. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 35.2.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system.
- 35.2.7 If at any time the Supplier suspects or has reason to believe that the Authority Data is corrupted, lost or sufficiently degraded in any way for any reason,



then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.

35.2.8 If the Authority Data is corrupted, lost or sufficiently degraded as a result of a Default so as to be unusable, the Supplier may:

- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent required by the Authority and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Authority's notice; and/or
- (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent required by the Authority.

### 35.3 Confidentiality

35.3.1 For the purposes of this Clause 35.3, the term **"Disclosing Party"** shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and **"Recipient"** shall mean the Party which receives or obtains directly or indirectly Confidential Information.

35.3.2 Except to the extent set out in this Clause 35.3 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:

- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
- (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Contract or without obtaining the owner's prior written consent;
- (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract; and
- (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

35.3.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 35.5 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
  - (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Contract;
  - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Contract; or
  - (iii) the conduct of a Central Government Body review in respect of this Contract; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

- 35.3.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 35.3.5 Subject to Clauses 35.3.2 and 35.3.7, the Supplier may only disclose the Confidential Information of the Authority on a confidential basis to:
- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Contract; and
  - (b) its professional advisers for the purposes of obtaining advice in relation to this Contract.
- 35.3.6 Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 35.3.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.
- 35.3.7 The Authority may disclose the Confidential Information of the Supplier:
- (a) to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
  - (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
  - (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 35.3.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
  - (e) on a confidential basis for the purpose of the exercise of its rights under this Contract; or
  - (f) to a proposed transferee, assignee or novatee of, or successor in title to the Authority,
- and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 35.3.
- 35.3.8 Nothing in this Clause 35.3 shall prevent a Recipient from using any techniques, ideas or Know-How gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.
- 35.3.9 In the event that the Supplier fails to comply with Clauses 35.3.2 to 35.3.5, the Authority reserves the right to terminate this Contract for material Default.

#### **35.4 TRANSPARENCY**

- 35.4.1 The Parties acknowledge and agree that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract and any Transparency Reports under it is not Confidential Information and shall be made available in accordance with the procurement policy note 13/15 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/458554/Procurement\\_Policy\\_Note\\_13\\_15.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/458554/Procurement_Policy_Note_13_15.pdf) and the Transparency

Principles referred to therein. The Authority shall determine whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA. The Authority may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

- 35.4.2 Notwithstanding any other provision of this Contract, the Supplier hereby gives his consent for the Authority to publish this Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Contract agreed from time to time.
- 35.4.3 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.

### **35.5 Freedom of Information**

- 35.5.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
  - (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its Information disclosure obligations under the FOIA and EIRs;
  - (b) transfer to the Authority all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
  - (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
  - (d) not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 35.5.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

### **35.6 Protection of Personal Data**

- 35.6.1 Where any Personal Data are Processed in connection with the exercise of the Parties' rights and obligations under this Contract, the Parties acknowledge that the Authority is the Data Controller and that the Supplier is the Data Processor.
- 35.6.2 The Supplier shall:
  - (a) Process the Personal Data only in accordance with instructions from the Authority to perform its obligations under this Contract;
  - (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data, including the measures as are set out in Clauses 35.1 (Security Requirements) and 35.2 (Protection of Authority Data);

- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under this Contract)
- (d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
  - (i) are aware of and comply with the Supplier's duties under this Clause 35.6.2 and Clauses 35.1 (Security Requirements), 35.2 (Protection of Authority Data) and 35.3 (Confidentiality);
  - (ii) 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
  - (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- (e) notify the Authority within five (5) Working Days if it receives:
  - (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Authority's obligations under the DPA;
  - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
  - (iii) 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;
- (f) provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made (as referred to at Clause 35.6.2(e)), including by promptly providing:
  - (i) the Authority with full details and copies of the complaint, communication or request;
  - (ii) where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
  - (iii) the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and
- (g) if requested by the Authority, provide a written description of the measures that has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 35.6.2 and provide to the Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

35.6.3 The Supplier shall not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area or any country which is not determined to be adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC (together "**Restricted Countries**"). If, after the Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any outside the European Economic Area, the following provisions shall apply:

- (a) the Supplier shall propose a Variation to the Authority which, if it is agreed by the Authority, shall be dealt with in accordance with the Variation Procedure and Clauses 35.6.3(b) to 35.6.3(d);
- (b) the Supplier shall set out in its proposal to the Authority for a Variation details of the following:
  - (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
  - (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and
  - (iii) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
- (c) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Authority's compliance with the DPA;
- (d) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with then-current Authority, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
- (e) the Supplier shall comply with such other instructions and shall carry out such other actions as the Authority may notify in writing, including:
  - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Contract or a separate data processing agreement between the Parties; and
  - (ii) procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
    - (A) a direct data processing agreement with the Authority on such terms as may be required by the Authority; or
    - (B) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Authority and the Sub-Contractor relating to the relevant Personal Data transfer, and
  - (iii) in each case which the Supplier acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Authority deems necessary for the purpose of protecting Personal Data.

35.6.4 The Supplier shall use its reasonable endeavours to assist the Authority to comply with any obligations under the DPA and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of the Authority's obligations under the DPA to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

## **36. PUBLICITY AND BRANDING**

36.1 The Supplier shall not:

- 36.1.1 make any press announcements or publicise this Contract in any way; or

- 36.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders,
- 36.1.3 without Approval (the decision of the Authority to Approve or not shall not be unreasonably withheld or delayed).
- 36.2 Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services and Supplier Equipment) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

## **I. LIABILITY AND INSURANCE**

### **37. LIABILITY**

#### **37.1 Unlimited Liability**

- 37.1.1 Neither Party excludes or limits its liability for:
- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
  - (b) bribery or Fraud by it or its employees;
  - (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - (d) any liability to the extent it cannot be excluded or limited by Law.
- 37.1.2 The Supplier does not exclude or limit its liability in respect of the Indemnity in Clause 34.9 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the Indemnity therein.

#### **37.2 NOT USED**

#### **37.3 Non-recoverable Losses**

- 37.3.1 Neither Party shall be liable to the other Party for any:
- (a) indirect, special or consequential Loss;
  - (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

#### **37.4 Recoverable Losses**

- 37.4.1 Notwithstanding Clause 37.3.1 (Non-recoverable Losses), the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:
- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
  - (b) any wasted expenditure or charges;
  - (c) the additional cost of procuring Replacement Services for the remainder of the Contract Period and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Contract;
  - (d) any compensation or interest paid to a third party by the Authority; and
  - (e) any fine, penalty or costs incurred by the Authority pursuant to Law.

#### **37.5 Miscellaneous**

- 37.5.1 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract.
- 37.5.2 NOT USED
- 37.5.3 Subject to any rights of the Authority under this Contract (including in respect of an IPR Claim), any claims by a third party where an indemnity is sought by that third party from a Party to this Contract shall be dealt with in accordance with the provisions of Schedule 16 (Conduct of Claims).

## **38. INSURANCE**

- 38.1 The Supplier shall effect and maintain insurances in relation to the performance of its obligations under this Contract, and shall procure that Sub-Contractors shall effect and maintain insurances in relation to the performance of their obligations under any Sub-Contract, in accordance with Schedule 15 (Insurance Requirements).
- 38.2 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities arising under this Contract.

## **J. REMEDIES AND RELIEF**

### **39. AUTHORITY REMEDIES FOR DEFAULT**

#### **39.1 Remedies**

- 39.1.1 Without prejudice to any other right or remedy of the Authority howsoever arising (including under Schedule 6 (Service Levels and Performance Monitoring)), if the Supplier commits any Default of this Contract then the Authority may (whether or not any part of the Services have been Delivered) do any of the following:
- (a) at the Authority's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (where such Default is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of this Contract are fulfilled, in accordance with the Authority's instructions;
  - (b) carry out, at the Supplier's expense, any work necessary to make the provision of the Services comply with this Contract;
  - (c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):
    - (i) instruct the Supplier to comply with the Rectification Plan Process;
    - (ii) suspend this Contract (whereupon the relevant provisions of Clause 45 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Services;
    - (iii) without terminating or suspending the whole of this Contract, terminate or suspend this Contract in respect of part of the provision of the Services only (whereupon the relevant provisions of Clause 45 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Good and/or Services;
- 39.1.2 Where the Authority exercises any of its step-in rights under Clauses 39.1.1(c)(ii) or 39.1.1(c)(iii), the Authority shall have the right to charge the

Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Authority (including any reasonable administration costs) in respect of the supply of any part of the Services by the Authority or a third party and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.

### **39.2 Rectification Plan Process**

- 39.2.1 Where the Authority has instructed the Supplier to comply with the Rectification Plan Process pursuant to Clause 39.1.1(c)(i):
- (a) the Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within five (5) Working Days (or such other period as may be agreed between the Parties) from the date of Authority's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Authority's request for a draft Rectification Plan.
  - (b) the draft Rectification Plan shall set out:
    - (i) full details of the Default that has occurred, including a root cause analysis;
    - (ii) the actual or anticipated effect of the Default; and
    - (iii) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).
- 39.2.2 The Supplier shall promptly provide to the Authority any further documentation that the Authority requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with paragraph 5 of Schedule 12 (Dispute Resolution Procedure).
- 39.2.3 The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- (a) is insufficiently detailed to be capable of proper evaluation;
  - (b) will take too long to complete;
  - (c) will not prevent reoccurrence of the Default; and/or
  - (d) will rectify the Default but in a manner which is unacceptable to the Authority.
- 39.2.4 The Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within five (5) Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.
- 39.2.5 If the Authority consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

## **40. SUPPLIER RELIEF DUE TO AUTHORITY CAUSE**

40.1 If the Supplier has failed to:

- 40.1.1 Achieve a Milestone by its Milestone Date;



40.1.2 Provide the Services in accordance with the Service Levels;

40.1.3 comply with its obligations under this Contract,

(each a **"Supplier Non-Performance"**),

and can demonstrate that the Supplier Non-Performance would not have occurred but for a Authority Cause, then (subject to the Supplier fulfilling its obligations in Clause 18 (Supplier Notification of Authority Cause)):

- (a) the Supplier shall not be treated as being in breach of this Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;
- (b) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Contract pursuant to Clause 42 (Authority Termination Rights) except Clause 42.7 (Termination Without Cause);
- (c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
  - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause; and
  - (ii) if the Authority, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause.
- (d) where the Supplier Non-Performance constitutes a Service Level Failure:
  - (i) NOT USED;
  - (ii) the Authority shall not be entitled to any Compensation for Critical Service Level Failure pursuant to Clause 15 (Critical Service Level Failure); and
  - (iii) the Supplier shall be entitled to invoice for the Contract Charges for the provision of the relevant Services affected by the Authority Cause,
  - (iv) in each case, to the extent that the Supplier can demonstrate that the Service Level Failure was caused by the Authority Cause.

40.2 In order to claim any of the rights and/or relief referred to in Clause 40.1, the Supplier shall:

40.2.1 comply with its obligations under Clause 18 (Notification of Authority Cause); and

40.2.2 within ten (10) Working Days of becoming aware that a Authority Cause has caused, or is likely to cause, a Supplier Non-Performance, give the Authority notice (a **"Relief Notice"**) setting out details of:

- (a) the Supplier Non-Performance;
- (b) the Authority Cause and its effect on the Supplier's ability to meet its obligations under this Contract; and
- (c) the relief claimed by the Supplier.

40.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief, consulting with the Supplier where necessary.

- 40.4 Without prejudice to Clauses 9.5 (Continuing obligation to provide the Services), if a Dispute arises as to:
- 40.4.1 whether a Supplier Non-Performance would not have occurred but for a Authority Cause; and/or
  - 40.4.2 the nature and/or extent of the relief claimed by the Supplier,
- either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.
- 40.5 Any Variation that is required to the Implementation Plan or to the Contract Charges pursuant to this Clause 40 shall be implemented in accordance with the Variation Procedure.

#### **41. FORCE MAJEURE**

- 41.1 Subject to the remainder of Clause 41 (and, in relation to the Supplier, a Party may claim relief under Clause 41 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure from complying with an obligation to the Supplier.
- 41.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 41.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under Clause 41 to the extent that consequences of the relevant Force Majeure:
- 41.3.1 are capable of being mitigated by any of the provision of any Services but the Supplier has failed to do so; and/or
  - 41.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract.
- 41.4 Subject to Clause 41.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure.
- 41.5 The Parties shall at all times following the occurrence of a Force Majeure and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure.
- 41.6 Where, as a result of a Force Majeure:
- 41.6.1 an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure:
    - (a) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure unless the provision of the Services is materially impacted by a Force Majeure which endures for a continuous period of more than ninety (90) days; and
    - (b) the Supplier shall not be liable for any Default and the Authority shall not be liable for any Authority Cause arising as a result of such failure;

41.6.2 the Supplier fails to perform its obligations in accordance with this Contract:

- (a) the Authority shall not be entitled:
  - (i) during the continuance of the Force Majeure to exercise its step-in rights under Clause 39.1.1(b) and 39.1.1(c) (Authority Remedies for Default) as a result of such failure;
  - (ii) retain any of the Contract Charges as Compensation for Critical Service Level Failure pursuant to Clause 15 (Critical Service Level Failure) to the extent that a Service Level Failure or Critical Service Level Failure has been caused by the Force Majeure; and
- (b) the Supplier shall be entitled to receive payment of the Contract Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be provided in accordance with the terms of this Contract during the occurrence of the Force Majeure.

41.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.

41.8 Relief from liability for the Affected Party under this Clause 41 shall end as soon as the Force Majeure no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 41.7.

## **K. TERMINATION AND EXIT MANAGEMENT**

### **42. AUTHORITY TERMINATION RIGHTS**

#### **42.1 NOT USED**

#### **42.2 Termination on Material Default**

42.2.1 The Authority may terminate this Contract for material Default by issuing a Termination Notice to the Supplier where:

- (a) the Supplier commits a Critical Service Level Failure;
- (b) the representation and warranty given by the Supplier pursuant to Clause 3.2.5 (Representations and Warranties) is materially untrue or misleading and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable;
- (c) NOT USED;
- (d) the Authority expressly reserves the right to terminate this Contract for material Default, including pursuant to any of the following Clauses: 5.4 (Cyber Essentials Scheme Condition), 7.1.5 (Implementation Plan), 9.3.2 (Provision of Services), 15.1 (Critical Service Failure), 17.4 (Disruption), 22.5 (Records, Audit Access and Open Book Data), 25 (Promoting Tax Compliance), 35.3.9 (Confidentiality), 51.6.2 (Prevention of Fraud and Bribery), Paragraph 1.2.4 of the Annex to Part A and Paragraph 1.2.4 of the Annex to Part B of Schedule 11: Staff Transfer;
- (e) the Supplier commits any material Default of this Contract which is not, in the reasonable opinion of the Authority, capable of remedy; and/or
- (f) the Supplier commits a Default, including a material Default, which in the opinion of the Authority is remediable but has not remedied such Default to the satisfaction of the Authority in accordance with the Rectification Plan Process;

- 42.2.2 For the purpose of Clause 42.2.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

#### **42.3 Termination in Relation to Financial Standing**

- 42.3.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Authority there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:
- (a) adversely impacts on the Supplier's ability to supply the Services under this Contract; or
  - (b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Services under this Contract.

#### **42.4 Termination on Insolvency**

- 42.4.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier where an Insolvency Event affecting the Supplier occurs.

#### **42.5 Termination on Change of Control**

- 42.5.1 The Supplier shall notify the Authority immediately in writing and as soon as the Supplier is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.
- 42.5.2 The Supplier shall ensure that any notification made pursuant to Clause 42.5.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.
- 42.5.3 The Authority may terminate this Contract under Clause 42.5 by issuing a Termination Notice to the Supplier within six (6) Months of:
- (a) being notified in writing that a Change of Control is anticipated or in contemplation or has occurred; or
  - (b) where no notification has been made, the date that the Authority becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,
- but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

#### **42.6 Termination for breach of Regulations**

- 42.6.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier on the occurrence of any of the statutory provisos contained in Regulation 73 (1) (a) to (c).

#### **42.7 Termination Without Cause**

- 42.7.1 The Authority shall have the right to terminate this Contract at any time by issuing a Termination Notice to the Supplier giving at least thirty (30) Working Days written notice.

#### **42.8 Termination in Relation to Variation**

- 42.8.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier for failure of the Parties to agree or the Supplier to implement a Variation in accordance with the Variation Procedure.

### **43. NOT USED**

### **44. TERMINATION BY EITHER PARTY**

#### **44.1 Termination for continuing Force Majeure**

- 44.1.1 Either Party may, by issuing a Termination Notice to the other Party, terminate this Contract in accordance with Clause 41.6.1(a) (Force Majeure).

#### **45. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION**

- 45.1 Where the Authority has the right to terminate this Contract, the Authority shall be entitled to terminate or suspend all or part of this Contract provided always that, if the Authority elects to terminate or suspend this Contract in part, the parts of this Contract not terminated or suspended can, in the Authority's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Contract.
- 45.2 Any suspension of this Contract under Clause 45.1 shall be for such period as the Authority may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Authority.
- 45.3 The Parties shall seek to agree the effect of any Variation necessitated by a partial termination, suspension or partial suspension in accordance with the Variation Procedure, including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Services and the Contract Charges, provided that the Supplier shall not be entitled to:
- 45.3.1 an increase in the Contract Charges in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of any of the Authority's termination rights under Clause 42 (Authority Termination Rights) except Clause 42.7 (Termination Without Cause); and
- 45.3.2 reject the Variation.

#### **46. CONSEQUENCES OF EXPIRY OR TERMINATION**

##### **46.1 Consequences of termination under Clauses 42.2 (Termination on Material Default), 42.3 (Termination in Relation to Financial Standing) and 42.8 (Termination in Relation to Variation)**

- 46.1.1 Where the Authority:
- (a) terminates (in whole or in part) this Contract under any of the Clauses referred to in Clause 46.1; and
- (b) then makes other arrangements for the supply of the Services,
- the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period provided that Authority shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Authority to the Supplier until the Authority has established the final cost of making those other arrangements.

##### **46.2 Consequences of termination under Clauses 42.7 (Termination without Cause)**

- 46.2.1 Where:
- (a) the Authority terminates (in whole or in part) this Contract under Clause 42.7 (Termination without Cause) the Authority shall indemnify the Supplier against any reasonable and proven Losses which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Contract, provided that the Supplier takes all reasonable steps to mitigate such Losses. The Supplier shall submit a fully itemised and costed list of such Losses, with supporting evidence including such further evidence as the Authority may require, reasonably and actually incurred by the Supplier as a result of termination under Clause 42.7 (Termination without Cause).

- 46.2.2 The Authority shall not be liable under Clause 46.2.1 to pay any sum which:
- (a) was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
  - (b) when added to any sums paid or due to the Supplier under this Contract, exceeds the total sum that would have been payable to the Supplier if this Contract had not been terminated.

**46.3 Consequences of termination under Clause 44.1 (Termination for Continuing Force Majeure)**

- 46.3.1 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Contract for a continuing Force Majeure pursuant to Clause 44.1 (Termination for Continuing Force Majeure).

**46.4 Consequences of Termination for Any Reason**

- 46.4.1 Save as otherwise expressly provided in this Contract:
- (a) termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
  - (b) termination of this Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Supplier under Clauses 22 (Records, Audit Access & Open Book Data), 34 (Intellectual Property Rights), 35.3 (Confidentiality), 35.5 (Freedom of Information) 35.6 (Protection of Personal Data), 37 (Liability), 46 (Consequences of Expiry or Termination), 52 (Severance), 54 (Entire Agreement), 55 (Third Party Rights) 57 (Dispute Resolution) and 58 (Governing Law and Jurisdiction), and the provisions of Schedule 1 (Definitions), Schedule 3 (Contract Charges, Payment and Invoicing), Schedule 11 (Staff Transfer), Schedule 12 (Dispute Resolution Procedure) and, without limitation to the foregoing, any other provision of this Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Expiry Date.

**46.5 NOT USED**

**L. MISCELLANEOUS AND GOVERNING LAW**

**47. COMPLIANCE**

**47.1 Health and Safety**

- 47.1.1 The Supplier shall perform its obligations under this Contract (including those in relation to the Services) in accordance with:
- (a) all applicable Law regarding health and safety; and
  - (b) the Authority's health and safety policy (as provided to the Supplier from time to time) whilst at the Authority Premises.
- 47.1.2 Each Party shall promptly notify the other of as soon as possible of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Contract

- 47.1.3 While on the Authority Premises, the Supplier shall comply with any health and safety measures implemented by the Authority in respect of Supplier Personnel and other persons working there and any instructions from the Authority on any necessary associated safety measures.

#### **47.2 Equality and Diversity**

- 47.2.1 The Supplier shall:
- (a) perform its obligations under this Contract (including those in relation to provision of the Services) in accordance with:
    - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
    - (ii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law;
  - (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

#### **47.3 Official Secrets Act and Finance Act**

- 47.3.1 The Supplier shall comply with the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and
  - (b) section 182 of the Finance Act 1989.

#### **47.4 Environmental Requirements**

- 47.4.1 The Supplier shall, when working on the Sites, perform its obligations under this Contract in accordance with the Environmental Policy of the Authority.
- 47.4.2 The Authority shall provide a copy of its written Environmental Policy (if any) to the Supplier upon the Supplier's written request.

### **48. ASSIGNMENT AND NOVATION**

- 48.1 The Supplier shall not assign, novate, Sub-Contract or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract or any part of it without Approval.
- 48.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Contract or any part thereof to:
- 48.2.1 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
  - 48.2.2 any private sector body which substantially performs the functions of the Authority,
- and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 48.2.
- 48.3 A change in the legal status of the Authority shall not, subject to Clause 48.4 affect the validity of this Contract and this Contract shall be binding on any successor body to the Authority.
- 48.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Contract to a private sector body in accordance with Clause 48.2.2 (the "**Transferee**" in the rest of this Clause) the right of termination of the Authority in

Clause 42.4 (Termination on Insolvency) shall be available to the Supplier in the event of insolvency of the Transferee as if the references to Supplier in Clause 42.4 (Termination on Insolvency) and to Supplier in the definition of Insolvency Event were references to the Transferee.

#### **49. WAIVER AND CUMULATIVE REMEDIES**

- 49.1 The rights and remedies under this Contract may be waived only by notice in accordance with Clause 56 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Contract or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that right or remedy.
- 49.2 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

#### **50. RELATIONSHIP OF THE PARTIES**

- 50.1 Except as expressly provided otherwise in this Contract, nothing in this Contract, nor any actions taken by the Parties pursuant to this Contract, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

#### **51. PREVENTION OF FRAUD AND BRIBERY**

- 51.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Commencement Date:
  - 51.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - 51.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 51.2 The Supplier shall not during the Contract Period:
  - 51.2.1 commit a Prohibited Act; and/or
  - 51.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 51.3 The Supplier shall during the Contract Period:
  - 51.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
  - 51.3.2 keep appropriate records of its compliance with its obligations under Clause 51.3.1 and make such records available to the Authority on request;
  - 51.3.3 if so required by the Authority, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing that the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with this Contract are compliant with the Relevant Requirements. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request; and



- 51.3.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
- 51.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 51.1, or has reason to believe that it has or any of the Supplier Personnel have:
  - 51.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 51.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - 51.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- 51.5 If the Supplier makes a notification to the Authority pursuant to Clause 51.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 22 (Records, Audit Access and Open Book Data).
- 51.6 If the Supplier breaches Clause 51.3, the Authority may by notice:
  - 51.6.1 require the Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
  - 51.6.2 immediately terminate this Contract for material Default.
- 51.7 Any notice served by the Authority under Clause 51.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Contract shall terminate).

## **52. SEVERANCE**

- 52.1 If any provision of this Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Contract shall not be affected.
- 52.2 In the event that any deemed deletion under Clause 52.1 is so fundamental as to prevent the accomplishment of the purpose of this Contract or materially alters the balance of risks and rewards in this Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Contract and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.
- 52.3 If the Parties are unable to resolve the Dispute arising under Clause 52 within twenty (20) Working Days of the date of the notice given pursuant to Clause 52.2, this Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Contract is terminated pursuant to Clause 52.

## **53. FURTHER ASSURANCES**

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

#### 54. ENTIRE AGREEMENT

- 54.1 This Contract and the documents referred to in it constitute the entire agreement between the Parties in respect of the matter and supersede and extinguish all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 54.2 Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.
- 54.3 Nothing in this Clause 54 shall exclude any liability in respect of misrepresentations made fraudulently.

#### 55. THIRD PARTY RIGHTS

- 55.1 The provisions of paragraphs 2.1 and 2.6 of Part A, paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, paragraphs 2.1 and 2.3 of Part C and paragraphs 1.4, 2.3 and 2.8 of Part D of Schedule 11 (Staff Transfer)] (together “**Third Party Provisions**”) confer benefits on persons named in such provisions other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 55.2 Subject to Clause 55.1, a person who is not a Party to this Contract has no right under the CTRPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 55.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.
- 55.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 55.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

#### 56. NOTICES

- 56.1 Except as otherwise expressly provided within this Contract, any notices sent under this Contract must be in writing. For the purpose of Clause 56, an e-mail is accepted as being "in writing".
- 56.2 Subject to Clause 56.3, the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

Manner of delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clauses 56.3 and 56.4)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For <sup>TM</sup> 1 <sup>st</sup> Class or other prepaid, next Working Day service providing	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day.	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

proof of delivery	Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	
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56.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1<sup>st</sup> Class or other prepaid in the manner set out in the table in Clause 56.2:

56.3.1 any Termination Notice (Clause 42 (Authority Termination Rights)),

56.3.2 any notice in respect of:

- (a) partial termination, suspension or partial suspension (Clause 45 (Partial Termination, Suspension and Partial Suspension)),
- (b) waiver (Clause 49 (Waiver and Cumulative Remedies))
- (c) Default or Authority Cause; and

56.3.3 any Dispute Notice.

56.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 56.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1<sup>st</sup> Class delivery (as set out in the table in Clause 56.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

56.5 Clause 56 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under the Dispute Resolution Procedure).

56.6 For the purposes of this Clause 56, the address and email address of each Party shall be

56.6.1 For the Authority:

Address: *[Redacted]*

For the attention of: *[Redacted]*

Email: *[Redacted]*

56.6.2 For the Supplier:

Address: *[Redacted]*

For the attention of: *[Redacted]*

Tel: *[Redacted]*

Fax: *[Redacted]*

Email: *[Redacted]*

## 57. DISPUTE RESOLUTION

57.1 The Parties shall resolve Disputes arising out of or in connection with this Contract in accordance with the Dispute Resolution Procedure.

57.2 The Supplier shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.

## 58. GOVERNING LAW AND JURISDICTION

- 58.1 This Contract and any issues, Disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 58.2 Subject to Clause 57 (Dispute Resolution) and Schedule 12 (Dispute Resolution Procedure) (including the Authority's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

## **59. CONFLICTS OF INTEREST**

- 59.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor the Supplier Personnel are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or the Supplier Personnel and the duties owed to the Authority under the provisions of this Contract.
- 59.2 The Supplier shall promptly notify and provide full particulars to the Authority if such conflict referred to in Clause 59.1 arises or may reasonably be foreseen as arising.
- 59.3 The Authority reserves the right to terminate this Contract immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The action of the Authority pursuant to this Clause 59.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority

## **60. ACCESS TO MOD SITES**

- 60.1 In this Clause 60:

- 60.1.1 The Authority shall issue passes for those representatives of the Supplier who are approved for admission to the Site and a representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Authority and shall be surrendered on demand or on completion of the supply of the Services.
- 60.1.2 The Supplier's representatives when employed within the boundaries of a Site, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the time being for the conduct of personnel at that Site. When on board ship, compliance shall be with the Ship's Regulations as interpreted by the Officer in charge. Details of such rules, regulations and requirements shall be provided, on request, by the Officer in charge.
- 60.1.3 The Supplier shall be responsible for the living accommodation and maintenance of its representatives while they are employed at a Site. Sleeping accommodation and messing facilities, if required, may be provided by the Authority wherever possible, at the discretion of the Officer in charge, at a cost fixed in accordance with current Ministry of Defence regulations. At Sites overseas, accommodation and messing facilities, if required, shall be provided wherever possible. The status to be accorded to the Supplier's personnel for messing purposes shall be at the discretion of the Officer in charge who shall, wherever possible give his decision before the commencement of this Contract where so asked by the Supplier. When sleeping accommodation and messing facilities are not available, a certificate to this effect may be required by the Authority and shall be obtained by the Supplier from the Officer in charge. Such certificate shall be presented to the Authority with other evidence relating to the costs of this Contract.

- 60.1.4 Where the Supplier's representatives are required by this Contract to join or visit a Site overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided for them free of charge by the Ministry of Defence whenever possible, normally by Royal Air Force or by MoD chartered aircraft. The Supplier shall make such arrangements through the Technical Branch named for this purpose in this Contract. When such transport is not available within a reasonable time, or in circumstances where the Supplier wishes its representatives to accompany material for installation which it is to arrange to be delivered, the Supplier shall make its own transport arrangements. The Authority shall reimburse the Supplier's reasonable costs for such transport of its representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Supplier's representatives locally overseas which is necessary for the purpose of this Contract shall be provided wherever possible by the Ministry of Defence, or by the Officer in charge and, where so provided, shall be free of charge.
- 60.1.5 Out-patient medical treatment given to the Supplier's representatives by a Service Medical Officer or other Government Medical Officer at a Site overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Site and transportation of the Supplier's representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Supplier at rates fixed in accordance with current Ministry of Defence regulations.
- 60.1.6 Accidents to the Supplier's representatives which ordinarily require to be reported in accordance with Health and Safety at Work etc. Act 1974, shall be reported to the Officer in charge so that the Inspector of Factories may be informed.
- 60.1.7 No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Supplier's representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Ministry of Defence rates.
- 60.1.8 The Supplier shall, wherever possible, arrange for funds to be provided to its representatives overseas through normal banking channels (e.g. by travellers' cheques). If banking or other suitable facilities are not available, the Authority shall, upon request by the Supplier and subject to any limitation required by the Supplier, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made at the Site to which the Supplier's representatives are attached. All such advances made by the Authority shall be recovered from the Supplier.

**IN WITNESS** of which this Contract has been duly executed by the Parties.

Signed duly authorised for and on behalf of the SUPPLIER

Signature: [Redacted]

Name: [Redacted]

Position: [Redacted]

Date [Redacted]

Signed for and on behalf of the AUTHORITY

Signature: [Redacted]

Name: [Redacted]

Position: [Redacted]

Date [Redacted]



## SCHEDULE 1: DEFINITIONS

In accordance with Clause 1 (Definitions and Interpretations) of this Contract including its Recitals the following expressions shall have the following meanings:

<b>"Achieve"</b>	means in respect of a Milestone, confirmation from the Authority that the Milestone is accepted as having been achieved by the Supplier, and "Achieved", "Achieving" and "Achievement" shall be construed accordingly;
<b>"Acquired Rights Directive"</b>	means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
<b>"Additional Clauses"</b>	means the additional Clauses in Schedule 22 (Additional Clauses);
<b>"Affected Party"</b>	means the party seeking to claim relief in respect of a Force Majeure;
<b>"Affiliates"</b>	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
<b>"Approval"</b>	means the prior written consent of the Authority and <b>"Approve"</b> and <b>"Approved"</b> shall be construed accordingly;
<b>"Approved Sub-Licensee"</b>	means any of the following: <ul style="list-style-type: none"><li>a) a Central Government Body;</li><li>b) any third party providing services to a Central Government Body; and/or</li><li>c) anybody (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority;</li></ul>
<b>"Auditor"</b>	means: <ul style="list-style-type: none"><li>a) the Authority's internal and external auditors;</li><li>b) the Authority's statutory or regulatory auditors;</li><li>c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office</li><li>d) HM Treasury or the Cabinet Office</li><li>e) any party formally appointed by the Authority to carry out audit or similar review functions; and</li><li>f) successors or assigns of any of the above;</li></ul>
<b>"Authority Assets"</b>	means the Authority's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision of the Services;
<b>"Authority Responsibilities"</b>	means the responsibilities of the Authority set out in the Part B of Schedule 4 (Implementation Plan, Authority Responsibilities and Key Personnel) and any other responsibilities of the Authority agreed in writing between the Parties from time to



	time in connection with this Contract;
<b>"Authority Background IPR"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>a) IPRs owned by the Authority before the Commencement Date, including IPRs contained in any of the Authority's Know-How, documentation, processes, software and procedures;</li> <li>b) IPRs created by the Authority independently of this Contract; and/or</li> </ul> <p>Crown Copyright which is not available to the Supplier otherwise than under this Contract;</p>
<b>"Authority Cause"</b>	means any breach of the obligations of the Authority or any other default, act, omission, negligence or statement of the Authority, of its employees, servants, agents in connection with or in relation to the subject-matter of this Contract and in respect of which the Authority is liable to the Supplier;
<b>"Authority Data"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Authority's Confidential Information, and which: <ul style="list-style-type: none"> <li>i) are supplied to the Supplier by or on behalf of the Authority; or</li> <li>ii) the Supplier is required to generate, process, store or transmit pursuant to this Contract; or</li> </ul> </li> <li>b) any Personal Data for which the Authority is the Data Controller;</li> </ul>
<b>"Authority Premises"</b>	means premises owned, controlled or occupied by the Authority which are made available for use by the Supplier or its Sub-Contractors for provision of the Services (or any of them);
<b>"Authority Property"</b>	means the property, other than real property and IPR, including any equipment issued or made available to the Supplier by the Authority in connection with this Contract;
<b>"Authority Representative"</b>	means the representative appointed by the Authority from time to time in relation to this Contract;
<b>"Authority Responsibilities"</b>	means the responsibilities of the Authority set out in the Part B of Schedule 4 (Implementation Plan, Authority Responsibilities and Key Personnel) and any other responsibilities of the Authority agreed in writing between the Parties from time to time in connection with this Contract;
<b>"Authority's Confidential Information"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Authority (including all Authority Background IPR and Project Specific IPR);</li> <li>b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Authority's attention or into the Authority's possession in connection with this</li> </ul>

	Contract; and
	information derived from any of the above;
<b>"Central Government Body"</b>	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> <li>a) Government Department;</li> <li>b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>c) Non-Ministerial Department; or</li> <li>d) Executive Agency;</li> </ul>
<b>"Change in Law"</b>	means any change in Law which impacts on the supply of the Services and performance of the Contract which comes into force after the Commencement Date;
<b>"Change of Control"</b>	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
<b>"Charges"</b>	means the charges raised under or in connection with this Contract from time to time;
<b>"Commercially Sensitive Information"</b>	means the Confidential information listed in Schedule 14 (Commercially Sensitive Information) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
<b>"Comparable Supply"</b>	means the supply of Services to another customer of the Supplier that are the same or similar to the Services;
<b>"Compensation for Critical Service Level Failure"</b>	has the meaning given to it in Clause 15.1 (Critical Service Level Failure);
<b>"Confidential Information"</b>	means the Authority's Confidential Information and/or the Supplier's Confidential Information, as the context specifies;
<b>"Contract"</b>	means this written agreement between the Authority and the Supplier consisting of these terms, the MoD Terms and Conditions, and the Additional Clauses;
<b>" Contract Charges"</b>	means the prices (exclusive of any applicable VAT), payable to the Supplier by the Authority under this Contract, as set out in Annex 1 of Schedule 3 (Contract Charges, Payment and Invoicing), for the full and proper performance by the Supplier of its obligations under this Contract less any Deductions;
<b>" Contract Period"</b>	means the term of this Contract from the Commencement Date until the Expiry Date;
<b>" Contract Year"</b>	means a consecutive period of twelve (12) Months commencing on the Commencement Date or each anniversary thereof;
<b>"Control"</b>	means control as defined in section 1124 and 450 Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly;
<b>"Conviction"</b>	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by

virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006;

**"Commencement Date"**

means **01/01/2017**;

**"Costs"**

the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:

- a) the cost to the Supplier or the Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including:
  - i) base salary paid to the Supplier Personnel;
  - ii) employer's national insurance contributions;
  - iii) 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 provide 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 Supplier 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 Supplier Assets by the Supplier to the Authority or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets; and
- 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 provision of the Services;

but excluding:

- a) Overhead;
- b) financing or similar costs;
- c) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Contract Period whether in relation to Supplier Assets or otherwise;
- d) taxation;
- e) fines and penalties;

	<p>f) amounts payable under Clause 26 (Benchmarking); and</p> <p>g) non-cash items (including depreciation, amortisation, impairments and movements in provisions);</p>
<b>"Critical Service Level Failure"</b>	means any instance of critical service level failure specified in Annex 2 to Part A of Schedule 6 (Service Levels and Performance Monitoring);
<b>"Crown"</b>	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Crown Body"</b>	means any department, office or executive agency of the Crown;
<b>"CRTPA"</b>	means the Contracts (Rights of Third Parties) Act 1999;
<b>"Cyber Essentials Scheme"</b>	<p>means the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats. Details of the Cyber Essentials Scheme can be found here:</p> <p><a href="https://www.gov.uk/government/publications/cyber-essentials-scheme-overview">https://www.gov.uk/government/publications/cyber-essentials-scheme-overview</a>];</p>
<b>"Cyber Essentials Scheme Basic Certificate"</b>	means the certificate awarded on the basis of self-assessment, varied by an independent certification body, under the Cyber Essentials Scheme and is the basic level of assurance;
<b>"Cyber Essentials Scheme Data"</b>	means sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme;
<b>"Data Controller"</b>	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
<b>"Data Processor"</b>	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
<b>"Data Protection Legislation" or "DPA"</b>	means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>"Data Subject"</b>	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
<b>"Data Subject Access Request"</b>	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;
<b>"Deductions"</b>	means any deduction which the Authority is paid or is payable under this Contract;
<b>"Default"</b>	means any breach of the obligations of the Supplier (including but not limited to including abandonment of this Contract in breach of its terms) or any other default (including material Default), act, omission, negligence or statement of the Supplier, of its Sub-Contractors or any Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to the Authority;

<b>"Delay"</b>	means: <ul style="list-style-type: none"> <li>a) a delay in the Achievement of a Milestone by its Milestone Date; or</li> <li>b) delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;</li> </ul>
<b>"Deliverable"</b>	means an item or feature in the supply of the Services delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Implementation Plan (if any) or at any other stage during the performance of this Contract;
<b>"Delivery"</b>	means, in respect of the relevant Milestone, the time at which the Milestone is delivered and accepted by the Authority, and, in respect of the Services, the time at which the Services have been provided or performed by the Supplier and accepted by the Authority and <b>"Deliver"</b> and <b>"Delivered"</b> shall be construed accordingly;
<b>"Disclosing Party"</b>	has the meaning given to it in Clause 35.3.1 (Confidentiality);
<b>"Dispute"</b>	means any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Variation Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
<b>"Dispute Notice"</b>	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
<b>"Dispute Resolution Procedure"</b>	means the dispute resolution procedure set out in Schedule 12 (Dispute Resolution Procedure);
<b>"Documentation"</b>	means all documentation as: <ul style="list-style-type: none"> <li>a) is required to be supplied by the Supplier to the Authority under this Contract;</li> <li>b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Services;</li> <li>c) is required by the Supplier in order to provide the Services; and/or</li> <li>d) has been or shall be generated for the purpose of providing the Services;</li> </ul>
<b>"DOTAS"</b>	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

<b>"Due Diligence Information"</b>	means any information supplied to the Supplier by or on behalf of the Authority prior to the Commencement Date;
<b>"Employee Liabilities"</b>	<p>means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:</p> <ul style="list-style-type: none"> <li>a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</li> <li>b) unfair, wrongful or constructive dismissal compensation;</li> <li>c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;</li> <li>d) compensation for less favourable treatment of part-time workers or fixed term employees;</li> <li>e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Authority or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;</li> <li>f) claims whether in tort, contract or statute or otherwise;</li> <li>g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;</li> </ul>
<b>"Employment Regulations"</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;
<b>"Environmental Policy"</b>	means to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Authority;
<b>"Environmental Information Regulations or EIRs"</b>	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
<b>"Expedited Dispute Timetable"</b>	means the timetable set out in paragraph 2.7 of Schedule 12 (Dispute Resolution Procedure);
<b>" Expiry Date"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>a) the end date of the Initial Period; or</li> <li>b) the end date of any Extension Period;</li> </ul> <p>if this Contract is terminated before the end date of the Initial Period or Extension Period as appropriate, the earlier date of</p>

	termination of this Contract in accordance with its terms;
<b>"Extension Period"</b>	means such period or periods up to a maximum of twelve (12) Months in total as may be specified by the Authority pursuant to Clause 6.2;
<b>"FOIA"</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
<b>"Force Majeure"</b>	<p>means any event, occurrence, circumstance, matter or cause affecting the performance by either the Authority or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none"> <li>a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Contract;</li> <li>b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</li> <li>c) acts of the Crown, local government or Regulatory Bodies;</li> <li>d) fire, flood or any disaster; and</li> <li>e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding: <ul style="list-style-type: none"> <li>i) any industrial dispute relating to the Supplier, the Supplier Personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain; and</li> <li>ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and</li> <li>iii) any failure of delay caused by a lack of funds;</li> </ul> </li> </ul>
<b>"Force Majeure Notice"</b>	means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure;
<b>"Former Supplier"</b>	means a supplier supplying the services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
<b>"Fraud"</b>	means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
<b>"General Anti-Abuse Rule"</b>	means (a) the legislation in Part 5 of the Finance Act 2013 and; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
<b>"General Change in Law"</b>	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a

	Comparable Supply;
<b>"Good Industry Practice"</b>	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
<b>"Government"</b>	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Halifax Abuse Principle"</b>	means the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>"HMRC"</b>	means Her Majesty's Revenue and Customs;
<b>"Holding Company"</b>	has the meaning given to it in section 1159 of the Companies Act 2006;
<b>"ICT Policy"</b>	means the Authority's policy in respect of information and communications technology, which is in force as at the Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;
<b>"Impact Assessment"</b>	has the meaning given to it in Clause 23.1.3 (Variation Procedure);
<b>"Implementation Plan"</b>	means the plan set out in Part A of Schedule 4 (Implementation Plan, Authority Responsibilities and Key Personnel);
<b>"Information"</b>	has the meaning given to it under section 84 of the Freedom of Information Act 2000;
<b>"Initial Period"</b>	means the period of thirty-nine (39) Months from the Commencement Date;
<b>"Insolvency Event"</b>	means, in respect of the Supplier: <ul style="list-style-type: none"> <li>a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or</li> <li>b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or</li> <li>c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or</li> <li>d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</li> <li>e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint</li> </ul>



	an administrator is given; or
	f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
	g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
	h) where the Supplier is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or
	i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;
<b>"Insurances"</b>	shall have the meaning given to it in paragraph 1.1 of Schedule 15 (Insurances);
<b>"Intellectual Property Rights" or "IPR"</b>	means <ul style="list-style-type: none"> <li>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information;</li> <li>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</li> <li>c) all other rights having equivalent or similar effect in any country or jurisdiction;</li> </ul>
<b>Invitation to Tender or "ITT"</b>	has the meaning given to it in Recital C to this Contract;
<b>"IPR Claim"</b>	means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority in the fulfilment of its obligations under this Contract;
<b>"Key Personnel"</b>	means the individuals (if any) identified as such in Part C of Schedule 4 (Implementation Plan, Authority Responsibilities and Key Personnel);
<b>"Key Role(s)"</b>	has the meaning given to it in Clause 27.1 (Key Personnel);
<b>"Know-How"</b>	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the other Party's possession before the Commencement Date;
<b>"Law"</b>	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier

	is bound to comply;
<b>"Losses"</b>	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and <b>"Loss"</b> shall be interpreted accordingly;
<b>"Man Day"</b>	means 7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
<b>"Man Hours"</b>	means the hours spent by the Supplier Personnel properly working on the provision of 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;
<b>"Milestone"</b>	means an event or task described in the Implementation Plan which, if applicable, must be completed by the relevant Milestone Date;
<b>"Milestone Date"</b>	means the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
<b>"MoD Terms and Conditions"</b>	means the contractual terms and conditions listed in Schedule 21 (MoD DEFCONS and DEFFORMS) which form part of the Contract;
<b>"Month"</b>	means a calendar month and <b>"Monthly"</b> shall be interpreted accordingly;
<b>"Officer in charge"</b>	shall include Officer Commanding Service Stations, Ships' Masters or Senior Officers, and Officers superintending Government Establishments;
<b>"Occasion of Tax Non-Compliance"</b>	means: <ul style="list-style-type: none"> <li>a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> <li>i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</li> <li>ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or</li> </ul> </li> <li>b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion;</li> </ul>
<b>"OJEU Notice"</b>	has the meaning given to it in Recital A to this Contract;
<b>"Open Book Data "</b>	means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the

Contract Charges already paid or payable and Contract Charges forecast to be paid during the remainder of this Contract, including details and all assumptions relating to:

- a) the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all services;
- b) operating expenditure relating to the provision of the Services including an analysis showing:
  - i) the unit costs and quantity of any 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; and
  - iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin;
- 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 Contract Period and on an annual basis;
- f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
- 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.

**"Other Supplier"**

means any supplier to the Authority (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;

**"Overhead"**

means those amounts which are intended to recover a proportion of the Supplier's or the relevant 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";

**"Parent Company"**

means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;

**"Party"**

means the Authority or the Supplier and **"Parties"** shall mean

	both of them;
<b>"Performance Monitoring System"</b>	has the meaning given to it in paragraph 1.1.2 in Part B of Schedule 6 (Service Levels and Performance Monitoring);
<b>"Performance Monitoring Reports"</b>	has the meaning given to it in paragraph 3.1 of Part B of Schedule 6 (Service Level and Performance Monitoring);
<b>"Personal Data"</b>	has the meaning given to it in the Data Protection Act 1998;
<b>"Processing"</b>	has the meaning given to it in the Data Protection Legislation but, for the purposes of this Contract, it shall include both manual and automatic processing and <b>"Process"</b> and <b>"Processed"</b> shall be interpreted accordingly;
<b>"Prohibited Act"</b>	means any of the following: <ul style="list-style-type: none"> <li>a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority or any other public body a financial or other advantage to: <ul style="list-style-type: none"> <li>i) induce that person to perform improperly a relevant function or activity; or</li> <li>ii) reward that person for improper performance of a relevant function or activity;</li> </ul> </li> <li>b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;</li> <li>c) committing any offence: <ul style="list-style-type: none"> <li>i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or</li> <li>ii) under legislation or common law concerning fraudulent acts; or</li> <li>iii) defrauding, attempting to defraud or conspiring to defraud the Authority; or</li> <li>iv) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</li> </ul> </li> </ul>
<b>"Project Specific IPR"</b>	means: <ul style="list-style-type: none"> <li>a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or</li> <li>b) IPR in or arising as a result of the performance of the Supplier's obligations under this Contract and all updates and amendments to the same;</li> </ul> but shall not include the Supplier Background IPR;
<b>"Quality Plan"</b>	means the deliverable quality plan submitted by the Supplier to the Authority upon the commencement of this Contract in accordance with DEFCON 602A. A copy of the Quality Plan is set out at Schedule 23;
<b>"Recipient"</b>	has the meaning given to it in Clause 35.3.1 (Confidentiality);

<b>"Rectification Plan"</b>	means the rectification plan pursuant to the Rectification Plan Process;
<b>"Rectification Plan Process"</b>	means the process set out in Clause 39.2 (Rectification Plan Process);
<b>"Regulations"</b>	means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;
<b>"Related Supplier"</b>	means any person who provides services to the Authority which are related to the Services from time to time;
<b>"Relevant Conviction"</b>	means a Conviction that is relevant to the nature of the Services to be provided;
<b>"Relevant Requirements"</b>	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
<b>"Relevant Tax Authority"</b>	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
<b>"Relevant Transfer"</b>	means a transfer of employment to which the Employment Regulations applies;
<b>"Relevant Transfer Date"</b>	means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
<b>"Relief Notice"</b>	has the meaning given to it in Clause 40.2.2 (Supplier Relief Due to Authority Cause);
<b>"Replacement Services"</b>	means any services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the Expiry Date, whether those services are provided by the Authority internally and/or by any third party;
<b>"Replacement Sub-Contractor"</b>	means 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);
<b>"Replacement Supplier"</b>	means any third party provider of Replacement Services appointed by or at the direction of the Authority from time to time or where the Authority is providing Replacement Services for its own account, shall also include the Authority;
<b>"Request for Information"</b>	means a request for information or an apparent request relating to this Contract or the provision of the Services or an apparent request for such information under the FOIA or the EIRs;
<b>"Restricted Countries"</b>	has the meaning given to it in Clause 35.6.3 (Protection of Personal Data);
<b>"Schedule"</b>	means a schedule to this Contract;
<b>"Security Policy Framework"</b>	the current HMG Security Policy Framework that can be found at <a href="https://www.gov.uk/government/publications/security-policy-framework">https://www.gov.uk/government/publications/security-policy-framework</a> ;
<b>"Service Failure"</b>	means an unplanned failure and interruption to the provision of the Services, reduction in the quality of the provision of the Services or event which could affect the provision of the Services in the future;
<b>"Service Level Failure"</b>	means a failure to meet the Service Level Performance Measure in respect of a Service Level Performance Criterion;
<b>"Service Level Performance"</b>	has the meaning given to it in paragraph 3.2 of Part A of

<b>Criteria"</b>	Schedule 6 (Service Levels and Performance Monitoring);
<b>"Service Level Performance Measure"</b>	shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Schedule 6 (Service Levels and Performance Monitoring);
<b>"Service Level Threshold"</b>	shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Schedule 6 (Service Levels and Performance Monitoring);
<b>"Service Levels"</b>	means any service levels applicable to the provision of the Services under this Contract specified in Annex 1 to Part A of Schedule 6 (Service Levels and Performance Monitoring);
<b>"Service Period"</b>	means a recurrent period of one Month during the Contract Period;
<b>"Service Transfer"</b>	means 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;
<b>"Service Transfer Date"</b>	means the date of a Service Transfer;
<b>"Services"</b>	means the services to be provided by the Supplier to the Authority as referred to in Annex A of Schedule 2 (Services);
<b>"Sites"</b>	means any premises (including the Authority Premises, the Supplier's premises or third party premises) from, to or at which: <ul style="list-style-type: none"> <li>a) the Services are (or are to be) provided; or</li> <li>b) the Supplier manages, organises or otherwise directs the provision or the use of the Services;</li> </ul> and which shall include any of Her Majesty's Ships or Vessels;
<b>"Specific Change in Law"</b>	means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
<b>"Staffing Information"</b>	has the meaning give to it in Schedule 11 (Staff Transfer);
<b>"Standards"</b>	means any: <ul style="list-style-type: none"> <li>a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;</li> <li>b) any Standards detailed by the Authority in Paragraph 1 of Schedule 7 (Standards) or agreed between the Parties from time to time;</li> <li>c) relevant Government codes of practice and guidance applicable from time to time.</li> </ul>
<b>"Sub-Contract"</b>	means each Sub-Contract with a Sub-Contractor;
<b>"Sub-Contractor"</b>	means any Sub-Contractor: <ul style="list-style-type: none"> <li>a) listed in Schedule 17 (Sub-Contractors);</li> <li>b) which provides the Services (or any part of them);</li> <li>c) provides facilities or services necessary for the provision of the Services (or any part of them); and/or</li> </ul>

	d) is responsible for the management, direction or control of the provision of the Services (or any part of them);
<b>"Supplier"</b>	means the person, firm or company named in the recitals with whom the Authority enters into this Contract;
<b>"Supplier Assets"</b>	means all assets and rights used by the Supplier to provide the Services in accordance with this Contract but excluding the Authority Assets;
<b>"Supplier Background IPR"</b>	means <ul style="list-style-type: none"> <li>a) Intellectual Property Rights owned by the Supplier before the Commencement Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or</li> <li>b) Intellectual Property Rights created by the Supplier independently of this Contract;</li> </ul>
<b>"Supplier Equipment"</b>	means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Authority) in the performance of its obligations under this Contract;
<b>"Supplier Non-Performance"</b>	has the meaning given to it in Clause 40.1 (Supplier Relief Due to Authority Cause);
<b>"Supplier Personnel"</b>	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of the Supplier's obligations under this Contract;
<b>"Supplier Profit"</b>	means, 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;
<b>"Supplier Profit Margin"</b>	means, 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 Contract Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
<b>"Supplier Representative"</b>	means the representative appointed by the Supplier and notified to the Authority in accordance with Clause 21;
<b>"Supplier's Confidential Information"</b>	means <ul style="list-style-type: none"> <li>a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Background IPR) trade secrets, Know-How, and/or personnel of the Supplier;</li> <li>b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with this Contract;</li> </ul>

	c) information derived from any of the above.
<b>"Tender"</b>	means the tender submitted by the Supplier to the Authority on 12/10/2016 and annexed to or referred to in Schedule 19 (Tender);
<b>"Termination Notice"</b>	means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;
<b>"Third Party IPR"</b>	means Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Services;
<b>"Transferring Authority Employees"</b>	those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;
<b>"Transferring Former Supplier Employees"</b>	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date;
<b>"Transferring Supplier Employees"</b>	means those employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.
<b>"Transparency Principles"</b>	means the principles which set out the requirement for the proactive release of information under the Government's transparency commitment to publish contract information. They set a presumption in favour of disclosure, to encourage both Government and suppliers to consider the information that should be made available when government signs a contract with a supplier;
<b>"Transparency Reports"</b>	means the information relating to the Services and performance of this Framework Agreement which the Supplier is required to provide to the Authority in accordance with the reporting requirements in Schedule 16;
<b>"Undelivered Services"</b>	has the meaning given to it in Clause 9.3.1 (Services);
<b>"Valid Invoice"</b>	means an invoice issued by the Supplier to the Authority that complies with the invoicing procedure in paragraph 4 (Invoicing Procedure) of Schedule 3 (Contract Charges, Payment and Invoicing);
<b>"Variation"</b>	has the meaning given to it in Clause 23.1 (Variation Procedure);
<b>"Variation Form"</b>	means the form set out in Schedule 13 (Variation Form);
<b>"Variation Procedure"</b>	means the procedure set out in Clause 23.1 (Variation Procedure);
<b>"VAT"</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>"Worker"</b>	means any one of the Supplier Personnel which the Authority, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 – Tax Arrangements of Public Appointees <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> applies in respect of the Services;
<b>"Working Day"</b>	means any Day other than a Saturday or Sunday or public holiday in England and Wales.



## SCHEDULE 2: SERVICES

### 1. DEFINITIONS AND ABBREVIATIONS

1.1 The following terms and abbreviations in this Schedule 2 shall have the following meanings:

<b>ADI</b>	Approved Driving Instructor;
<b>Administrative Withdrawal</b>	means the Authority's withdrawal of a Candidate from LAT so that the Candidate is unavailable for any further LAT. This will not count as a fail for the purpose of calculating the Supplier's overall Candidate pass-rate;
<b>AoR</b>	Area of Responsibility;
<b>Assessment Point Withdrawal</b>	means the withdrawal of a Candidate from LAT because they are not expected to reach test standard during their LAT course;
<b>Candidate</b>	means the member of the Authority's staff that is receiving LAT under this Contract;
<b>Category</b>	means the category of licence for which LAT is delivered by the Supplier. The categories of licence are B and B+E;
<b>CDT</b>	Contract Driver Training;
<b>CDT Branch, HQ DST</b>	Contract Driver Training Branch, Headquarters, Defence School of Transport;
<b>CDT Record Card</b>	Contract Driver Training Record Card in the form set out at Annex E to this Schedule 2;
<b>Consolidated Results Sheet</b>	the consolidated results of the Candidates listed on the Nominal Roll, in the form set out at Annex C to this Schedule 2;
<b>Contracting, Purchasing, and Finance / CP&amp;F system</b>	means the Authority's online procurement system;
<b>DDEs</b>	Defence Driving Examiners;
<b>DeLTA</b>	Defence Licence & Testing Authority;
<b>DO</b>	Designated Officer; means the officer responsible for monitoring the Contract on behalf of the Authority and authorising claims for payments;
<b>DST</b>	Defence School of Transport;
<b>DVSA</b>	Driver and Vehicle Standards Agency;
<b>EDBS</b>	Enhanced Disclosure Barring Service;
<b>Fully Qualified</b>	means an Instructor has passed the theory test, driving

	assessment, and instructional ability assessment requirements in order to be on the LGV voluntary register.
<b>Instructor</b>	means the Supplier Personnel that deliver LAT under this Contract;
<b>Instructor Trainer</b>	a member of the Authority's staff who will assess the capability of the Supplier's Instructors when required;
<b>ITC</b>	Infantry Training Centre;
<b>LAT</b>	Licence Acquisition Training;
<b>MI</b>	management information;
<b>Minimum Test Vehicle Standards</b>	means the minimum specifications, set by the DVSA, that a vehicle is required to meet in order to be a suitable vehicle to be used for a practical test;
<b>Nominal Roll</b>	the list of Candidates the Authority will issue with an OTT if the OTT requests LAT for more than two Candidates. The Nominal Roll will be in the form set out at Annex C to this Schedule 2;
<b>OFSTED</b>	Office for Standards in Education, Children's Services and Skills;
<b>OTT</b>	Orders to Train;
<b>Ph2</b>	means Phase 2;
<b>Phase 2</b>	means the second phase of a military recruit's training;
<b>Quality Plan</b>	means the deliverable quality plan submitted by the Supplier to the Authority upon the commencement of this Contract in accordance with DEFCON 602A;
<b>RAF</b>	Royal Air Force;
<b>SO</b>	Supervising Officer, a Civil Service position; means the officer responsible for issuing OTT and supervising the Contract at individual locations and who is responsible to the DO;
<b>Show Me Tell Me</b>	the vehicle safety questions that DDE's may ask Candidates as part of a practical test;
<b>Supplier Personnel</b>	has the meaning given to it in Contract Schedule 1 (Definitions);
<b>Training Day</b>	means 1 day of LAT, comprised of 4 hours behind-the-wheel Tuition, and 4 hours observing as a passenger in the training vehicle;
<b>Tuition</b>	means the behind-the-wheel LAT received by the Candidate;
<b>ULO</b>	Unit Licensing Officer;
<b>Unit</b>	MoD formation / company;
<b>USO</b>	Unit Supervising Officer;

## **2. INTRODUCTION**

- 2.1 The purpose of this Schedule 2 is to set out the scope of the Services that the Supplier is required to provide to the Authority under this Contract and to provide a description of what the Services entail, together with any specific Standards applicable to the Services.

## **3. SCOPE OF THE CONTRACT**

- 3.1 The Authority's personnel frequently require LAT in order to drive the vehicles they are expected to operate in the course of their duties. To meet the statutory and legal obligations set for the Department for Transport, the Authority's personnel must hold the appropriate Category of licence to operate military vehicles legally on public roads. Under this Contract, the Supplier shall deliver the required LAT to the Authority's personnel.
- 3.2 The Authority requires the Supplier to provide concurrent Category B / B+E LAT courses nationally at the nominated Ph2 training establishments, set out at Annex A to this Schedule 2.
- 3.3 Candidates will be recruits from the UK Armed Forces, will generally be aged between 17 and 28, and will be within the remit of OFSTED regulations. Candidates may be in or out of uniform when receiving LAT.
- 3.4 Candidates will have the appropriate provisional licence and will have passed the relevant theory and hazard perception test for the Category of licence they require. Candidates will be medically fit to drive in accordance with Department for Transport Regulations.
- 3.5 The estimated number of Candidates that will require LAT courses is set out at Annex A to this Schedule 2.
- 3.6 Annual estimates for Candidate volumes, including a forecast of where the volumes fall throughout the year, will be provided to the Supplier in January or February of each year of the Contract.
- 3.7 Phase 2 training establishments shall have 2 – 3 stand down periods of between 1 – 2 weeks a year. Exact timings for these stand down periods will be communicated to the Supplier in January or February of each Contract Year.
- 3.8 The Authority's Contract Manager and CDT Branch, HQ DST shall have primary responsibility for contract management on behalf of the Authority. However, operationally this responsibility will be delegated to Ph2 SO's at each Ph2 training establishment. The DO will be located at DST Leconfield.
- 3.9 Provisional licence applications, theory and hazard perception testing, and the DVSA practical driving test are **not** within the scope of this Contract.

## **4. MANDATORY SERVICE REQUIREMENTS**

- 4.1 Sections 5 – 21 (inclusive) below set out the mandatory requirements that the Supplier must fulfil in their entirety in order to meet the requirements of this Contract.

## **5. CONTRACT IMPLEMENTATION**

- 5.1 The Supplier shall commence the delivery of LAT, as and when required by the Authority, on 1<sup>st</sup> April 2017. Following the commencement of the Contract, and before any LAT is delivered, the Supplier shall have a period of 10 weeks to complete the implementation activities set out below, in accordance with the specified timescales and to the satisfaction of the Authority:
- 5.1.1 The Supplier shall visit all DO's / Ph2 SO's at their premises for introductory meetings and to become familiar with the Authority's sites (by week 2 of Contract);
- 5.1.2 Implement reporting mechanism for the production of the required monthly management information (by week 10 of Contract)

- 5.1.3 Attend weekly implementation progress meeting with the Authority, which the Authority may request to be face-to-face or via audio-conference (to commence by week 3 of Contract);
- 5.1.4 Confirm resources, including sufficient Instructors and training vehicles, are in place to commence delivery of LAT (by weeks 4 – 8 of Contract);
- 5.1.5 Provide the Authority with copies of driving licences and ADI / DVSA / ASLS certificates of all Instructors (by weeks 4 – 8 of Contract);
- 5.1.6 Provide the Authority with copies of vehicle documentation for all training vehicles that shall be used to deliver LAT (by weeks 4 – 8 weeks of Contract)
- 5.1.7 Provide the Authority with a letter of intent for every Instructor that confirms each Instructor's commitment to deliver LAT under this Contract (by weeks 4 – 8 of the Contract); and
- 5.2 Within 5 working days of the commencement of the Contract, the Supplier shall submit its Implementation Plan to the Authority, in accordance with the requirements set out in Contract Clause 7 and Contract Schedule 4.
- 5.3 The Supplier's Implementation Plan shall set out how it will deliver the implementation activity requirements listed at 5.1.1 to 5.1.7 above. The Supplier shall incorporate any reasonable additions or amendments to the Implementation Plan that have been requested by the Authority prior to its submission.
- 5.4 The implementation activity undertaken by the Supplier upon the commencement of the Contract, and prior to the commencement of the delivery of LAT on 1<sup>st</sup> April 2017, will be at the Supplier's own cost and only requests for payment for the delivery of LAT (when delivery commences on 1<sup>st</sup> April 2017) will be paid by the Authority.

## **6. ORDERS TO TRAIN (OTT) PROCESS**

- 6.1 The Authority will complete a separate OTT to set out the requirements for each LAT course it requires the Supplier to deliver.
- 6.2 The OTT shall be in the form set out at Annex B to this Schedule 2, and shall include, but shall not be limited to, the following details:
  - 6.2.1 Candidate(s) requiring LAT;
  - 6.2.2 Category of licence required for each Candidate;
  - 6.2.3 Commencement date of LAT;
  - 6.2.4 Unit location;
  - 6.2.5 Pick-up point; and
  - 6.2.6 Candidate availability during the LAT course (Candidates will normally be made available for 10 working days).
- 6.3 At ITC Catterick Candidates will not be made available for more than 10 working days. After this period Candidates will be withdrawn by the Authority. If a Candidate is withdrawn and has not passed a practical test, this shall be deemed a fail for the purpose of calculating the Supplier's overall Candidate pass-rate.
- 6.4 If an OTT requests LAT for more than two Candidates, the Authority shall provide a Nominal Roll, in the form set out at Annex C to this Schedule 2, with the OTT.
- 6.5 The Supplier shall receive OTT from the Authority no later than 14 calendar days before the commencement date of the LAT course. The Supplier shall receive OTT from the Ph2 SO at each Ph2 training establishment.
- 6.6 The Supplier shall notify the DO / Ph2 SO if they receive an OTT from any source other than the DO / Ph2 SO.
- 6.7 The Supplier shall accept every completed OTT that is serial-numbered and signed as instruction to proceed with the LAT requirements set out in the OTT.

- 6.8 The Supplier shall sign, date-stamp, and return a scanned copy of the completed OTT via email to the DO / Ph2 SO no later than 5 working days before the LAT commencement date specified in the OTT.
- 6.9 The Supplier shall deliver LAT in accordance with the details and instructions set out by the Authority in the OTT. All LAT will commence and finish at the Unit location specified in the OTT unless a different location is authorised by the DO / Ph2 SO.
- 6.10 The Supplier shall deliver LAT on working days (Monday to Friday) between 0800 hours and 1700 hours. When required by the Authority, the Supplier shall deliver LAT on public and Bank Holidays (except for Christmas Day and New Year's Day), on early mornings (before 0800 hours), and evenings (after 1700 hours). When required by the Authority, the Supplier shall deliver LAT at the weekend.
- 6.11 The Supplier shall only deliver LAT to the specific Candidates listed on an OTT for a LAT course. The Supplier shall immediately notify the DO / Ph2 SO via telephone if any Candidate listed in the OTT does not attend their LAT, or if any Candidate not listed in the OTT is presented for LAT. The Supplier shall not deliver LAT to a Candidate who is not listed in the OTT unless the DO / Ph2 SO provides written confirmation to the Supplier that the Candidate in question may undertake LAT.
- 6.12 The Supplier shall not be permitted to reject an OTT. However, if the Supplier is unable to fulfil an OTT, it must notify the DO / Ph2 SO, setting out the reason why the OTT cannot be accepted, no later than five working days prior to the LAT commencement date specified in the OTT. Within 2 working days of the Supplier's notification that it cannot fulfil the OTT, the Supplier shall submit to the Authority:
- 6.12.1 A detailed explanation of why the OTT was not accepted; and
- 6.12.2 A plan of activity and actions that the Supplier will take to ensure there are no further instances of non-acceptance of an OTT.
- 6.13 The Supplier shall maintain a control record of all the OTT, in numerical sequence, it has received from the Authority. The DO / Ph2 SO will maintain an identical record. Any change to an OTT will be authorised by the DO / Ph2 SO and the Authority will issue written confirmation of such changes to the Supplier. This written confirmation will bear the relevant contract reference number and serial number.
- 6.14 The Supplier shall submit requests for payment for each LAT course within 5 working days of the completion date specified in the OTT. The Supplier shall submit completed CDT Record Cards and a Consolidated Results Sheet to the Authority as a request for payment.
- 6.15 The Supplier shall be registered on the Authority's Contracting, Purchasing, and Finance (CP&F) system to enable the Authority to process the Supplier's requests for payment. Information in respect of the CP&F system is available here:  
<https://www.gov.uk/government/publications/mod-contracting-purchasing-and-finance-e-procurement-system/contracting-purchasing-and-finance-cpf-tool#new-online-procurement-system>
- 6.16 The OTT number shall remain valid for a period of one month. If the OTT number expires before the LAT course is completed and the Supplier has submitted its request for payment, the Supplier shall submit a request to the Authority to re-authorise the OTT.

## **7. DRIVING TUITION AND PRACTICAL TESTS**

- 7.1 Each LAT course shall commence on the date specified in the OTT.
- 7.2 Each Training Day shall commence when the Candidate is collected from the pick-up point specified in the OTT.
- 7.3 A Training Day constitutes 1 day of LAT, comprised of 4 hours behind-the-wheel Tuition, and 4 hours observing as a passenger in the training vehicle.
- 7.4 Instructors shall not deliver any driving tuition for private customers once the LAT course for a Candidate has commenced until it is completed.

- 7.5 The Supplier shall provide all training aids that are required as part of the delivery of LAT. This shall include, but is not limited to, cones, poles, and barriers. All training aids shall be DVSA-compliant and the Supplier shall maintain a sufficient inventory of training aids so that there is no shortage at any time.
- 7.6 The Supplier shall provide Candidates with all personal protective equipment that is required during their LAT. This shall include, but is not limited to, high visibility vests, hard hats, and gloves. All personal protective equipment shall be clean, serviceable, and shall comply with all relevant Health and Safety Executive guidelines. The Supplier shall maintain a sufficient inventory of personal protective equipment so that there is no shortage at any time.
- 7.7 The Supplier shall identify appropriate parking / manoeuvring areas that shall be used during LAT in addition to areas provided by the Authority.
- 7.8 The Authority will make parking / manoeuvring areas available for use during LAT. However, the availability of these areas cannot be guaranteed. Therefore, the Supplier shall identify a sufficient number of suitable parking / manoeuvring areas for use during the delivery of LAT.
- 7.9 In order to be deemed suitable by the Authority, parking / manoeuvring areas identified for use by the Supplier shall be:
- 7.9.1 DVSA compliant; and
  - 7.9.2 Near enough to the pick-up point for the LAT as to not have an adverse impact on the LAT delivered owing to travelling time to the area (all areas shall be within 1 hour travelling time of the pick-up point specified in the OTT).
- 7.10 Once a Candidate has commenced LAT they shall not be removed from it until they have:
- 7.10.1 Passed a practical test;
  - 7.10.2 Failed 3 practical tests;
  - 7.10.3 Been withdrawn from LAT by the DO / Ph2 SO.
- 7.11 When LAT is being delivered, Instructors shall keep the passenger Candidate(s) engaged in learning while one Candidate is receiving behind-the-wheel Tuition.
- 7.12 Instructors shall provide instruction to Candidates on the Highway Code, vehicle safety, and daily vehicle servicing, and shall instruct Candidates on the full range of Show Me Tell Me questions, so that Candidates have a competent level of knowledge in these areas.
- 7.13 The Instructor shall notify the Authority as soon as a Candidate is considered to have reached the standard required to take their practical test. The Instructor shall submit such notification in writing, via email, to the DO located in the relevant DeLTA office within the AoR that the LAT is being delivered. The Authority shall have sole discretion when deciding if a Candidate shall take a practical test. If requested, the Instructor shall provide any information required by the Authority to support this decision making process.
- 7.14 Practical tests will be conducted by an Authority DDE. The Authority's DeLTA staff will be responsible for allocating DDEs to conduct practical tests. The DO will contact the Instructor / Supplier to confirm the date, time, and location, of each Candidate's practical test.
- 7.15 Practical tests will usually be conducted within 24 hours of being requested. However, it may take the Authority up to 3 working days to arrange a practical test.
- 7.16 The Supplier shall direct any questions about the Authority's LAT and practical test processes to the DO in the first instance.
- 7.17 When a Candidate takes a practical test, the Supplier shall provide the Candidate with the use of the same training vehicle used during the Candidate's LAT. If the same training vehicle is not available, the Supplier shall provide a vehicle of the same make and model for the Candidate to use. If this is not possible, the Supplier shall provide a suitable alternate vehicle (subject to approval by the DO) and shall provide the Candidate with 2 hours Tuition in the alternate vehicle at no cost to the Authority.
- 7.18 On the day of a practical test, the Instructor shall present the Candidate for the practical test at the specified location and, following the practical test, return the Candidate to the set down point specified in the OTT.

- 7.19 If required by the Authority, when a DDE is not available to perform a Candidate's practical test in the same location the LAT course was delivered, the Instructor shall take the Candidate to another location for a practical test. The Supplier will receive payment for the travelling time on the return journey from the new practical test location to the set down point if the journey is longer than 1 hour. The journey from the pick-up point to the new test area will be deemed to be Tuition.

## **8. FAILING A PRACTICAL TEST, CANCELLATION, AND ASSESSMENT POINT WITHDRAWAL**

- 8.1 The DO / Ph2 SO will decide how many times a Candidate will be permitted to take a practical test. The maximum number of practical tests each Candidate is permitted to take is 3. However, the Authority may, by exception and at its sole discretion, authorise a Candidate to take additional practical tests.
- 8.2 Candidates will not be permitted to re-take a practical test for a period of 24 hours after a fail. The Supplier shall provide 4 hours Tuition to the Candidate prior to their next practical test being taken.
- 8.3 If the Authority is unable to arrange a re-take of a practical test within 3 working days, the Instructor shall provide the Candidate with a further 2 hours Tuition for every further 3 working day period that the Candidate is waiting to take a practical test. The Authority will pay the Supplier for this additional Tuition if the total Tuition that has been provided by the Instructor exceeds 30 hours.
- 8.4 If a Candidate fails 2 practical tests, the Candidate will not be permitted to re-take the practical test until the Instructor has provided 30 hours Tuition to the Candidate.
- 8.5 The DO / Ph2 SO shall give the Supplier a minimum of 3 working days' notice of the postponement or cancellation of all, or part of, a Candidate's LAT course.
- 8.6 In the event of adverse weather or un-safe driving conditions, either the DO or the Instructor shall be permitted, with the agreement of the other party (which shall not be unreasonably withheld), to cancel all or part of a Training Day because of the un-safe conditions. The Authority will not make any payment to the Supplier for LAT that is cancelled due to adverse weather or un-safe driving conditions.
- 8.7 The Instructor shall identify any Candidate who, after 16 – 20 hours Tuition, is not expected to reach the standard required to pass a practical test during their LAT course. For each Candidate identified, the Instructor shall submit a driving assessment report, in the form set out at Annex D to this Schedule 2, to the DO / Ph2 SO to recommend that the Candidate's performance is deemed to necessitate an Assessment Point Withdrawal from their LAT course.
- 8.8 The driving assessment report submitted by the Instructor shall provide a clear, detailed justification for the recommendation to action an Assessment Point Withdrawal for the Candidate in question.
- 8.9 The DO / Ph2 SO shall have sole responsibility for deciding if the Candidate should be withdrawn as part of the Assessment Point Withdrawal process. The DO (or a suitably-qualified member of the Authority's staff) will carry out a driving assessment of the Candidate to determine if the Candidate should be withdrawn from LAT. The template the Authority shall use to record the driving assessment is set out at Annex D.
- 8.10 If the DO / Ph2 SO decides to withdraw a Candidate as an Assessment Point Withdrawal, this will count as a fail for the purpose of calculating the Supplier's overall Candidate pass-rate.

## **9. MONITORING TUITION**

- 9.1 The Instructor shall ensure that each Candidate is in possession of a CDT Record Card, in the form set out at Annex E to this Schedule 2, at the commencement of the LAT course. The Instructor shall record the Candidate's daily progress on the CDT Record Card, and shall ensure the Candidate counter-signs the CDT Record Card at the end of each Training Day.

- 9.2 Each CDT Record Card shall be retained by the Instructor for the duration of the LAT course and shall be presented to the DO / Ph2 SO upon request.
- 9.3 The Supplier shall retain a copy of each completed CDT Record Card when the LAT course is complete for its records, and shall email a copy of the CDT Record Card to the USO / DO/ Ph2 SO.

## **10. SUPPLIER PERSONNEL AND INSTRUCTORS**

- 10.1 The Supplier shall deploy and maintain a sufficient number of Instructors to ensure that, throughout the Contract, all of the LAT required by the Authority, including delivering LAT courses concurrently and during peaks in demand, is delivered in full, on time, and to the Authority's satisfaction. The Authority will provide the Supplier with as much notice as it is able to of an upcoming peak period in demand for LAT.
- 10.2 An unexpected change in the Authority's operational requirements may result in a surge in demand for LAT and a significant increase in the LAT required by the Authority for a period of time. The Supplier shall have a contingency process in place that sets out how it shall mobilise additional Instructors within a reasonable timescale to meet the significant increase in the LAT required by the Authority if such a surge in demand for LAT occurs.
- 10.3 The Supplier and its Instructors shall have an awareness and understanding of new and developing good industry practice in respect of LAT.
- 10.4 The Supplier shall deliver Category B / B+E LAT at an Instructor to Candidate ratio of 1:2. The Supplier shall not exceed this ratio. In exceptional circumstances, the Authority's DO / Ph2 SO may, at their sole discretion, permit the ratio to be increased to 1:3.
- 10.5 If required, the Authority will present Candidates for LAT on an individual basis. However, this will be kept to a minimum. If Candidates are presented on an individual basis, they may exceed the minimum duration of Tuition required to constitute a Training Day if they are fit and able, and it is safe for them to do so.
- 10.6 To provide continuity, the Supplier shall use the same Instructor and training vehicle for the duration of a Candidate's LAT. In exceptional circumstances, if the Supplier cannot provide the same Instructor and training vehicle for the duration of a Candidate's LAT, the Supplier shall notify the Authority of this and shall provide an alternate Instructor and / or training vehicle so that there is no pause in the Candidate's LAT.
- 10.7 The Supplier Personnel, including all of its Instructors, shall comply with all current legislation that is relevant to the Services, including any legislative changes that are implemented during the duration of the Contract. This legislation includes, but is not limited to:
- 10.7.1 The Road Traffic Act 1988 (as amended)
  - 10.7.2 The Motor Cars (Driving Instruction) Regulations 2005 (as amended)
  - 10.7.3 Driving Instruction (Suspension and Exemption Powers) Act 2009
  - 10.7.4 The Driving Instruction (Compensation Scheme) Regulations 2012
  - 10.7.5 The Motor Vehicles (Driving Licences) Regulations 1999
- 10.8 Instructors shall comply with the DVSA national standard and the minimum legal requirements for delivering LAT.
- 10.9 The Supplier Personnel, including all of its Instructors, shall conform to the DVSA Driver Training Code of Conduct when delivering the Services.
- 10.10 Instructors shall be fully qualified DVSA ADI's and shall have achieved a minimum Grade B qualification.
- 10.11 Instructors' DVSA registration cards must be displayed in the training vehicle at all times when LAT is being delivered.
- 10.12 Instructors shall clearly display their instructor certificate(s) (ADI, and LGV if applicable) in the training vehicle. If requested by the Authority, the Supplier shall present instructor certificates for inspection by the Authority within 24 hours.



- 10.13 All Supplier Personnel shall hold, for the duration of the Contract, a current, valid EDBS certificate that is no more than 5 years old. The Supplier shall ensure that any EDBS certificate that becomes older than 5 years old during the duration of the Contract is renewed. The Supplier shall provide the Authority with the EDBS certificate numbers for all Supplier Personnel, including all new Supplier Personnel that are appointed during the duration of the Contract.
- 10.14 The Supplier shall conduct an assessment on all potential Instructors to ensure they have the capability and competence to deliver the Services. The assessment shall include, but shall not be limited to:
- 10.14.1 A theory test;
  - 10.14.2 A driving assessment; and
  - 10.14.3 An assessment of instructional ability.
- 10.15 The Supplier shall retain a record of the assessment completed for each Instructor, and shall, within 24 hours of a request being raised, provide the Authority with copies of any such records that it requires.
- 10.16 If required by the Authority, an Instructor shall be assessed by an Authority Instructor Trainer, against the DVSA national standard, to ensure they have the capability and competence to deliver the Services. The assessment shall include, but shall not be limited to, an assessment of:
- 10.16.1 Driving ability;
  - 10.16.2 Instructional ability, including teaching, manoeuvring, and trailer coupling / uncoupling; and
  - 10.16.3 The ability to identify and rectify Candidate driving errors.
- 10.17 If the Authority notifies the Supplier that an Instructor has not demonstrated the required capability and competence during the assessment, the Instructor shall not be permitted to deliver any LAT until they have been given additional training by the Supplier and, subsequently, have been re-assessed by the Authority and found to have the capability and competence to deliver the Services.
- 10.18 Instructors that provide LAT at Ph2 training establishments shall complete the Authority's mandatory Army Recruiting and Training Division Staff Leadership School (ASLS) course. The course is accessed using a computer, and the Authority shall provide the Supplier with copies of the course on compact disc. Every Instructor must pass the course and submit their pass certificate to the Authority before delivering any LAT under this Contract.
- 10.19 If the Authority, in its sole discretion, notifies the Supplier that an Instructor has failed to meet the requirements of the Contract including, but not limited to, in relation to poor performance or unacceptable behaviour, the Supplier shall remove the Instructor from delivering any further LAT in this Contract and any other contract in place between the Authority and the Supplier.

## **11. TRAINING VEHICLES**

- 11.1 The Supplier shall provide all training vehicles and trailers that are required to deliver the Services. The Supplier's training vehicles and trailers shall comply with DVSA recommendations in respect of vehicle specification and loads.
- 11.2 The Supplier's training vehicle and trailer fleet shall at all times be of sufficient size to deliver all of the Authority's requested LAT courses, including during peak periods of demand, in full, on time, and with no delay to the commencement of Candidates' LAT. The Authority will provide the Supplier with as much notice as it is able to of an upcoming peak period in demand for LAT course.
- 11.3 An unexpected change in the Authority's operational requirements may result in a surge in demand for LAT and a significant increase in the LAT required by the Authority for a period of time. The Supplier shall have a contingency process in place that sets out how it shall

- mobilise additional training vehicles within a reasonable timescale to meet the significant increase in the LAT required by the Authority if such a surge in demand for LAT occurs.
- 11.4 The Supplier shall have vehicle recovery cover for all training vehicles. If a training vehicle breaks down when LAT is being delivered, the Supplier shall return the Candidate(s) to the pick-up point.
- 11.5 If a training vehicle breaks down, the Supplier shall repair or replace the training vehicle by no later than the start of the next scheduled Training Day.
- 11.6 The Supplier's training vehicles shall be right-hand drive.
- 11.7 The Supplier's Category B / B+E training vehicles shall have sufficient leg room in the rear of the vehicle to enable any passenger Candidate(s) observing the Candidate receiving behind-the-wheel Tuition to be carried safely and comfortably.
- 11.8 The Supplier's Category B / B+E training vehicles shall be dual control, fitted with manual transmission, and shall be no more than 5 years old at any point during the Contract.
- 11.9 The Supplier's training vehicles and trailers shall meet the DVSA Minimum Test Vehicle Standards at all times for the duration of the Contract.
- 11.10 The Supplier shall ensure that any additional seating and / or seatbelts fitted to any of the Supplier's training vehicles are manufactured and fitted in accordance with all minimum legal requirements, including, but not limited to, the Road Vehicles (Construction and Use) Regulations Motor Vehicles (1986) and the Driver Testing and Vehicle Load Regulations (2013).
- 11.11 The Supplier's training vehicles shall:
- 11.11.1 Have fully functional ancillary controls;
  - 11.11.2 Be roadworthy and fully taxed;
  - 11.11.3 Meet the Department for Transport's MOT test standard.
  - 11.11.4 Be presentable, tidy, and clean inside and out.
- 11.12 The Supplier shall have a service and maintenance programme for its training vehicle fleet. The Supplier's service and maintenance programme shall maximise training vehicle availability. For every training vehicle, the Supplier shall have a system that records, and provides visibility of, the due dates for its next MOT, next service, and any scheduled maintenance.
- 11.13 The Supplier shall ensure all inspections and servicing that is undertaken on the training vehicle fleet is completed on schedule (i.e. as determined by mileage, time since last service, or in accordance with the manufacturer's specifications) by professionally qualified individuals.
- 11.14 The Authority shall be permitted to inspect any training vehicle or trailer to determine its roadworthiness and may reject any training vehicle or trailer it determines to be unsuitable.
- 11.15 If the Authority determines that a training vehicle or trailer is not roadworthy, the training vehicle or trailer shall not be used to deliver LAT to Candidates until its roadworthiness is of an acceptable standard to the Authority. If the Authority determines a training vehicle or trailer is not roadworthy the Supplier shall provide a replacement by no later than the start of the next Training Day so that there is no disruption to the Candidate's scheduled LAT.
- 11.16 The Supplier shall establish and maintain a system to record and monitor documentation for all of the Supplier's training vehicles, including all documentation related to:
- 11.16.1 Insurance;
  - 11.16.2 Tax;
  - 11.16.3 MOT;
  - 11.16.4 Servicing;
  - 11.16.5 Maintenance;
  - 11.16.6 V5C certificates; and

- 11.16.7 Lease-hire agreements (if applicable).
- 11.17 The Supplier shall ensure all training vehicle documentation is valid and in-date. During normal office hours, the Supplier shall provide the Authority with any training vehicle documentation requested on the same day as the request is made.
- 11.18 The Supplier shall have vehicle insurance for all training vehicles that shall indicate that the vehicle is used to deliver LAT. Vehicle insurance shall include, but shall not be limited to, cover for:
- 11.18.1 The delivery of LAT for Candidates both in and out of military uniform; and
- 11.18.2 DDE's when they are driving and / or in control of the Supplier's training vehicles.
- 11.19 The Instructor shall be responsible for checking the security of the training vehicle load and shall remain responsible for the load when delivering LAT to a Candidate. This shall include conducting regular checks in respect of the training vehicle load during a Candidate's LAT course.

## **12. SECURITY**

- 12.1 When required, Supplier Personnel shall undergo security vetting procedures in order to access Authority sites or to process LAT documentation. Security vetting procedures differ across Authority sites and the Authority shall notify the Supplier of the security vetting procedure of specific sites on a case by case basis. The Supplier shall note that security vetting procedures may take a number of weeks to complete.
- 12.2 Supplier Personnel shall comply with all security standing orders, health and safety policies, and operating procedures, of any Authority site at which they are present. The Authority shall make copies of these orders, policies, and procedures, available to the Supplier upon request.
- 12.3 Instructors shall check training vehicles for explosive devices every day before LAT commences. Instructors shall conduct a further check if the training vehicle is left unattended at any time.
- 12.4 The DO / Ph2 SO shall arrange training for Instructors so they are able to competently check the training vehicle for explosive devices. The Authority may conduct a spot check on an Instructor to determine if they can competently perform the required check of the training vehicle. If the Authority deems that the Instructor cannot competently perform the required safety checks, the Instructor in question shall, at the Authority's request, undertake further training.

## **13. RECORDING AND FILMING**

- 13.1 The Supplier shall be permitted to use external facing visual recording and filming devices for insurance purposes when LAT is being delivered. The Supplier shall ensure the identity of Authority personnel is protected by not recording audio at any time. The Supplier shall not conduct any filming of any kind on Authority sites. The Supplier shall turn off or cover all filming devices before entering Authority sites.
- 13.2 With the exception of external facing cameras fitted for insurance purposes, the Supplier shall not record or film any practical test being undertaken by a Candidate. This includes any recording or filming by any device fitted to any training vehicle used to undertake a practical test. If a DDE identifies that any equipment is filming the conduct of a practical test, either visually or audibly, the DDE will terminate the practical test immediately and this will be counted as a fail.
- 13.3 The Supplier shall not request, under any circumstances, that any Authority personnel comment on, or review, any audio or video provided by a Candidate, or any third party, for the purposes of facilitating a challenge to the conduct of a practical test or its result.
- 13.4 If a training vehicle with a Candidate inside is involved in a motor accident, The Supplier shall, in the first instance, submit to the Authority any recording of the incident that will be shared with the appropriate investigating authority and / or insurer.

- 13.5 The Supplier shall, upon request, provide the Authority with any video or audio recording made during the delivery of LAT under this Contract, and all such video or audio shall remain the property of the Authority.
- 13.6 The Supplier shall retain any video or audio footage made during the delivery of LAT under this Contract in accordance with the Data Protection Act 1998. The Supplier shall maintain a register of all currently stored footage and all footage that has been destroyed.

#### **14. RESOURCE AND ACCOUNT MANAGEMENT**

- 14.1 The Supplier shall deploy, and consistently maintain, the Supplier Personnel required to ensure the Supplier is sufficiently resourced to deliver the Services required under this Contract to the satisfaction of the Authority. The Supplier shall ensure that, at all times, Supplier Personnel are all suitably qualified and experienced, and are of a grade relevant and proportionate to the role being undertaken.
- 14.2 The Supplier shall ensure that all Supplier Personnel have a clear understanding of the Authority's objectives for this Contract.
- 14.3 The Supplier shall appoint an Account Manager and Deputy Account Manager for this Contract. The Account Manager shall be the Authority's primary point of contact. On the Commencement Date of this Contract, the Supplier shall send the Authority the name and contact details (including telephone number and email address) of the Account Manager and Deputy Account Manager. The Account Manager(s) shall have industry experience in the delivery of driving licence acquisition contracts and shall not directly deliver LAT under this Contract. The Supplier shall empower the Deputy Account Manager to act on the Account Manager's behalf in their absence.
- 14.4 The Account Manager shall manage the delivery of the Services, and shall keep the Authority informed on the Supplier's performance, proposed activity, and outstanding issues in accordance with the requirements set out in Contract Schedule 6 (Service levels and Performance Monitoring).
- 14.5 The Account Manager, or the Deputy Account Manager in their absence, shall be contactable by the Authority during normal working hours (Monday to Friday, between 0800 hours and 1700 hours).
- 14.6 The Supplier shall appoint three On-Site Managers for this Contract who shall be based at the Authority's premises full-time. The On-Site Managers shall be responsible for managing the delivery of the Services at the site(s) they are based, including managing the Instructors at the site(s). One On-Site Manager shall split their time between ITC Catterick and DST Leconfield. Two On-Site Managers will be based at DST South; the specific locations will be confirmed by the Authority upon the commencement of this Contract.
- 14.7 The Authority will make office space available for the On-Site Managers at its premises, and the Supplier shall provide the On-Site Managers' office furniture, telephone line, IT equipment, and internet access.

#### **15. COMPLAINTS**

- 15.1 The Supplier shall establish and maintain a documented and clearly defined process to record, manage, and resolve complaints raised by the Authority.
- 15.2 The Authority shall raise complaints using a Service Provision Report, in the form set out at Annex F to this Schedule 2.
- 15.3 The Supplier shall record all complaints received in a register and shall hold on file a copy of each Service Provision Report it receives from the Authority.
- 15.4 The Supplier shall maintain a record of all corrective and preventative actions taken in response to a complaint that is raised by the Authority.
- 15.5 The Supplier shall resolve complaints, to the satisfaction of the DO / Ph2 SO, within 10 working days of the complaint being raised by the Authority.

- 15.6 The On-Site Manager shall be responsible for managing the complaints process at the site(s) they are located.

## **16. QUALITY MANAGEMENT AND PERFORMANCE MANAGEMENT**

- 16.1 The Supplier shall have an established quality management system that is relevant to the Services delivered under this Contract. The Supplier's quality management system shall be used by the Supplier to ensure that the Services are delivered to an acceptable standard.
- 16.2 In accordance with DEFCON 602A, the Supplier shall submit its deliverable Quality Plan to the Authority on the commencement of this Contract. When the Quality Plan has been approved by the Authority it will be incorporated into the Contract.
- 16.3 The Supplier shall measure and record the performance of all of its Instructors for the duration of the Contract, including, but not limited to, measuring and recording performance in respect of:
- 16.3.1 Pass rates;
  - 16.3.2 Failure rates;
  - 16.3.3 Assessment Point Withdrawals; and
  - 16.3.4 1<sup>st</sup> / 2<sup>nd</sup> / 3<sup>rd</sup> time pass rates
- 16.4 The Supplier shall identify any poor performance among its Instructors and shall have a process in place to correct such poor performance to ensure the Services are delivered to an acceptable standard.
- 16.5 Each On-Site Manager shall be responsible for managing the identification and correction of poor performance among the Supplier's Instructors at the site(s) they are located.
- 16.6 The Supplier shall maintain the performance records for the duration of the Contract, and, for each OTT, shall maintain a record of the completion date of the LAT course and the date the Supplier invoice is paid by the Authority.
- 16.7 The Supplier shall provide the Authority with a copy of any or all performance records and OTT records upon request.

## **17. MANAGEMENT INFORMATION (MI)**

- 17.1 The Supplier shall submit monthly MI reports (in Excel format) to the Authority by the 5<sup>th</sup> working day of each month.
- 17.2 The Supplier shall establish and maintain a process to produce and submit the monthly MI reports, and shall ensure the data within each report is accurate.
- 17.3 Each monthly MI report shall include data for both the previous month and the year to date.
- 17.4 The Supplier shall make any changes to the format or content of the monthly MI report that are reasonably requested by the Authority.
- 17.5 The Supplier's monthly MI report shall include, but shall not be limited to, the following data fields:
- 17.5.1 Total number of Candidates that received LAT;
  - 17.5.2 Number of Candidates that passed;
  - 17.5.3 Number of Candidates that failed;
  - 17.5.4 Passes recorded by 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> attempt;
  - 17.5.5 Number candidates presented on a 1:1 basis;
  - 17.5.6 Average number of hours to pass;
  - 17.5.7 Average number of hours to fail;
  - 17.5.8 Average number of hours to Assessment Point Withdrawal;

- 17.5.9 Number of Administrative Withdrawals by the Authority;
- 17.5.10 Number of Assessment Point Withdrawals by the Authority;
- 17.5.11 Average number of practical tests per Candidate;
- 17.5.12 Overall pass rate;
- 17.5.13 Number of instances that an Instructor failed to attend and Candidates were available but not collected;
- 17.5.14 Number of instances that an OTT was rejected due to no Instructor being available;
- 17.5.15 Number of instances that an OTT was rejected due to no training vehicle being available;
- 17.5.16 Number of instances where the practical test was delayed / cancelled by the Authority due to no DDE being available;
- 17.5.17 Number of instances where the practical test was cancelled late by the Authority;
- 17.5.18 Number of instances where the test was delayed / cancelled by the Authority due to no DDE being available;
- 17.5.19 Number of instances where the OTT was rejected due to insufficient notice;
- 17.5.20 Number of complaints (Service Provision Reports) raised;
- 17.5.21 Total payments received for passed LAT courses;
- 17.5.22 Total payments received for failed LAT courses;
- 17.5.23 Total payments received for Administrative Withdrawals;
- 17.5.24 Total payments received for Assessment Point Withdrawals;
- 17.5.25 Total payments received for additional costs;
- 17.5.26 Total payments received for cancellations;
- 17.5.27 Total payments received excluding VAT;
- 17.5.28 Total payments received including VAT; and
- 17.5.29 Total payments outstanding by OTT number.
- 17.6 The Authority will provide the Supplier with a template for the monthly MI report upon the commencement of this Contract.
- 17.7 The Supplier shall work with the Authority during the Contract implementation period (as detailed in paragraph 5 of this Schedule 2) to finalise the structure of the MI reports and shall incorporate all reasonable requests made by the Authority in respect of the MI report structure and the MI reporting process.

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

- 18.1 The Supplier shall have established business continuity and disaster recovery processes, and shall have and maintain a business continuity and disaster recovery plan.
- 18.2 The Supplier's business continuity and disaster recovery plan shall ensure the continuity of the Services, following any failure or disruption, and the recovery of the Services, following any event that results in the Services being unavailable.
- 18.3 If requested by the Authority, the Supplier shall provide the Authority with the current version of its business continuity and disaster recovery plan.

## **19. CONTINUOUS IMPROVEMENT**

- 19.1 The Supplier shall be expected to continuously improve the way in which the required Services are delivered throughout the duration of the Contract.

- 19.2 The Supplier shall present new ways of working to the Authority, in accordance with the requirements set out in Contract Clause 19 (Continuous Improvement).
- 19.3 Changes to the way in which the Services are to be delivered must be brought to the Authority's attention and agreed prior to any changes being implemented.

## **20. CONTINGENCY COVER**

- 20.1 If required by the Authority, the Supplier shall provide contingency cover by providing LAT in locations outside of the geographical scope of this Contract if the Authority's other suppliers are unable to meet the Authority's requirements. The Authority expects contingency cover requirements to be infrequent and minimal.
- 20.2 The Supplier shall deliver LAT on a contingency cover basis in locations which are nearest (using the AA auto route calculator) to a pick-up point specified in this Contract.
- 20.3 Should the Supplier provide such contingency cover, it will receive payment which shall be the greater amount between its own price and that of the supplier that is unable to meet the requirement.

## **21. CYBER ESSENTIALS**

- 21.1 Upon the commencement of this Contract, the Supplier shall provide the Authority with evidence that it has a Cyber Essentials Scheme Basic Certificate or equivalent.

## Annex A – Locations and Estimated Candidate Volume

### Lot 6 – Delivery of Category B / B+E Licence Acquisition Training (nationally at Phase 2 training establishments)

Where the estimated Candidate volume for a Category is 0 the Supplier must still be able to deliver this Category if required by the Authority.

Estimated Candidate Volume:

Location	Cat B	Cat B+E
DST	615	0
DST (N) - ITC	1000	0
DST (S)	2139	257

Pick-up Point Locations for Licence Acquisition Training at Defence School of Transport (DST) Leconfield:

110Sqn  
Training Delivery  
DST Leconfield  
Beverley  
East Yorkshire  
HU17 7LX

Category B

Pick-up Point Locations for Licence Acquisition Training at Defence School of Transport (North) – Infantry Training Centre (ITC) Catterick:

ITC (Catterick)  Scotton Road Catterick Garrison Catterick North Yorkshire DL9 3PS	Darlington  TA Centre Neasham Road Darlington DL1 4DF	Northallerton  Thirsk Road North Road Northallerton DL9 1DF
--	--	--

Pick-up and Set-down Points for Licence Acquisition Training within Defence School of Transport South (DST (S)):



REME MOD Lyneham Lyneham Wiltshire SN15 4XX  Category B	Royal Signals Maresfield Block 11 Sigs Regt Blandford Camp Blandford Forum Dorset DT11 8RH  Category B	Royal Military Academy Sandhurst Camberley Surrey GU15 4PQ  Category B
RSME (RE) Archibald Block Gibraltar Barracks Blackwater Camberley Surrey GU17 9LP  Category B	DCLPA (RLC) Building 28N Princess Royal Barracks Deepcut Camberley Surrey GU16 6RW  Category B	RA Building 21 24 Irish Battery Sterling Barracks Larkhill Wiltshire SP4 8QT  Categories B, B+E
AAC 676 Trg Squadron AAC School of Army Aviation Middle Wallop Hampshire SO20 8DY  Category B	RMP Lewin Block Southwick Park Fareham Hampshire PO17 6EJ  Category B	AGC RHQ SPS TS Building 17 AGC Depot Worthy Down Winchester Hampshire SO21 2RG  Categories B, B+E
DST(S) Office A & R Wing AFV D&M School The Armour Centre Bovington Wareham Dorset BH20 6JA  Categories B, B+E	Commando Training Centre Exmouth Rd Lymptone Exmouth EX8 5AR  Category B	

## Annex B – Order to Train Template

### ORDER TO TRAIN APPLICATION FOR CONTRACT DRIVER TRAINING

**Part 1: (Unit/Station to complete)**

Unit/Station Title		Cap Badge/Trade Gp <i>(Inf, RA, RAF, RM, RN)</i>		Reg/Res
Unit Address <i>(In Full)</i>				
Candidates Details <i>(No. Rank. Name)</i>	Candidate 1:  Candidate 2:		Nominal Roll Attached <i>(Annex C)</i>	YES NO
DELTA Location		Location of Training <i>(Pick Up Point)</i>		
Category Required		Date Of Training <i>(Min 10 Working Days)</i>	From	To
Candidate Availability <i>(Working Day)</i>		Special Instructions		
Is this Operational Training <i>(Or Self Funded)</i>	YES	NO	Deployment Name	
<b>Unit Supervising/Licencing Officer</b>				
Rank/Name:			Signature:	
Tel No: <i>(Mil)</i>				
Tel No: <i>(Civ)</i>				
Fax No: <i>(Dial Code)</i>				

**Part 2: (DeLTA to complete)**

Accepted	YES	NO	PPL	£	PPH	£
Contractor			Contract Number			
<b>Designated Officer</b>						
Rank/Name:			Signature:			
Tel No: <i>(Mil)</i>						
Tel No: <i>(Civ)</i>						
Fax No: <i>(Dial Code)</i>						

**Part 3: (CDT Branch to complete)**

Authorised	YES	NO	
Billing UIN			
OTT Number			
(Comments)			
			(CDT Branch Stamp)

**Part 4: (Contractor to complete)**

Accepted	YES	NO	Signature:     Date:
Name:			
Tel No: (Dial Code)			
Mobile No:			
Fax No: (Dial Code)			
Instructors Name			
DVSA/LGV No			(Contractors Stamp)

*Note: To be fully completed and forwarded to the contractor at least 10 working days prior to the date training is require.*

**Annex C – Nominal Roll and Consolidated Results Sheet**

Ser No			Location		Contract No		Cat		OTT No		Date of Training	
--------	--	--	----------	--	-------------	--	-----	--	--------	--	------------------	--

Ser	Number	Rank	Name	Hours	Days	Tests	Result	Admin Reason	Payment
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									

Average No of Hours		SIGNATURE & STAMP	Requisition Number	
Average No of Days			Order Number	
Average Number of Tests			Receipt Number	
Admin Loss			Additional Hours Claimed:	
Failed			Payment Sub Total:	
Passed			Total Payment (Excl. Vat):	

## Annex D – Driving Assessment Template

### DRIVING ASSESSMENT SHEET

This form is to be completed prior to the authority **agreeing** to the candidate continuing training, or being placed on the hourly rate.

LICENCE CATEGORY	B   B+E   C   C+E   D1   D1+E   D (Circle as appropriate)	
ASSESSMENT TYPE:	hrs	DATE OF INITIAL ASSESSMENT:
NEXT ASSESSMENT:	hrs	DATE:
PROVISIONAL TEST DATE:		REMARKS:

#### Progress Key

**1 = Introduced    2 = Under full Instruction    3 = Prompted    4 = Seldom Prompted    5 = Independent**

Ser	Description	Score	Ser	Description	Score
1	Safety Questions		21	Reversing Exercise	
2	Entering & Exiting Safely		22	One-Way Systems	
3	Precautions before starting engine		23	Roundabouts	
4	Moving Off Safely/Control		24	Pedestrian Crossings	
5	Steer Accurate Course		25	Keeping Space Following Traffic	
6	Stopping Normally		26	Keeping Space Either Side	
7	Changing Gear		27	Keeping Pace with Traffic	
8	Clutch Control		28	Passing Stationary Vehicles	
9	Turn Left		29	Meeting Traffic	
10	Emerge Left		30	Lane Discipline & Position	
11	Turn Right		31	Dual Carriageway/Motorways	
12	Emerge Right		32	Hazard Awareness	
13	MSPSGL Routine		33	Anticipation & Planning	
14	Moving Off at an Angle		34	Eco-Safe Driving	
15	Move Off Uphill		35	Left/Right Reverse (Car)	
16	Move Off Downhill		36	Turn in the Road (Car)	

17	Controlled Stop		37	Parallel Park (Car)	
18	Approach Crossroads		38	Reverse Bay Park (Car)	
19	Use Mirrors Effectively		39	Independent Drive	
20	Give Signals Correct/Timed/Necessary		40		

ASSESSORS REMARKS:

Signature.....

DELTA USE:

---

WITHDRAWN	RETAINED (PPL)	RETAINED (PPH)	
DELTA Supervisor Remarks:          Signature:.....			DELTA STAMP

Notes:

1. The contractor is to complete and submit this form to the DELTA for initial screening.
2. This form is to be completed by an assessor appointed by the Authority and compared with the assessment made by the contractor.
3. The Authority and the contractor must agree on the decision to withdraw, retain or place the candidate on the hourly rate.

## Annex E – Contract Driver Training Record Card Template

## CONTRACT DRIVER TRAINING RECORD CARD

## Part 1: CONTRACT DETAILS

Order To Train No:	Contractor:	*CATEGORY: A / B / B+E / D1 / D1+E / C / C+E / D  (*Delete as applicable)
Instructors Name:	ADI/DVSA Number:	Location:

## CANDIDATES DETAILS

Number:	Rank:	Name & Initials:	Unit/Station:	UIN:
Cap Badge/Trade:	Regular/Reserve	Previous Driving Experience:	1. Hours Received: 2. Date Passed Last Test:	Signature:

## Part 2: TRAINING RECORD

[illegible]




Note:

1.To be signed by the candidates and contractor on completion of daily training.

2.In accordance with the contract Terms & Conditions, progress reports are to be completed by the contractor between the 16 and 20 hour point

## **Annex F – Service Provision Report Template**

### **CONTRACT DRIVER TRAINING SERVICE PROVISION REPORT**

**Contractor Name:**

**Contract Number:**

Comment from Unit Licencing/ Supervising Officer:

Proposed Resolution:

Comment from Contract provider:

Proposed resolution:

Comment from Designated Officer (DeLTA):

Proposed resolution:

**Has a resolution been achieved satisfactory to the requirements of the Unit receiving CDT**

**Yes/No**

CDT Branch Action:

Crown Commercial Service Action:

Final outcome of this report:

**Note:** This report is to be reproduced electronically. A copy of each report is to be initially sent to the training provider and CDT Branch, HQ DST for action. All reports are to be recorded and retained by the initiating Unit for 12 months or until the next Annual Contractors Report

## **SCHEDULE 3: CONTRACT CHARGES, PAYMENT AND INVOICING**

### **1. GENERAL PROVISIONS**

- 1.1 This Schedule 3 details:
  - 1.1.1 the Contract Charges for the Services under this Contract; and
  - 1.1.2 the invoicing procedure; and
  - 1.1.3 the procedure applicable to any adjustments of the Contract Charges.

### **2. CONTRACT CHARGES**

- 2.1 The Contract Charges which are applicable to this Contract are set out in Annex 1 of this Schedule 3.
- 2.2 The Supplier acknowledges and agrees that, subject to paragraph 5 of this Schedule 3 (Adjustment of Contract Charges), the Contract Charges cannot be increased during the Contract Period.

### **3. COSTS AND EXPENSES**

- 3.1 The Contract Charges include all costs and expenses relating to the Services and/or the Supplier's performance of its obligations under this Contract 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:
  - 3.1.1 any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges; or
  - 3.1.2 any amount for any services provided or costs incurred by the Supplier prior to the Commencement Date.

### **4. INVOICING PROCEDURE**

- 4.1 DEFCON 522J

### **5. ADJUSTMENT OF CONTRACT CHARGES**

- 5.1 The Contract Charges shall only be varied:
  - 5.1.1 due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Contract Charges in accordance with Clause 23.2 of this Contract (Legislative Change);
  - 5.1.2 where all or part of the Contract Charges are reduced as a result of a review of the Contract Charges in accordance with Clause 19 of this Contract (Continuous Improvement);
  - 5.1.3 where all or part of the Contract Charges are reduced as a result of a review of Contract Charges in accordance with Clause 26 of this Contract (Benchmarking);
  - 5.1.4 where all or part of the Contract Charges are reviewed and reduced in accordance with paragraph 6 of this Schedule 3;
- 5.2 The Contract Charges will remain fixed for the Contract Period.

### **6. SUPPLIER PERIODIC ASSESSMENT OF CONTRACT CHARGES**

- 6.1 Every six (6) Months during the Contract Period, the Supplier shall assess the level of the Contract Charges to consider whether it is able to reduce them.
- 6.2 Such assessments by the Supplier under paragraph 6 of this Schedule 3 shall be carried out on 1 May and 1 November in each Contract Year (or in the event that such dates do not, in any Contract Year, fall on a Working Day, on the next Working Day following such dates). To the extent that the Supplier is able to decrease all or part of the Contract Charges it shall promptly notify the Authority in writing and such reduction shall be implemented in accordance with paragraph 7.1.4 of this Schedule 3 below.

## **7. IMPLEMENTATION OF ADJUSTED CONTRACT CHARGES**

- 7.1 Variations in accordance with the provisions of this Schedule 3 to all or part the Contract Charges (as the case may be) shall be made by the Authority to take effect:
  - 7.1.1 in accordance with Clause 23.2 of this Contract (Legislative Change) where an adjustment to the Contract Charges is made in accordance with paragraph 5.1.1 of this Schedule 3;
  - 7.1.2 in accordance with Clause 19 of this Contract (Continuous Improvement) where an adjustment to the Contract Charges is made in accordance with paragraph 5.1.2 of this Schedule 3;
  - 7.1.3 in accordance with Clause 26 of this Contract (Benchmarking) where an adjustment to the Contract Charges is made in accordance with paragraph 5.1.3 of this Schedule 3; or
  - 7.1.4 on 1 June for assessments made on 1 May and on 1 December for assessments made on 1 November where an adjustment to the Contract Charges is made in accordance with paragraph 5.1.4 of this Schedule 3

and the Parties shall amend the Contract Charges shown in Annex 1 to this Schedule 3 to reflect such variations.

## **ANNEX 1: CONTRACT CHARGES**

*[REDACTED]*

## **SCHEDULE 4: IMPLEMENTATION PLAN, AUTHORITY RESPONSIBILITIES, AND KEY PERSONNEL**

### **1. INTRODUCTION**

1.1 This Schedule 4 specifies:

- 1.1.1 in Part A, the Implementation Plan in accordance with which the Supplier shall provide the Services;
- 1.1.2 in Part B, the Authority Responsibilities in respect of facilitating the Supplier's achievement of the Implementation Plan; and
- 1.1.3 in Part C, the Key Personnel and their Key Roles assigned by the Supplier to this Contract in accordance with Clause 27.1 of this Contract (Key Personnel).

## PART A: IMPLEMENTATION PLAN

### 1. GENERAL

#### 1.1 The Implementation Plan

1.1.1 The Implementation Plan including the Milestones to be Achieved is set out below:

Milestone	Deliverables	Duration	Milestone Date	Authority Responsibilities
[ ]	[ ]	[ ]	[ ]	[ ]

**Guidance Note: The Supplier's Implementation Plan, submitted to the Authority within 5 Working Days of the Contract Commencement Date, shall be incorporated here**

## **PART B: AUTHORITY RESPONSIBILITIES**

### **1. GENERAL**

- 1.1 The Authority Responsibilities associated with the Milestones identified in the Implementation Plan are set out in the column entitled Authority Responsibilities in the Implementation Plan.



## **PART A: KEY PERSONNEL**

### **1. GENERAL**

- 1.1 The Supplier has assigned the following Key Personnel to this Contract in the Key Roles detailed below:

[REDACTED]

**SCHEDULE 5: NOT USED**

## **SCHEDULE 6: SERVICE LEVELS AND PERFORMANCE MONITORING**

### **1. SCOPE**

- 1.1 This Schedule 6 (Service Levels and Performance Monitoring) sets out the Service Levels which the Supplier is required to achieve when providing the Services, the mechanism by which Service Level Failures and Critical Service Level Failures will be managed and the method by which the Supplier's performance in the provision by it of the Services will be monitored.
- 1.2 This Schedule 6 comprises:
  - 1.2.1 Part A: Service Levels;
  - 1.2.2 Annex 1 to Part A - Service Levels and Table;
  - 1.2.3 Annex 2 to Part A – Critical Service Level Failure; and
  - 1.2.4 Part B: Performance Monitoring.

## **PART A: SERVICE LEVELS**

### **1. GENERAL PROVISIONS**

- 1.1 The Supplier shall provide a proactive Contract manager to ensure that all Service Levels in this Contract are achieved to the highest standard throughout the Contract Period.
- 1.2 The Supplier shall provide a managed service through the provision of a dedicated Contract manager where required on matters relating to:
  - 1.2.1 Supplier performance;
  - 1.2.2 Quality of Services;
  - 1.2.3 Authority support;
  - 1.2.4 Complaints handling; and
  - 1.2.5 Accurate and timely invoices.
- 1.3 NOT USED

### **2. PRINCIPAL POINTS**

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

### **3. SERVICE LEVELS**

- 3.1 Annex 1 to this Part A of this Schedule 6 sets out the Service Levels the performance of which the Parties have agreed to measure.
- 3.2 The Supplier shall monitor its performance of this Contract by reference to the relevant performance criteria for achieving the Service Levels shown in Annex 1 to this Part A of this Schedule 6 (the "**Service Level Performance Criteria**") and shall send the Authority a Performance Monitoring Report detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Schedule 6.
- 3.3 The Supplier shall, at all times, provide the Services in such a manner that the Service Levels Performance Measures are achieved.
- 3.4 If the level of performance of the Supplier of any element of the provision by it of the Services during the Contract Period:
  - 3.4.1 is likely to or fails to meet any Service Level Performance Measure or
  - 3.4.2 is likely to cause or causes a Critical Service Failure to occur,
  - 3.4.3 the Supplier shall immediately notify the Authority in writing and the Authority, in its absolute discretion and without prejudice to any other of its rights howsoever arising including under Clause 14 of this Contract (Service Levels), may:
    - (a) require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Authority and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring; and

- (b) if the action taken under paragraph (a) above has not already prevented or remedied the Service Level Failure or Critical Service Level Failure, the Authority shall be entitled to instruct the Supplier to comply with the Rectification Plan Process; or
  - (c) NOT USED; or
  - (d) if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure in accordance with Clause 15 of this Contract (Critical Service Level Failure) (including subject, for the avoidance of doubt, the proviso in Clause 15.1 of this Contract in relation to Material Breach).
- 3.5 Approval and implementation by the Authority of any Rectification Plan shall not relieve the Supplier of any continuing responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppels or waiver shall arise from any such Approval and/or implementation by the Authority.

# ANNEX 1 TO PART A: SERVICE LEVELS TABLE

Service Levels			
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Service Level Threshold (below which shall constitute a Service Level Failure)
<b>Reliability of Candidate pick-up.</b> The Supplier shall ensure each Candidate is collected by the Instructor at the pick-up point specified in the OTT, and at the time and date specified in the OTT.	Accuracy / Reliability / Timeliness	at least 98% at all times	98%
<b>Acceptance of OTT.</b> The Supplier shall accept all OTTs raised by the Authority.	Reliability	at least 99% at all times	99%
<b>Return of OTT.</b> The Supplier shall sign, date-stamp, and return a scanned copy of the completed OTT via email to Authority no later than 5 working days before the LAT commencement date specified in the OTT.	Accuracy / Timeliness	at least 98% at all times	98%
<b>Availability of training vehicles.</b> The Supplier's training vehicles used to deliver the Services shall be available at the dates and times specified in each OTT so that no planned LAT is delayed, abandoned or cancelled due to a training vehicle having a break down, being unavailable, or being un-roadworthy.	Reliability / Timeliness	at least 95% at all times	95%
<b>Complaints resolution.</b> The Supplier shall resolve all complaints raised by the Authority, to the Authority's	Accuracy / Timeliness	at least 85% at all times	85%

Service Levels			
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Service Level Threshold (below which shall constitute a Service Level Failure)
satisfaction, within 10 Working Days of the complaint being raised.			
<b>Candidate pass rate.</b> The Supplier shall ensure Candidates pass a practical test in no more than 3 attempts.	Quality	at least 85% at all times	85%
<b>MI returns.</b> The Supplier shall submit full, accurate MI reports to the Authority by the 5th Working Day of each month.	Accuracy / Timeliness	at least 98% at all times	98%

## **ANNEX 2 TO PART A: CRITICAL SERVICE LEVEL FAILURE**

In relation to all Service Level Performance Criteria, a Critical Service Level Failure shall occur where the Supplier's performance against a Service Level Performance Criterion is more than 20% below the stated Service Level Threshold for the same Service Level Performance Criterion more than once in any three (3) Month period

The number of Service Level Performance Criteria for the purposes of Clause 14.6.1 shall be seven (7).



## **PART B: PERFORMANCE MONITORING**

### **1. PRINCIPAL POINTS**

- 1.1 Part B to this Schedule 6 provides the methodology for monitoring the provision of the Services:
  - 1.1.1 to ensure that the Supplier is complying with the Service Levels; and
  - 1.1.2 for identifying any failures to achieve Service Levels in the performance of the Supplier and/or provision of the Services ("**Performance Monitoring System**").
- 1.2 Within twenty (20) Working Days of the Commencement Date the Supplier shall provide the Authority with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.

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

- 2.1 The Supplier shall report all failures to achieve Service Levels and any Critical Service Level Failure to the Authority in accordance with the processes agreed in paragraph 1.2 of Part B of this Schedule 6 above.

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

- 3.1 The Supplier shall provide the Authority with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to paragraph 1.2 of Part B of this Schedule 6 above which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
  - 3.1.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
  - 3.1.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
  - 3.1.3 any Critical Service Level Failures and details in relation thereto;
  - 3.1.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
  - 3.1.5 NOT USED; and
  - 3.1.6 such other details as the Authority may reasonably require from time to time.
- 3.2 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and the Authority of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
  - 3.2.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier;
  - 3.2.2 take place at such location and time (within normal business hours) as the Authority shall reasonably require unless otherwise agreed in advance;
  - 3.2.3 be attended by the Supplier's Representative and the Authority's Representative; and
  - 3.2.4 be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Authority's Representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed

and signed by both the Supplier's Representative and the Authority's Representative at each meeting.

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

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

- 4.1 In order to assess the level of performance of the Supplier, the Authority may undertake satisfaction surveys in respect of the Supplier's provision of the Services.
- 4.2 The Authority shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.
- 4.3 All other suggestions for improvements to the provision of Services shall be dealt with as part of the continuous improvement programme pursuant to Clause 19 of this Contract (Continuous Improvement).

## SCHEDULE 7: STANDARDS

### 1. STANDARDS

Standard:	Link:	Clause reference:
Cyber Essentials Scheme Basic Certificate (or equivalent)	<a href="https://www.gov.uk/government/publications/cyber-essentials-scheme-overview">https://www.gov.uk/government/publications/cyber-essentials-scheme-overview</a>	Clause 5 (Cyber Essentials Scheme Condition)

## **SCHEDULE 8: SECURITY**

### **1. DEFINITIONS**

1.1 In this Schedule 8, the following definitions shall apply:

**"Breach of Security"**

means the occurrence of:

- a) any unauthorised access to or use of the Services, the Sites and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Authority Data) used by the Authority and/or the Supplier in connection with this Contract; and/or
- b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including any copies of such information or data, used by the Authority and/or the Supplier in connection with this Contract.

### **2. INTRODUCTION**

2.1 The purpose of this Schedule 8 is to ensure a good organisational approach to security under which the specific requirements of this Contract will be met;

2.2 This Schedule 8 covers:

- 2.2.1 principles of protective security to be applied in delivering the Services; and
- 2.2.2 obligations in the event of actual or attempted Breaches of Security.

### **3. PRINCIPLES OF SECURITY**

3.1 The Supplier acknowledges that the Authority places great emphasis on the reliability of the performance of the Services, confidentiality, integrity and availability of information and consequently on security.

3.2 The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:

- 3.2.1 is in accordance with the Law and this Contract;
- 3.2.2 as a minimum demonstrates Good Industry Practice;
- 3.2.3 meets any specific security threats of immediate relevance to the Services and/or the Authority Data; and
- 3.2.4 complies with the Authority's ICT Policy (if so required by the Authority).

3.3 Subject to Clause 35 of this Contract (Security and Protection of Information) the references to standards, guidance and policies contained or set out in paragraph 3.2 of this Schedule 8 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.

3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Authority's Representative of such inconsistency immediately upon becoming aware of the same, and the Authority's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

#### **4. BREACH OF SECURITY**

- 4.1 Either party shall notify the other upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 4.2 Upon becoming aware of any of the circumstances referred to in paragraph 4.1, the Supplier shall:
  - 4.2.1 immediately take all reasonable steps(which shall include any action or changes reasonably required by the Authority) necessary to:
    - (a) minimise the extent of actual or potential harm caused by any Breach of Security;
    - (b) remedy such Breach of Security to the extent possible and protect the integrity of the Authority and the provision of the Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
    - (c) prevent an equivalent breach in the future exploiting the same root cause failure; and
    - (d) as soon as reasonably practicable provide to the Authority, where the Authority so requests, full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.

**SCHEDULE 9: NOT USED**

**SCHEDULE 10: NOT USED**

## SCHEDULE 11: STAFF TRANSFER

### 1. DEFINITIONS

In this Schedule 11, the following definitions shall apply:

<b>“Admission Agreement”</b>	The agreement to be entered into by which the Supplier agrees to participate in the Schemes as amended from time to time;
<b>“Eligible Employee”</b>	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
<b>“Fair Deal Employees”</b>	those Transferring Authority Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;
<b>“Former Supplier”</b>	a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
<b>“New Fair Deal”</b>	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;
<b>“Notified Sub-Contractor”</b>	a Sub-Contractor identified in the Annex to this Schedule 11 to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
<b>“Replacement Sub-Contractor”</b>	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);
<b>“Relevant Transfer”</b>	a transfer of employment to which the Employment Regulations applies;
<b>“Relevant Transfer Date”</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
<b>“Schemes”</b>	the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Supplier by the Minister for the Cabinet Office);
<b>“Service Transfer”</b>	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a



	Replacement Supplier or a Replacement Sub-Contractor;
<b>“Service Transfer Date”</b>	the date of a Service Transfer;
<b>“Staffing Information”</b>	<p>in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:</p> <ul style="list-style-type: none"> <li>(a) their ages, dates of commencement of employment or engagement and gender;</li> <li>(b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;</li> <li>(c) the identity of the employer or relevant contracting Party;</li> <li>(d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;</li> <li>(e) their wages, salaries and profit sharing arrangements as applicable;</li> <li>(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;</li> <li>(g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);</li> <li>(h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;</li> <li>(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</li> <li>(j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;</li> </ul>
<b>“Supplier's Final Supplier Personnel List”</b>	a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;
<b>“Supplier's Provisional Supplier Personnel List”</b>	a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
<b>“Transferring Authority Employees”</b>	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 11 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:
- 1.1.1 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
  - 1.1.2 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. CUSTOMER INDEMNITIES**

- 2.1 Subject to Paragraph 2.2, the Authority shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities in respect of any Transferring Authority Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 2.1.1 any act or omission by the Authority occurring before the Relevant Transfer Date;
  - 2.1.2 the breach or non-observance by the Authority before the Relevant Transfer Date of:
    - (a) any collective agreement applicable to the Transferring Authority Employees; and/or
    - (b) any custom or practice in respect of any Transferring Authority Employees which the Authority is contractually bound to honour;
  - 2.1.3 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;
  - 2.1.4 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:
    - (a) 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
    - (b) 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.

- 2.1.5 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;
  - 2.1.6 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
  - 2.1.7 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:
- 2.2.1 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
  - 2.2.2 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:
- 2.3.1 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
  - 2.3.2 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 2.3.2 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 2.3.2:
- 2.5.1 no such offer of employment has been made;
  - 2.5.2 such offer has been made but not accepted; or

- 2.5.3 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 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:
- 2.7.1 shall not apply to:
- (a) any claim for:
- (i) 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
- (ii) 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
- (b) 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
- 2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to the Authority within 6 months of the Commencement 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 in respect of any Transferring Authority Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 3.1.1 any act or omission by the Supplier or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date;
- 3.1.2 the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:
- (a) any collective agreement applicable to the Transferring Authority Employees; and/or
- (b) any custom or practice in respect of any Transferring Authority Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
- 3.1.3 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;
- 3.1.4 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;
  - 3.1.5 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;
  - 3.1.6 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:
    - (a) 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
    - (b) 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;
  - 3.1.7 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; and
  - 3.1.8 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.
- 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 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:
  - 5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - 5.2.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
  - 5.2.3 HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
  - 5.2.4 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 Variation Procedure.

#### **6. PENSIONS**

The Supplier shall, and shall procure that each of its Sub-Contractors shall, comply with the pensions provisions in the following Annex.

## **ANNEX TO PART A: PENSIONS**

### **1. PARTICIPATION**

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and the Authority:
  - 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
  - 1.2.2 agree that the Authority is entitled to make arrangements with the body responsible for the Schemes for the Authority to be notified if the Supplier breaches the Admission Agreement;
  - 1.2.3 notwithstanding Paragraph 1.2.2 of this Annex, the Supplier shall notify the Authority in the event that it breaches the Admission Agreement; and
  - 1.2.4 agree that the Authority may terminate this Contract for material default in the event that the Supplier breaches the Admission Agreement.
- 1.3 The Supplier shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

### **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 Schemes that they currently contribute to, or were eligible to join immediately prior to 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 Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 2.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

### **3. FUNDING**

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

### **4. PROVISION OF INFORMATION**

The Supplier and the Authority respectively undertake to each other:



- 4.1 to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 4.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

## **5. INDEMNITY**

The Supplier undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

## **6. EMPLOYER OBLIGATION**

The Supplier shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

## **7. SUBSEQUENT TRANSFERS**

The Supplier shall:

- 7.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
- 7.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Authority may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
- 7.3 for the period either:
  - 7.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Agreement or any part of the Services; or
  - 7.3.2 after the date which is two (2) years prior to the date of expiry of this Contract, ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

## **PART B**

### **TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES**

#### **1. RELEVANT TRANSFERS**

- 1.1 The Authority and the Supplier agree that:
- 1.1.1 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
  - 1.1.2 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 in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 2.1.1 any act or omission by the Former Supplier arising before the Relevant Transfer Date;
  - 2.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
    - (a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
    - (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
  - 2.1.3 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:
    - (a) 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
    - (b) 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;

- 2.1.4 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;
  - 2.1.5 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 Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
  - 2.1.6 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:
- 2.2.1 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
  - 2.2.2 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:
- 2.3.1 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
  - 2.3.2 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 2.3.2 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 2.3.2:
- 2.5.1 no such offer of employment has been made;

- 2.5.2 such offer has been made but not accepted; or
  - 2.5.3 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 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:
    - 2.7.1 shall not apply to:
      - (a) any claim for:
        - (i) 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
        - (ii) 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
      - (b) 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
    - 2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 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 Commencement 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 in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
  - 3.1.1 any act or omission by the Supplier or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date;
  - 3.1.2 the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:
    - (a) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
    - (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;

- 3.1.3 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;
- 3.1.4 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;
- 3.1.5 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;
- 3.1.6 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:
  - (a) 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
  - (b) 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;
- 3.1.7 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; and
- 3.1.8 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.
- 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 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:
  - 5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - 5.1.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
  - 5.1.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
  - 5.1.4 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 Variation 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**

The Supplier shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in the following Annex in respect of any Transferring Former Supplier Employees who transfer from the Former Supplier to the Supplier.

## **ANNEX TO PART B: PENSIONS**

### **1. PARTICIPATION**

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and the Authority:
  - 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
  - 1.2.2 agree that the Authority is entitled to make arrangements with the body responsible for the Schemes for the Authority to be notified if the Supplier breaches the Admission Agreement;
  - 1.2.3 notwithstanding Paragraph 1.2.2 of this Annex, the Supplier shall notify the Authority in the event that it breaches the Admission Agreement; and
  - 1.2.4 agree that the Authority may terminate this Contract for material default in the event that the Supplier breaches the Admission Agreement.
- 1.3 The Supplier shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

### **2. FUTURE SERVICE BENEFITS**

- 2.1 If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to 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 Schemes for service from (and including) the Relevant Transfer Date.
- 2.3 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

### **3. FUNDING**

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account

to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

#### **4. PROVISION OF INFORMATION**

The Supplier and the Authority respectively undertake to each other:

- 4.1 to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 4.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

#### **5. INDEMNITY**

The Supplier undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

#### **6. EMPLOYER OBLIGATION**

The Supplier shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

#### **7. SUBSEQUENT TRANSFERS**

The Supplier shall:

- 7.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
- 7.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Authority may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
- 7.3 for the period either
  - 7.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Agreement or any part of the Services; or
  - 7.3.2 after the date which is two (2) years prior to the date of expiry of this Contract, ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.



## **PART C**

### **NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES**

#### **1. PROCEDURE IN THE EVENT OF TRANSFER**

- 1.1 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.
- 1.2 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:
  - 1.2.1 the Supplier shall, and shall procure that the relevant Sub-Contractor shall, within five (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
  - 1.2.2 the Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (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.
- 1.3 If an offer referred to in Paragraph 1.2.2 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.
- 1.4 If by the end of the fifteen (15) Working Day period specified in Paragraph 1.2.2:
  - 1.4.1 no such offer of employment has been made;
  - 1.4.2 such offer has been made but not accepted; or
  - 1.4.3 the situation has not otherwise been resolved,the Supplier and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

#### **2. INDEMNITIES**

- 2.1 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:
  - 2.1.1 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
  - 2.1.2 subject to paragraph 3, 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 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.

- 2.2 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 fifteen (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.
- 2.3 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.
- 2.4 The indemnities in Paragraph 2.1:
- 2.4.1 shall not apply to:
- (a) any claim for:
    - (i) 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
    - (ii) 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
  - (b) 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
- 2.4.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-Contractor to the Authority and, if applicable, Former Supplier within 6 months of the Commencement Date.

### **3. 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**

### **EMPLOYMENT EXIT PROVISIONS**

#### **1. PRE-SERVICE TRANSFER OBLIGATIONS**

- 1.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:
- 1.1.1 receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
  - 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Contract;
  - 1.1.3 the date which is twelve (12) months before the end of the Term; and
  - 1.1.4 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 six (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 thirty (30) 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:
- 1.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
  - 1.2.2 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, 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):
- 1.5.1 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;
  - 1.5.2 make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
  - 1.5.3 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;
  - 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;

- 1.5.5 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
- 1.5.6 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:
  - 1.6.1 the numbers of employees engaged in providing the Services;
  - 1.6.2 the percentage of time spent by each employee engaged in providing the Services; and
  - 1.6.3 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 five (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:
  - 1.7.1 the most recent month's copy pay slip data;
  - 1.7.2 details of cumulative pay for tax and pension purposes;
  - 1.7.3 details of cumulative tax paid;
  - 1.7.4 tax code;
  - 1.7.5 details of any voluntary deductions from pay; and
  - 1.7.6 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 Contract 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 (but not 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 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, where a Relevant Transfer occurs, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-Contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 2.3.1 any act or omission of the Supplier or any Sub-Contractor whether occurring before, on or after the Service Transfer Date;
  - 2.3.2 the breach or non-observance by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date of:
    - (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
    - (b) 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;
  - 2.3.3 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;
  - 2.3.4 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:
    - (a) 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
    - (b) in relation to any employee who is not a Transferring 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 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;
  - 2.3.5 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);
  - 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee for whom it is alleged the Authority and/or the

Replacement Supplier and/or any Replacement Sub-Contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

- 2.3.7 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:
  - 2.4.1 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
  - 2.4.2 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 a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, 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:
  - 2.5.1 the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-Contractor shall, within (five) 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
  - 2.5.2 the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the 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 fifteen (15) Working Day period specified in Paragraph 2.5.2 has elapsed:
  - 2.7.1 no such offer of employment has been made;
  - 2.7.2 such offer has been made but not accepted; or
  - 2.7.3 the situation has not otherwise been resolvedthe Authority shall advise the Replacement Supplier and/or Replacement Sub-Contractor, as appropriate that it may within five (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 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:

2.9.1 shall not apply to:

(a) any claim for:

- (i) 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
- (ii) 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

(b) 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

2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Supplier within six (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 and the Replacement Supplier and/or Replacement Sub-Contractor shall comply with such obligations as may be imposed upon it under applicable Law.

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 the Transferring Supplier Employees 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 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:

2.11.1 the Supplier and/or any Sub-Contractor; and

2.11.2 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 in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:

- 2.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-Contractor;
- 2.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
  - (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
  - (b) any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-Contractor is contractually bound to honour;
- 2.13.3 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 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 Relevant Transfer Date;
- 2.13.4 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 on or after their transfer to the Replacement Supplier or Replacement 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 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;
- 2.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-Contractor to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- 2.13.6 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:
  - (a) 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 after the Service Transfer Date; and
  - (b) in relation to any employee who is not a Transferring 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 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;
- 2.13.7 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 in respect of the period from (and including) the Service Transfer Date; and
- 2.13.8 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 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 Relevant 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 TO SCHEDULE: LIST OF NOTIFIED SUB-CONTRACTORS**

## **SCHEDULE 12: DISPUTE RESOLUTION PROCEDURE**

### **1. DEFINITIONS**

1.1 In this Schedule 12, the following definitions shall apply:

<b>“CEDR”</b>	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
<b>“Counter Notice”</b>	has the meaning given to it in paragraph 6.2 of this Schedule 12;
<b>“Exception”</b>	a deviation of project tolerances in accordance with PRINCE2 methodology in respect of this Contract or in the supply of the Services;
<b>“Expert”</b>	the person appointed by the Parties in accordance with paragraph 5.2 of this Schedule 12; and
<b>“Mediation Notice”</b>	has the meaning given to it in paragraph 3.2 of this Schedule 12;
<b>“Mediator”</b>	the independent third party appointed in accordance with paragraph 4.2 of this Schedule 12.

### **2. INTRODUCTION**

2.1 If a Dispute arises then:

- 2.1.1 the representative of the Authority and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
- 2.1.2 if such attempts are not successful within a reasonable time either Party may give to the other a Dispute Notice.

2.2 The Dispute Notice shall set out:

- 2.2.1 the material particulars of the Dispute;
- 2.2.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
- 2.2.3 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 2.6 of this Schedule 12, the reason why.

2.3 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Contract regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

2.4 Subject to paragraph 3.2 of this Schedule 12, the Parties shall seek to resolve Disputes:

- 2.4.1 first by commercial negotiation (as prescribed in paragraph 3 of this Schedule 12);
- 2.4.2 then by mediation (as prescribed in paragraph 4 of this Schedule 12); and
- 2.4.3 lastly by recourse to arbitration (as prescribed in paragraph 6 of this Schedule 12) or litigation (in accordance with Clause 58 of this Contract (Governing Law and Jurisdiction)).

2.5 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 5 of this Schedule) where specified under the provisions of this Contract and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 5 of this Schedule 12.

- 2.6 In exceptional circumstances where the use of the times in this Schedule 12 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 of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 2.7 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.6 or is otherwise specified under the provisions of this Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:
- 2.7.1 in paragraph 3.2.3, ten (10) Working Days;
  - 2.7.2 in paragraph 4.2, ten (10) Working Days;
  - 2.7.3 in paragraph 5.2, five (5) Working Days; and
  - 2.7.4 in paragraph 6.2, ten (10) Working Days.
- 2.8 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. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

### **3. COMMERCIAL NEGOTIATIONS**

- 3.1 Following the service of a Dispute Notice, the Authority and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Authority Representative and the Supplier Representative.
- 3.2 If:
- 3.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution;
  - 3.2.2 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 negotiations in accordance with this paragraph 3 of this Schedule 12; or
  - 3.2.3 the Parties have not settled the Dispute in accordance with paragraph 3.1 of this Schedule 12 within thirty (30) Working Days of service of the Dispute Notice,
- either Party may serve a written notice to proceed to mediation (a “**Mediation Notice**”) in accordance with paragraph 4 of this Schedule 12.

### **4. MEDIATION**

- 4.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with CEDR's Model Mediation Agreement which shall be deemed to be incorporated by reference into this Contract.
- 4.2 If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Mediation Notice then either Party may apply to CEDR to nominate the Mediator.
- 4.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the 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.

- 4.4 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 Variation Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

## 5. EXPERT DETERMINATION

- 5.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a financial technical or other aspect of a technical nature (as the Parties may agree) and the Dispute has not been resolved by discussion or mediation, then either Party may request (which request will not be unreasonably withheld or delayed) by written notice to the other that the Dispute is referred to an Expert for determination.
- 5.2 The Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the relevant professional body.
- 5.3 The Expert shall act on the following basis:
- 5.3.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
  - 5.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
  - 5.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (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;
  - 5.3.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
  - 5.3.5 the process shall be conducted in private and shall be confidential; and
  - 5.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

## 6. ARBITRATION

- 6.1 The Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4 of this Schedule 12.
- 6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have fifteen (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 6.4 of this Schedule 12 or be subject to the jurisdiction of the courts in accordance with Clause 58 of this Contract (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 6.3 If:
- 6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 of this Schedule 12 shall apply;
  - 6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 58 of this Contract

(Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;

- 6.3.3 the Authority does not serve a Counter Notice within the fifteen (15) Working Days period referred to in paragraph 6.2 of this Schedule 12, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 of this Schedule 12 or commence court proceedings in the courts in accordance with Clause 58 of this Contract (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.
- 6.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3 of this Schedule 12, the Parties hereby confirm that:
  - 6.4.1 all disputes, issues or claims arising out of or in connection with this Contract (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("**LCIA**") (subject to paragraphs 6.4.5 to 6.4.7 of this Schedule 12);
  - 6.4.2 the arbitration shall be administered by the LCIA;
  - 6.4.3 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 Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
  - 6.4.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) 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;
  - 6.4.5 the chair of the arbitral tribunal shall be British;
  - 6.4.6 the arbitration proceedings shall take place in London and in the English language; and
  - 6.4.7 the seat of the arbitration shall be London.

## **7. URGENT RELIEF**

- 7.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
  - 7.1.1 for interim or interlocutory remedies in relation to this Contract or infringement by the other Party of that Party's Intellectual Property Rights; and/or
  - 7.1.2 where compliance with paragraph 2.1 of this Schedule 12 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

### SCHEDULE 13: VARIATION FORM

No of order being varied:

.....

Variation Form No:

.....

BETWEEN:

**[insert name of Authority]** ("the Authority")

and

**[insert name of Supplier]** ("the Supplier")

1. This Contract is varied as follows and shall take effect on the date signed by both Parties:

**[Guidance Note: Insert details of the Variation]**

2. Words and expressions in this Variation shall have the meanings given to them in this Contract.
3. This Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Authority

Signature

Date

Name (in Capitals)

Address

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

Signature

Date

Name (in Capitals)

Address

## **SCHEDULE 14: COMMERCIALLY SENSITIVE INFORMATION**

### **1. INTRODUCTION**

- 1.1 In this Schedule 14 (Commercially Sensitive Information) the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA.
- 1.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule 14 applies.
- 1.3 Without prejudice to the Authority's obligation to disclose Information in accordance with FOIA or Clause 35.5 (Freedom of Information), the Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

<b>No.</b>	<b>Date</b>	<b>Item(s)</b>	<b>Duration of Confidentiality</b>



## **SCHEDULE 15: INSURANCE REQUIREMENTS**

### **1. OBLIGATION TO MAINTAIN INSURANCES**

- 1.1 Without prejudice to its obligations to the Authority under this Contract, including its indemnity obligations, the Supplier shall for the periods specified in this Schedule 15 take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 (Required Insurances) 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 Commencement Date.
- 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 of good financial standing and of good repute in the international insurance market.
- 1.4 The Supplier shall ensure that the public 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**

- 2.1 Without limiting the other provisions of this Contract, the Supplier shall:
  - 2.1.1 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;
  - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
  - 2.1.3 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 POLICIES**

- 4.1 The Supplier shall upon the Commencement Date and within 15 Working Days after the renewal 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 15. 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 Contract.

### **5. AGGREGATE LIMIT OF INDEMNITY**

- 5.1 Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":
- 5.1.1 if a claim or claims which do not relate to this Contract 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:
- (a) details of the policy concerned; and
  - (b) its proposed solution for maintaining the minimum limit of indemnity specified; and
- 5.1.2 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 Contract are paid by insurers, the Supplier shall:
- (a) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Contract; or
  - (b) 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 The Supplier shall notify the Authority in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

## **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 Contract 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 or this Contract, the Supplier shall co-operate with the Authority and assist it in dealing with such claims 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 twenty (20) Working Days after any insurance claim in excess of £10,000 relating to or arising out of the provision of the Services or this Contract 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 Contract or otherwise.

## **ANNEX 1: REQUIRED INSURANCES**

### **PART A: THIRD PARTY PUBLIC LIABILITY INSURANCE**

#### **1. INSURED**

- 1.1 The Supplier

#### **2. INTEREST**

- 2.1 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:

2.1.1 death or bodily injury to or sickness, illness or disease contracted by any person;

2.1.2 loss of or damage to property;

happening during the period of insurance (as specified in Paragraph 5 of this Annex 1 to this Schedule 15) and arising out of or in connection with the provision of the Services and in connection with this Contract.

#### **3. LIMIT OF INDEMNITY**

- 3.1 Not less than **£5,000,000** in respect of any one occurrence, the number of occurrences being unlimited.

#### **4. TERRITORIAL LIMITS**

- 4.1 United Kingdom

#### **5. PERIOD OF INSURANCE**

- 5.1 From the Commencement Date for the Contract Period and renewable on an annual basis unless agreed otherwise by the Authority in writing.

#### **6. COVER FEATURES AND EXTENSIONS**

- 6.1 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

- 8.1 Not to exceed ***[£ threshold to be agreed with Supplier]*** for each and every third party property damage claim (personal injury claims to be paid in full).

## **PART B: UNITED KINGDOM COMPULSORY INSURANCES**

### **1. GENERAL**

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

## SCHEDULE 16: CONDUCT OF CLAIMS

### 1. GENERAL

- 1.1 This Schedule 16 shall apply to the conduct by a Party from whom an indemnity is sought under this Contract (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 Contract (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 1.5, 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 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:
- 1.4.1 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
  - 1.4.2 the Indemnifier shall not bring the name of the Beneficiary into disrepute;
  - 1.4.3 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
  - 1.4.4 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 Contract if:
- 1.5.1 the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
  - 1.5.2 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
  - 1.5.3 the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

### 2. RECOVERY OF SUMS

- 2.1 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 the lesser is of:
- 2.1.1 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

- 2.1.2 the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

### **3. MITIGATION**

- 3.1 Each of the Parties 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 16.

**SCHEDULE 17: SUB-CONTRACTORS**

1. In accordance with Clause 30.2 (Appointment of Sub-Contractors), the Supplier is entitled to sub-contract its obligations under this Contract to the Sub-Contractors listed below.

Name and full details including contact details and company registration number:	Obligation
Company name:  Address:	Role of the Sub-Contractor in delivering the Services:
Contact Details (telephone / email):  Company registration number:	Approximate % of contractual obligations sub-contracted:



**SCHEDULE 18: NOT USED**

## **SCHEDULE 19: TENDER**

### **1. GENERAL**

- 1.1 This Schedule 19 sets out a copy of the Supplier's Tender including the Supplier's responses to the whole award questionnaire to the ITT.
- 1.2 In addition to any other obligations on the Supplier under this Contract, the Supplier shall provide the Services to the Authority in accordance with the Tender.

*[Redacted]*

## **SCHEDULE 20: TRANSPARENCY REPORTS**

### **1. GENERAL**

- 1.1 From time to time, and upon request, the Supplier shall submit draft Transparency Reports (consistent with the content and format requirements specified by the Authority) to the Authority for Approval.
- 1.2 If the Authority rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for 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. This process shall be repeated until the parties have agreed versions of each Transparency Report.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency reasonably specified by the Authority.
- 1.4 Any Dispute in connection with the preparation and/or approval of Transparency Reports shall be resolved in accordance with the Dispute Resolution Procedure.
- 1.5 The requirements in this Schedule 20 are in addition to any other reporting requirements in this Contract.

## SCHEDULE 21: MOD DEFCONS AND DEFFORMS

### DEFCONS

DEFCON No.	Edition	Description
DEFCON 5J	Edn. 03/15	Unique Identifiers
DEFCON 76	Edn. 12/06	Contractors Personnel at Government Establishments. The Contractor must ensure he has adequate cover regarding his liability under Clauses 3 and 4 of DEFCON 76.
DEFCON 129J	Edn. 07/08	The Use of The Electronic Business Delivery Form
DEFCON 522J	Edn. 04/09	Payment under P2P
DEFCON 566	Edn. 07/14	Change of Control of Contractor
DEFCON 602A	Edn. 12/06	Quality Plan

### DEFFORMs (Ministry of Defence Forms)

DEFFORM No.	Edition	Description
DEFFORM 30	Edn. 04/15	The Electronic Transactions Agreement
DEFFORM 111	Edn. 02/16	Annex – Addresses and Other Information

## **SCHEDULE 22: ADDITIONAL CLAUSES**

### **1. INTRODUCTION**

- 1.1 This Schedule 22 sets out the Additional Clauses that form part of this Contract.

### **2. ADDITIONAL CLAUSES**

- 2.1 The following Additional Clause forms part of this Contract:

- 2.1.1 If an Instructor is not available to conduct scheduled LAT, and is not replaced so that there is no pause to a Candidate's LAT, the Supplier shall reimburse the Authority at a rate of two (2) hours at the average hourly rate, as set out in Annex 1 to Schedule 3 (Contract Charges, Payment, and Invoicing), for every full day (7 hours) that the Instructor is unavailable. The Supplier shall deduct all such reimbursements from its next request for payment.

## **SCHEDULE 23: QUALITY PLAN**

### **1. INTRODUCTION**

1.1 The Supplier's deliverable Quality Plan, in accordance with DEFCON 602A, is set out below:

[ ]

## SCHEDULE 24: CONTRACT CONTROL SHEET

### Contract Control Sheet

Contract Number: [ ]

Variation number:	Brief details of Variation:	Date of incorporation:
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