



## **TERMS AND CONDITIONS**

**IT Managed Service**

**Supplier: Littlefish (UK) Limited**

**Project No. 20130**

TABLE OF CONTENTS

<b>A.</b>	<b>PRELIMINARIES .....</b>	<b>5</b>
	1. <b>DEFINITIONS AND INTERPRETATION .....</b>	<b>5</b>
	2. <b>DUE DILIGENCE.....</b>	<b>6</b>
	3. <b>REPRESENTATIONS AND WARRANTIES .....</b>	<b>7</b>
<b>B.</b>	<b>CONTRACT COMMENCEMENT .....</b>	<b>8</b>
	4. <b>TERM AND CONDITION PRECEDENT .....</b>	<b>8</b>
<b>C.</b>	<b>CONTRACT PERFORMANCE .....</b>	<b>9</b>
	5. <b>IMPLEMENTATION PLAN .....</b>	<b>9</b>
	6. <b>SERVICES.....</b>	<b>9</b>
	7. <b>STANDARDS AND QUALITY .....</b>	<b>14</b>
	8. <b>SERVICE LEVELS AND SERVICE CREDITS.....</b>	<b>14</b>
	9. <b>CRITICAL SERVICE LEVEL FAILURE.....</b>	<b>15</b>
	10. <b>DISRUPTION.....</b>	<b>15</b>
	11. <b>SUPPLIER NOTIFICATION OF AUTHORITY CAUSE .....</b>	<b>15</b>
<b>D.</b>	<b>CONTRACT GOVERNANCE.....</b>	<b>16</b>
	12. <b>PERFORMANCE MONITORING.....</b>	<b>16</b>
	13. <b>REPRESENTATIVES .....</b>	<b>16</b>
	14. <b>RECORDS, AUDIT ACCESS AND OPEN BOOK DATA .....</b>	<b>16</b>
	15. <b>CHANGE .....</b>	<b>17</b>
<b>E.</b>	<b>PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS.....</b>	<b>18</b>
	16. <b>CONTRACT CHARGES AND PAYMENT .....</b>	<b>18</b>
<b>F.</b>	<b>SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS .....</b>	<b>19</b>
	17. <b>SUPPLIER PERSONNEL.....</b>	<b>19</b>
	18. <b>SUPPLY CHAIN RIGHTS AND PROTECTION .....</b>	<b>20</b>
<b>G.</b>	<b>PROPERTY MATTERS .....</b>	<b>23</b>
	19. <b>AUTHORITY PREMISES.....</b>	<b>23</b>
	20. <b>AUTHORITY PROPERTY .....</b>	<b>24</b>
<b>H.</b>	<b>INTELLECTUAL PROPERTY AND INFORMATION .....</b>	<b>24</b>
	21. <b>INTELLECTUAL PROPERTY RIGHTS .....</b>	<b>24</b>
	22. <b>SECURITY AND PROTECTION OF INFORMATION .....</b>	<b>30</b>
	23. <b>PUBLICITY AND BRANDING .....</b>	<b>38</b>
<b>I.</b>	<b>LIABILITY AND INSURANCE .....</b>	<b>38</b>
	24. <b>LIABILITY.....</b>	<b>38</b>
	25. <b>INSURANCE .....</b>	<b>40</b>
<b>J.</b>	<b>REMEDIES AND RELIEF .....</b>	<b>41</b>

26.	AUTHORITY REMEDIES FOR DEFAULT.....	41
27.	SUPPLIER RELIEF DUE TO AUTHORITY CAUSE .....	42
28.	FORCE MAJEURE.....	44
K.	TERMINATION .....	45
29.	AUTHORITY TERMINATION RIGHTS .....	45
30.	SUPPLIER TERMINATION RIGHTS .....	48
31.	TERMINATION BY EITHER PARTY .....	48
32.	PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION...48	
33.	CONSEQUENCES OF EXPIRY OR TERMINATION.....	49
L.	MISCELLANEOUS AND GOVERNING LAW .....	50
34.	COMPLIANCE.....	50
35.	ASSIGNMENT AND NOVATION.....	51
36.	WAIVER AND CUMULATIVE REMEDIES .....	52
37.	RELATIONSHIP OF THE PARTIES .....	52
38.	PREVENTION OF FRAUD AND BRIBERY .....	52
39.	SEVERANCE .....	53
40.	FURTHER ASSURANCES.....	54
41.	ENTIRE AGREEMENT .....	54
42.	THIRD PARTY RIGHTS .....	54
43.	NOTICES.....	54
44.	DISPUTE RESOLUTION.....	56
45.	GOVERNING LAW AND JURISDICTION .....	56
	SCHEDULE 1: SERVICE REQUIREMENTS .....	56
	SCHEDULE 2: CHARGES AND INVOICING .....	58
	SCHEDULE 3: SERVICE LEVELS AND PERFORMANCE.....	73
	SCHEDULE 4: SUPPLIER SOLUTION .....	85
	SCHEDULE 5: CHANGE CONTROL NOTE .....	85
	SCHEDULE 6: DISPUTE RESOLUTION PROCEDURE .....	89
	SCHEDULE 7: BUSINESS CONTINUITY AND DISASTER RECOVERY .....	94
	SCHEDULE 8: EXIT MANAGEMENT .....	102
	SCHEDULE 9: IMPLEMENTATION AND TESTING .....	112
	SCHEDULE 10: GOVERNANCE.....	119
	SCHEDULE 11: REPORTS AND RECORDS PROVISION .....	124
	SCHEDULE 12: AUTHORITY RESPONSIBILITIES.....	130
	SCHEDULE 13: STANDARDS.....	137
	SCHEDULE 14: INSURANCE REQUIREMENTS.....	140
	SCHEDULE 15: COMMERCIALLY SENSITIVE INFORMATION .....	147

<b>SCHEDULE 16: SECURITY .....</b>	<b>148</b>
<b>SCHEDULE 17: SOFTWARE AND KEY-SUBCONTRACTORS .....</b>	<b>159</b>
<b>SCHEDULE 18: FINANCIAL DISTRESS .....</b>	<b>161</b>
<b>SCHEDULE 19: GOODS .....</b>	<b>166</b>
<b>SCHEDULE 20: DEFINITIONS.....</b>	<b>170</b>

THIS CONTRACT is made on **14 December 2017**

BETWEEN

- (1) **THE PENSIONS OMBUDSMAN** of 11 Belgrave Road, London, SW1V 1RB (the "**Authority**").
- (2) **LITTLEFISH (UK ) LIMITED** a company registered in England and Wales under company number 04700876 and at Price House, 37 Stoney Street, Nottingham, England, NG1 1LS ("**Supplier**")

each a '**Party**' and together the '**Parties**'.

## **INTRODUCTION**

- A. The Pensions Ombudsman placed a contract notice ref: 2017/S 146-301823 in the Official Journal of the European Union ("OJEU Notice") seeking expressions of interest to bid from providers for the provision of IT Managed Services
- B. Following an evaluation of the interested bidders' selection questionnaire responses, the Authority issued an invitation to tender ("ITT") to the Supplier (along with other suppliers who were successful at the selection stage) and the Supplier submitted a response to the ITT ("Tender");
- C. On the basis of the Supplier's Tender submitted by the Supplier and the subsequent evaluation by the Authority of all the tenders submitted by tenderers, the Authority selected the Supplier to enter into this Contract to provide the IT Managed Service to the Authority in accordance with Schedule 1 (Service Requirements) (the "Services") and the Supplier undertakes to supply the same on the terms set out below.

**IT IS AGREED** as follows:

### **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 20 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in Schedule 20 (Definitions) or relevant Schedule, it shall have the meaning given to it in the Contract. If no meaning is given to it in the Contract, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In this Contract, unless the context otherwise requires:
  - 1.3.1 the singular includes the plural and vice versa;
  - 1.3.2 reference to a gender includes the other gender and the neuter;

- 1.3.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
- 1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- 1.3.5 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**";
- 1.3.6 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;
- 1.3.7 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;
- 1.3.8 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;
- 1.3.9 the headings in this Contract are for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 1.4 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
  - 1.4.1 the Clauses and Schedule 20 (Definitions);
  - 1.4.2 Schedules 1 (Service Requirements) and Schedule 3 (Service Levels and Performance) and their Annexes;
  - 1.4.3 any other Schedules and their Annexes (other than Schedule 4 (Supplier Solution) and its Annexes); and
  - 1.4.4 Schedule 4 (Supplier Solution) and its Annexes (if any).
- 1.5 The Schedules and their Annexes form part of this Contract
- 1.6 If there is any conflict between any part of Schedule 4 (Supplier Solution), then the Authority shall be entitled in its sole discretion to decide which part takes precedence.

## 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 and that it has entered into this Contract in reliance on its own due diligence alone;
- 2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority in before the Commencement Date) of all relevant details (including those which could affect Service implementation, implementation, delivery, performance and price);
- 2.1.4 it has advised the Authority in writing of:
  - (a) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
  - (b) the actions needed to remedy each such unsuitable aspect; and
  - (c) a timetable for and the costs of those actions.
- 2.1.5 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 any:
  - (a) unsuitable aspects of the Operating Environment;
  - (b) misinterpretation of the requirements of the Authority in Schedule 1 (Service Requirements) or elsewhere in this Contract; and/or
  - (c) failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

### **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, including without limitation to its Tender submitted to the Authority 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 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 Licensed Software, 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
- 3.3 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.

## **B. CONTRACT COMMENCEMENT**

### **4. TERM AND CONDITION PRECEDENT**

- 4.1 This Contract shall commence on the Commencement Date and the term of this Contract shall be the Term.

- 4.2 The Authority shall be entitled to extend this Contract for a further period of up to one (1) year beyond the Initial Term by giving the Supplier written notice of its intention to extend at least thirty (30) Working Days notice before the end of the Initial Term.
- 4.3 Where expressly requested by the Authority, this Contract is conditional upon the valid execution and delivery to the Authority of the Guarantee (the “**Condition Precedent**”). The Authority may in its sole discretion at any time agree to waive compliance with the Condition Precedent by giving the Supplier notice in writing.
- 4.4 The Supplier shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. In the event that the Condition Precedent is not satisfied within 20 Working Days after Commencement Date, then unless the Condition Precedent is waived by the Authority in accordance with Clause 4.3:
- 4.4.1 this Contract shall automatically cease and shall not come into effect; and
- 4.4.2 neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.
- 4.5 The Supplier shall consult with the Authority in relation to the steps it takes to satisfy the condition set out in Clause 4.3 and shall keep the Authority fully informed of its progress in satisfying the condition and of any circumstances which are likely to result in the condition not being satisfied by the date set out in Clause 4.4

## **C. CONTRACT PERFORMANCE**

### **5. IMPLEMENTATION PLAN**

- 5.1.1 Supplier provided an Outline Implementation Plan as part of its Tender which is attached at Schedule 9 (Implementation and Testing) at Annex 1 and is required under that schedule to develop the Outline Implementation Plan into the final Implementation Plan.
- 5.1.2 The Supplier shall comply with the implementation requirements set out at Schedule 9 (Implementation and Testing)
- 5.2 Rectification of Delay in Implementation
- 5.2.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Contract it shall:
- (a) 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; and
  - (b) include in its notification an explanation of the actual or anticipated impact of the Delay; and
  - (c) comply with the Authority’s instructions in order to address the impact of the Delay or anticipated Delay; and
  - (d) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and

### **6. SERVICES**

- 6.1 Provision of the Services

- 6.1.1 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.
- 6.1.2 The Supplier shall ensure that:
- (a) the Services:
    - (i) comply in all respects with the Service Requirements as set out in Schedule 1 (Service Requirements);
    - (ii) are supplied in accordance with the provisions of this Contract and the Tender (subject to clause 1.4 (Order of Precedence))
  - (b) where:
    - (i) the Operational Services to be provided from any Operational Service Commencement Date are similar to services that the Authority was receiving immediately prior to that Operational Service Commencement Date (such similar services being "Preceding Services"); and
    - (ii) the standard and level of service received by the Authority in respect of any of the Preceding Services in the 12 month period immediately prior to that Operational Service Commencement Date have been disclosed to the Supplier in the Due Diligence Information (such preceding services being "Relevant Preceding Services"),  
  
the Operational Services to be provided from the relevant Operational Service Commencement Date that are similar to the Relevant Preceding Services are in each case provided to a standard and level of service which is at least as good as the standard and level of service received by the Authority in respect of the Relevant Preceding Services in the 12 month period immediately prior to the relevant Operational Service Commencement Date.
- 6.1.3 The Supplier shall provide:
- (a) the Implementation Services from (and including), the Commencement Date; and
  - (b) the Operational Services in each case from (and including) the relevant Operational Service Commencement Date(s) as specified in the Implementation Plan.
- 6.1.4 The Supplier shall perform its obligations under this Contract in accordance with:
- (a) all applicable Law;
  - (b) Good Industry Practice;
  - (c) the Standards;
  - (d) the Security Policy;
  - (e) the Quality Plans; and
  - (f) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 6.1.4(a) to (f)

6.1.5 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 15.1 (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:
  - (i) the release of any new Supplier Software or upgrade to any Supplier Software complies with the interface requirements of the Authority and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Authority three (3) Months before the release of any new Supplier Software or Upgrade;
  - (ii) all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
  - (iii) any products or 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;
  - (iv) the Supplier System and Supplier Assets will be free of all encumbrances (except as agreed in writing with the Authority) and will be Euro Compliant; and
  - (v) the Services are fully compatible with any Authority Software, Authority System, Authority Property and Authority Assets and as otherwise used by the Supplier in connection with this Contract;
- (d) minimise any disruption to the Sites Services, the ICT Environment and/or the Authority's operations when providing the Services;
- (e) ensure that any Documentation and training provided by the Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (f) 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 to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services 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;
- (g) 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;

- (h) provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
- (i) deliver the Services in a proportionate and efficient manner;
- (j) 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
- (k) 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.

6.1.6 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.

## 6.2 Time of Delivery of the Services

6.2.1 The Supplier shall provide the Services from the Commencement Date and in accordance with the Milestone Dates (if any). Such provision shall include compliance with the obligation on the Supplier set out in Clause 5 (Implementation Plan).

## 6.3 Location and Manner of Delivery of the Services

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

6.3.2 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.

## 6.4 Undelivered Services

6.4.1 In the event that any of the Services are not Delivered in accordance with Clauses 6.1 (Provision of the Services), 6.2 (Time of Delivery of the Services) and 6.3 (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.

6.4.2 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 6.1, (Provision of the Services), 6.2 (Time of Delivery of the Services) and 6.3 (Location and Manner of Delivery of the Services) and meet the relevant Milestone Date (if any) to be a material Default.

## 6.5 Supplier Equipment

- 6.5.1 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Authority Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this Contract the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Authority Premises, including the cost of packing, carriage and making good the Sites and/or the Authority Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.
- 6.5.2 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.
- 6.5.3 Subject to any express provision of the BCDR Plan to the contrary, 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 Agreement, including the Target Performance Levels.
- 6.6 Obligation to Remedy of Default in the Supply of the Services
- 6.6.1 Subject to Clauses 21.9.2 and 21.9.3 (IPR Indemnity) and without prejudice to any other rights and remedies of the Authority howsoever arising (including under Clauses 6.4 (Undelivered Services) and 26 (Authority Remedies for Default)), the Supplier shall, where practicable:
- (a) remedy any breach of its obligations in Clause 6 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.
- 6.7 Continuing Obligation to Provide the Services
- 6.7.1 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,
  - (d) unless the Supplier is entitled to terminate this Contract under Clause 30.1 (Termination on Authority Cause for Failure to Pay) for failure by the Authority to pay undisputed Contract Charges.
- 6.8 Business Continuity and Disaster Recovery
- 6.8.1 The Parties shall comply with the provisions of Schedule 7 (Business Continuity and Disaster Recovery).

## **7. STANDARDS AND QUALITY**

- 7.1 The Supplier shall at all times during the Term comply with the Standards and maintain, where applicable, accreditation with the relevant Standards' authorisation body.
- 7.2 If so required by the Authority the Supplier shall develop, within 6 weeks of the Commencement Date quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").
- 7.3 The Supplier shall seek Approval (the decision of the Authority to Approve or not shall not be unreasonably withheld or delayed) of the Quality Plans before implementing them. The Supplier acknowledges and accepts that Approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Contract.
- 7.4 Throughout the Term, 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 13 (Standards) shall, in addition, require the written consent of the Authority.
- 7.5 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.
- 7.6 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 the written consent of the Authority where the relevant Standard or Standards is/are included in Schedule 13 (Standards) and shall be implemented within an agreed timescale.
- 7.7 Following the approval by the Authority of the Quality Plans:
- 7.7.1 the Supplier shall implement all Deliverables in accordance with the Quality Plans; and
  - 7.7.2 any Variation to the Quality Plans shall be agreed in accordance with the Variation Procedure.

## **8. SERVICE LEVELS AND SERVICE CREDITS**

- 8.1 The Parties shall comply with the provisions of Part A (Service Levels and Service Credits) of Schedule 3 (Service Levels and Performance).
- 8.2 The Supplier shall at all times during the Term provide the Services to meet or exceed the Service Level Performance Measure for each Service Level Performance Criterion.
- 8.3 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 the provisions of Part A of Schedule 3 (Service Levels and Performance) including the right to any Service Credits.
- 8.4 The Supplier acknowledges and agrees that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Authority as a result of the Supplier's failure to meet any Service Level Performance Measure.

8.5 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:

8.5.1 the total number of Service Level Performance Criteria for which the weighting is to be changed does not exceed the number set out at the Commencement Date of this Contract; and

8.5.2 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.

## 9. CRITICAL SERVICE LEVEL FAILURE

9.1 On the occurrence of a Critical Service Level Failure:

9.1.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and

9.1.2 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 9.1 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.

9.2 The Supplier:

9.2.1 agrees that the application of Clause 9.1 is commercially justifiable where a Critical Service Level Failure occurs; and

9.2.2 acknowledges that it has taken legal advice on the application of Clause 9.1 and has had the opportunity to price for that risk when calculating the Contract Charges.

## 10. DISRUPTION

10.1 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.

10.2 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.

10.3 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.

10.4 If the Supplier's proposals referred to in Clause 10.3 are considered insufficient or unacceptable by the Authority acting reasonably then the Authority may terminate this Contract for material Default.

## 11. SUPPLIER NOTIFICATION OF AUTHORITY CAUSE

- 11.1 Without prejudice to any other obligations of the Supplier in this Contract to notify the Authority in respect of a specific Authority Cause (including the notice requirements under Clause 30.1.1 (Termination on Authority Cause for Failure to Pay)), 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:
- 11.1.1 the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Contract; and
  - 11.1.2 any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
  - 11.1.3 use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

#### **D. CONTRACT GOVERNANCE**

### **12. PERFORMANCE MONITORING**

- 12.1 Unless otherwise Approved or notified by the Authority, the Supplier shall comply with the monitoring requirements set out in Schedule 10 (Governance), Schedule 11 (Reports and Records Provisions) and Schedule 3 (Service Levels and Performance).

### **13. REPRESENTATIVES**

- 13.1 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.
- 13.2 The initial Supplier Representative shall be the person as specified in Clause 43. Any change to the Supplier Representative shall be agreed in advance and only with the Approval of the Authority.
- 13.3 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.

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

- 14.1 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.
- 14.2 The Supplier shall:
- 14.2.1 keep the records and accounts referred to in Clause 14.1 in accordance with Good Industry Practice and Law; and
  - 14.2.2 afford any Auditor access to the records and accounts referred to in Clause 14.1 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 Term and the period specified in Clause 14.1, 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.

- 14.3 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.
- 14.4 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable information requested by the Authority within the scope of the audit and shall cooperate with providing reasonable access to the Supplier Sites, Supplier Personnel and Supplier Equipment.
- 14.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 14, 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.
- 14.6 The Supplier acknowledges the importance to the Authority of financial transparency and the Authority's need for a reasonable level of transparency in the way in which the Contract Charges are calculated in order to comply with its obligations under the Government Transparency policy..
- 14.7 During the Term, and for a period of 7 years following the end of the Term, the Supplier shall:
  - 14.7.1 maintain and retain the Open Book Data; and
  - 14.7.2 disclose and allow the Authority and/or the Audit Agents access to the Open Book Data.

## 15. CHANGE

### 15.1 Variation Procedure

- 15.1.1 Subject to the provisions of this Clause 15 and of Schedule 2 (Charges 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**".
- 15.1.2 A Party may request a Variation by completing and sending a draft of the Change Control Note 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.
- 15.1.3 The Authority may require the Supplier to 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 full details of any impact of the proposed Variation on the Supplier's delivery of the Services and its ability to meet its obligations under the Contract, costs of implementing the Variation and ongoing costs post implementation, impact on the Contract Charges, impact on working practices of the Parties and any other information reasonably necessary and as may be requested by the Authority.
- 15.1.4 Subject to 1.1.1, the receiving Party shall respond to the request within the time limits specified in the Change Control Note. 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.

- 15.1.5 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 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.
- 15.1.6 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.

## 15.2 Legislative Change

- 15.2.1 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.

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

### **16. CONTRACT CHARGES AND PAYMENT**

#### 16.1 Contract Charges

- 16.1.1 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 payment profile and the invoicing procedure in Schedule 2 (Charges and Invoicing).
- 16.1.2 Except as otherwise provided, each Party shall bear its own costs and expenses incurred in respect of compliance with its obligations under Clause 14 (Records, Audit Access and Open Book Data), 22.5 (Freedom of Information), 22.6 (Protection of Personal Data).

#### 16.2 VAT

- 16.2.1 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.
- 16.2.2 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 this Clause 16.2 (VAT) shall be paid in cleared funds by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

### 16.3 Retention and Set Off

16.3.1 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.

16.3.2 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.

### 16.4 PROMOTING TAX COMPLIANCE

16.4.1 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

- (a) notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
- (b) 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.

16.4.2 In the event that the Supplier fails to comply with this Clause 16.4 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.

### 16.5 FINANCIAL DISTRESS

16.5.1 Parties shall comply with the provisions of Schedule 18 (Financial Distress) in relation to the assessment of the financial standing of the Supplier and the consequences of a change to that financial standing.

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

### **17. SUPPLIER PERSONNEL**

#### 17.1 Supplier Personnel

17.1.1 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 Security Policy and the Standards;
  - (iii) apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Services;
  - (iv) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements set out in Schedule 16 (Security), if applicable; and
  - (v) obey all lawful instructions and reasonable directions of the Authority and provide the Services to the reasonable satisfaction of the Authority.
- (c) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Contract shall be a Default by the Supplier;
- (d) 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;

## 17.2 Staff Transfer

17.2.1 Due to the nature of the previous services and the Services, the Parties do not anticipate that there will be any Relevant Transfers in relation to the commencement of this Contract (from the Former Supplier to the Supplier) or at the Exit from this Contract (from the Supplier to the Replacement Supplier).

## 18. SUPPLY CHAIN RIGHTS AND PROTECTION

### 18.1 Appointment of Sub-Contractors

18.1.1 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.

18.1.2 Prior to sub-contacting any of its obligations under this Contract, the Supplier shall notify the Authority and provide the Authority with:

- (a) the proposed Sub-Contractor's name, registered office and company registration number;

- (b) the scope of any Services to be provided by the proposed Sub-Contractor; and
  - (c) 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.
- 18.1.3 If requested by the Authority within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 18.1.2, the Supplier shall also provide:
  - (a) a copy of the proposed Sub-Contract; and
  - (b) any further information reasonably requested by the Authority.
- 18.1.4 The Authority may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 18.1.2 (or, if later, receipt of any further information requested pursuant to Clause 18.1.3), object to the appointment of the relevant Sub-Contractor they consider that:
  - (a) the appointment of a proposed Sub-Contractor may prejudice the provision of the Services (including in respect of Data Protection and security or may be contrary to the interests respectively of the Authority under this Contract;
  - (b) the proposed Sub-Contractor is unreliable and/or has not provided reasonable services to other Public Bodies and/or
  - (c) the proposed Sub-Contractor employs unfit persons,  
in which case, the Supplier shall not proceed with the proposed appointment.
- 18.2 Appointment of Key Sub-Contractors
  - 18.2.1 The Authority has consented to the engagement of the Key Sub-Contractors listed in Schedule 16 (Software and Key Sub-Contractors).
  - 18.2.2 Where the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority (the decision to consent not to be unreasonably withheld or delayed). The Authority may reasonably withhold its consent to the appointment of a Key Sub-Contractor if clauses 18.1.4(a) to 18.1.4(c) apply.
  - 18.2.3 Except where the Authority has given its prior written consent otherwise, the Supplier shall ensure that each Key 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 Key Sub-Contract which confer a benefit upon the Authority;
    - (c) a provision enabling the Authority to enforce the Key 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 Key Sub-Contract to the Authority or any Replacement Supplier;
    - (e) obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Contract in respect of:

- (i) data protection requirements set out under this Contract including clauses, 22.2 (Protection of Authority Data) and 22.6 (Protection of Personal Data);
  - (ii) FOIA requirements set out in Clause 22.5 (Freedom of Information);
  - (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 6.1.5(j) (Provision of Services);
  - (iv) the keeping of records in respect of the Services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
  - (v) the conduct of audits set out in Clause 14 (Records, Audit Access & Open Book Data);
- (f) provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 29 (Authority Termination Rights), 31 (Termination by Either Party) and 33 (Consequences of Expiry or Termination) of this Contract;
- (g) a provision restricting the ability of the Key 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;

### 18.3 Supply Chain Protection

18.3.1 Except where the Authority has given its prior written consent otherwise, the Supplier shall ensure that all Sub-Contracts contain a provision:

- (a) 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; and
- (b) a right for the Authority to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (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.

Also, 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.

18.3.2 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;
- (b) include within the Monthly Performance Reports required under Schedule 11 (Reports and Records Provision) a summary of its compliance with this Clause 18.3.2, such data to be certified each

quarter by a director of the Supplier as being accurate and not misleading.

18.3.3 Notwithstanding any provision of Clauses 22.3 (Confidentiality) and 23 (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).

#### 18.4 Termination of Sub-Contracts

18.4.1 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 29 (Authority Termination Rights) except Clause 29.7 (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 Key Sub-Contract where there is a Change of Control of the relevant Key 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.

#### 18.5 Retention of Legal Obligations

18.5.1 Notwithstanding the Supplier's right to Sub-Contract pursuant to this Clause 18 (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**

#### **19. AUTHORITY PREMISES**

##### 19.1 Licence to occupy Authority Premises

19.1.1 Any Authority Premises which the Authority agrees for the Supplier to use, 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 of the necessary onsite work, termination, expiry or abandonment of this Contract and in accordance with Schedule 8 (Exit Management) where used.

## 19.2 Security of Authority Premises

19.2.1 The Authority shall be responsible for maintaining the security of the Authority Premises in accordance with the Security Policy. The Supplier shall comply with the Security Policy, and any other reasonable security requirements of the Authority while on the Authority Premises.

## 20. AUTHORITY PROPERTY

20.1 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.

20.2 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.

20.3 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.

20.4 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 a 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.

## H. INTELLECTUAL PROPERTY AND INFORMATION

### 21. INTELLECTUAL PROPERTY RIGHTS

#### 21.1 Allocation of title to IPR

21.1.1 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) in the Supplier Software;
- (ii) the Supplier Background IPR;
- (iii) in the Third Party Software;
- (iv) the Third Party IPR;
- (v) in the Specially Written Software; and
- (vi) 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 Software;
    - (ii) Authority Background IPR; and
    - (iii) Authority Data.
- 21.1.2 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 21.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 21.1.3 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.
- 21.2 Licences granted by the Supplier: Specially Written Software and Project Specific IPR
  - 21.2.1 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:
    - (a) the Documentation, Source Code and the Object Code of the Specially Written Software (including any Supplier Background IPR or Third Party IPR that are embedded in or which are an integral part of the Specially Written Software) which shall include the right to load, execute, interpret, store, transmit, display, copy (for the purposes of loading, execution, interpretation, storage, transmission or display), modify, adapt, enhance, reverse compile, decode and translate such Specially Written Software;
    - (b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the "**Software Supporting Materials**"); and
    - (c) the Project Specific IPR including but not limited to the right to copy, adapt, publish (including on the ICT Environment) and distribute such Project Specific IPR.
  - 21.2.2 The Supplier shall:
    - (a) inform the Authority of all Specially Written Software that constitutes a modification or enhancement to Supplier Software or Third Party Software; and
    - (b) deliver to the Authority the Specially Written Software in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of completion or, if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Authority.
  - 21.2.3 The Supplier acknowledges and agrees that the ownership of the media referred to in Clause 21.2.2(b) shall vest in the Authority upon their receipt by the Authority.

## 21.3 Licences granted by the Supplier: Supplier Software and Supplier Background IPR

21.3.1 The Supplier hereby grants to the Authority a perpetual, royalty-free and non-exclusive licence to use:

- (a) the Supplier Software 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 including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display); and
- (b) the Supplier Background IPR for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to as part of the exercise of the Authority's (or, if the Authority is a Central Government Body, any other Central Government Body's) business or function.

21.3.2 At any time during the Term or following the Expiry Date, the Supplier may terminate a licence granted in respect of the Supplier Software or the Supplier Background IPR under Clause 21.3.1 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 21.3.1(a) or 21.3.1(b) (as the case may be) 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.

21.3.3 In the event the licence of the Supplier Software or the Supplier Background IPR is terminated pursuant to Clause 21.3.2), the Authority shall:

- (a) immediately cease all use of the Supplier Software or the Supplier Background IPR (as the case may be);
- (b) at the discretion of the Supplier, return or destroy documents and other tangible materials that contain any of the Supplier Software and/or 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 Software and/or the Supplier Background IPR (as the case may be); and
- (c) ensure, so far as reasonably practicable, that any Supplier Software and/or Supplier Background IPR that are 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 such Supplier Software and/or Supplier Background IPR.

## 21.4 Authority's right to sub-license

21.4.1 The Authority shall be freely entitled to sub-license the rights granted to it pursuant to Clause 21.2.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR).

21.4.2 The Authority may sub-license:

- (a) the rights granted under Clause 21.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) to a third

- party (including for the avoidance of doubt, any Replacement Supplier) provided that:
- (i) the sub-licence 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 21.3.1 (Licences granted by the Supplier: Supplier Software and 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 21.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specifically Written Software and/or the Project Specific IPR provided that the sub-licence is on terms no broader than those granted to the Authority.

## 21.5 Authority's right to assign/novate licences

### 21.5.1 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 21.2.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR); and
- (b) may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to Clause 21.3.1 (Licences granted by the Supplier: Supplier Software and 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 21.2.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR) and/or Clause 21.3.1 (Licences granted by the Supplier: Supplier Software and 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 21.2.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR) and Clause 21.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR).
- (d) If a licence granted in Clause 21.2.1 (Licences granted by the Supplier: Specially Written Software and Project Specific IPR) and/or Clause 21.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) is novated under Clause 21.5.1(b) or there is a change of the Authority's status pursuant to Clause 21.5.1(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.

## 21.6 Third Party IPR and Third Party Software

21.6.1 The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR and any Third Party Software which is not commercial off-the-shelf software grant a direct licence to the Authority on terms at least equivalent to those set out in Clause 21.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) and Clause 21.5.1(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 21.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) and Clause 21.5.1(b) (Authority’s right to assign/novate licences) in respect of any such Third Party IPR and/or Third Party Software, 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 software providers which the Supplier could seek to use; and
- (b) only use such Third Party IPR and/or Third Party Software if the Authority Approves the terms of the licence from the relevant third party.

21.6.2 The Supplier shall procure that the owners or the authorised licensors of any Third Party Software which is commercial off-the-shelf software grants a direct licence to the Authority on terms no less favourable that such software is usually made available.

## 21.7 Licence granted by the Authority

21.7.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Software, 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 22.3 (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.

## 21.8 Termination of licenses

**21.8.1** Subject to Clauses 21.3.2 and/or 21.3.3 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR), all licences granted pursuant to this Clause 21 (Intellectual Property Rights) (other than those granted pursuant to Clause 21.6.2 (Third Party IPR and Third Party Software) and 21.7.1 (Licence granted by the Authority)) shall survive the Expiry Date.

21.8.2 The Supplier shall, if requested by the Authority in accordance with Schedule 8 (Exit Management) where used, grant (or procure the grant) to the Replacement Supplier of a licence to use any Supplier Software, Supplier Background IPR, Third Party IPR and/or Third Party Software on terms

equivalent to those set out in Clause 21.3.1 (Licences granted by the Supplier: Supplier Software and Supplier Background IPR) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.

21.8.3 The licence granted pursuant to Clause 21.7.1 (Licence granted by the Authority ) and any sub-licence granted by the Supplier in accordance with Clause 21.7.1 (Licence granted by the Authority) shall terminate automatically on the Expiry Date and the Supplier shall:

- (a) immediately cease all use of the Authority Software, 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 Software, 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 Software, the Authority Background IPR and the Authority Data (as the case may be); and
- (c) ensure, so far as reasonably practicable, that any Authority Software, 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 Software, Authority Background IPR and/or Authority Data.

## 21.9 IPR Indemnity

21.9.1 The Supplier shall during and after the Term, 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.

21.9.2 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 or the ICT Environment;
  - (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.

21.9.3 If the Supplier elects to procure a licence in accordance with Clause 21.9.2(a) or to modify or replace an item pursuant to Clause 21.9.2(b), but this has not avoided or resolved the IPR Claim, then:

- (a) the Authority may terminate this Contract by written notice with immediate effect; and
  - (b) without prejudice to the indemnity set out in Clause 21.9.1, 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.
- 21.9.4 The provisions of Clauses 21.9.1 to 21.9.3 (inclusive) shall not apply to the extent that any IPR Claim is caused by any use by or on behalf of the Authority of the Software, or the use of the Authority Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Contract or in a manner not reasonably to be inferred from the description of the Services or the provisions of this Contract.
- 21.9.5 The Authority agrees that:
- (a) it will notify the Supplier in writing of any IPR Claim;
  - (b) it will allow the Supplier to conduct all negotiations and proceedings and will provide the Supplier with such reasonable assistance required by the Supplier, each at the Supplier's cost, regarding the IPR Claim; and
  - (c) it will not, without first consulting with the Supplier, agree to make any payment or make an admission relating to the IPR Claim.
- 21.9.6 The Supplier shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Authority into disrepute. The Supplier shall not settle or compromise any IPR Claim without the Authority's Approval (not to be unreasonably withheld or delayed).

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

### **22.1 Malicious Software**

- 22.1.1 The Supplier shall, as an enduring obligation throughout the Term use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between the Parties).
- 22.1.2 Any cost arising out of the actions of the Parties taken to mitigate and reduce the effect of any Malicious Software and to restore provision of the Services shall be borne by the Parties as follows:
- (a) by the Supplier, where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier (except where the Authority has waived the obligation set out in Clause 22.1.1) or the Authority Data (whilst the Authority Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the Supplier; and

- (b) by the Authority if the Malicious Software originates from the Authority Software (in respect of which the Authority has waived its obligation set out in Clause 22.1.1) or the Authority Data (whilst the Authority Data was under the control of the Authority).

## 22.2 Protection of Authority Data

- 22.2.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 22.2.2 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.
- 22.2.3 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 in this Contract and in any event as specified by the Authority from time to time in writing.
- 22.2.4 The Supplier shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- 22.2.5 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 in accordance with any BCDR Plan or otherwise. 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).
- 22.2.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan (if any).
- 22.2.7 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.
- 22.2.8 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 and in accordance with the requirements specified in Schedule 7 (Business Continuity and Disaster Recovery) where used, or as otherwise 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 and in accordance with the requirements specified in Schedule 7 (Business Continuity and Disaster Recovery) where used, or as otherwise required by the Authority.

## 22.3 Confidentiality

- 22.3.1 For the purposes of this Clause 22.3, 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.

22.3.2 Except to the extent set out in this Clause 22.3 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.

22.3.3 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 22.5 (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.

22.3.4 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.

22.3.5 Subject to Clauses 22.3.2 and 22.3.7, 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.

22.3.6 Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 22.3.5, 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.

22.3.7 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 22.3.7(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 22.3.5 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 22.3.5.

22.3.8 Nothing in this Clause 22.3 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.

22.3.9 In the event that the Supplier fails to comply with Clauses 22.3.2 to 22.3.5, the Authority reserves the right to terminate this Contract for material Default.

## 22.4 Transparency

22.4.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract 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](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.

22.4.2 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.

22.4.3 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.

## 22.5 Freedom of Information

22.5.1 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.

22.5.2 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.

## 22.6 Protection of Personal Data

22.6.1 If the Supplier is Processing Personal Data as Data Processor for the Authority, the Supplier shall:

- (a) Prior to the processing of any Personal Data under this Contract and where requested by the Authority provide a Privacy Impact Assessment ("PIA") to the Authority which will include (but not be limited to);
  - (i) A systematic description of the envisaged processing operations and the purpose of the processing;

- (ii) An assessment of the necessity and proportionality on the processing operations in relation to the Services;
  - (iii) an assessment of the risks to the rights and freedoms of data subjects; and
  - (iv) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- (b) implement and maintain appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected including the measures as are set out in Clause 22.2 (Protection of Authority Data) and Schedule 16 (Security);
- (c) Process the Personal Data only in accordance with written instructions from the Authority to perform its obligations under this Contract;
- (d) Process the Personal Data only to the extent and in such manner as is necessary for the provision of the Supplier's obligations under this Contract or as is required by Law or any Regulatory Body;
- (e) Keep a record of all categories of processing activities carried out on behalf of the Authority, containing:
  - (i) the categories of processing carried out on behalf of the Authority;
  - (ii) where applicable, any transfers of Personal Data to Restricted Countries or an international organisation;

22.6.2 The Supplier shall:

- (a) in conjunction with the Authority, in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with the provisions of the GDPR upon its implementation;
- (b) and shall procure that its entire Staff, comply with any notification requirements under Data Protection Laws and both Parties will duly observe all their obligations under Data Protection Laws which arise in connection with the Contract.
- (c) provide the Authority with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations in this Clause;
- (d) 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);

- (e) 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 22.6.2, Schedule 16 (Security), 22.2 (Protection of Authority Data) and 22.3 (Confidentiality);]
  - (ii) subject to appropriate confidentiality undertakings with the Supplier or relevant Sub-Contractor;
  - (iii) 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
  - (iv) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the Data Protection Laws);
- (f) notify the Authority within 48 hours if it:
  - (i) from a Data Subject (or third party on their behalf)
  - (A) a Data Subject Access Request (or purported Data Subject Access Request)
  - (B) 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 Data Protection Laws;
  - (C) any other request or communication relating to either Party's obligations under the Data Protection Laws.
  - (ii) considers that any of the Authority's instructions from the Authority infringe the Data Protection Laws;
  - (iii) receives any Regulator Correspondence or any other communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
  - (iv) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - (v) is required by Law to commit an act or omission that would, but for Clause 22.6.2(b), constitute a breach of this Clause 22.6.
- (g) provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to either Party's obligations under Data Protection Laws or any complaint, communication or request made (as referred to at Clause 22.6.2(f)), including by promptly providing:
  - (i) the Authority with full details and copies of the complaint, communication or request; and

- (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 timescale as set out in the Data Protection Laws; and
    - (iii) the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and
    - (iv) assistance following a Data Loss Event, as required by the Authority including with respect to the conduct of a data protection impact assessment and the Authority's consultation with the Information Commissioner's Office;
  - (h) The Supplier shall, 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 22.6.2 and provide to the Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.
- 22.6.3 The Supplier shall allow the Authority (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with Clause 14 (Records, Audit Access and Open Book Data) the Supplier's data Processing activities (and/or those of the Supplier Personnel) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Supplier is in full compliance with its obligations under the Contract.
- 22.6.4 The Supplier shall not Process or otherwise transfer any Personal Data in or to any Restricted Country without the Authority's prior written consent. If, after the Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country, the Supplier shall, in seeking consent, submit such information as the Authority's shall require in order to enable it to consider the request and acknowledges that such consent may be given subject to conditions which will, if appropriate, be incorporated into this Contract at the Supplier's cost and expense using the Variation Procedure.
- 22.6.5 The Supplier will notify the Authority immediately, and in any event no later than 12 hours, after becoming aware of a Data Loss Event, in particular the Supplier will:
- (a) when notifying the Authority of a Data Loss Event will describe the nature of the event including the categories and approximate number of data subjects concerned and the categories and approximate number of Personal Data records concerned;
  - (b) Cooperate fully with any Authority investigation into the Data Loss Event including but not limited to the causes and effects (actual or potential);
  - (c) provide immediate access to the Supplier's premises and systems for the purposes of any Authority investigation under Clause 22.6.5(b);
  - (d) Take all necessary actions to remedy the causes of the Data Loss Event and to ensure the protection of Personal Data from any further loss;
  - (e) Not make any public statement of any kind without the prior approval of the Authority

- (f) Where appropriate, provide all assistance necessary to enable the Authority to fulfil its obligations to notify the Information Commissioner within 72 hours after becoming aware of the Data Loss Event.
- 22.6.6 The Supplier shall use its reasonable endeavours to assist the Authority to comply with any obligations under the Data Protection Laws 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 Data Protection Laws to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.
- 22.6.7 At the end of the Term or earlier termination of this Contract, at the Authority's request, the Supplier shall delete or return all Authority personal data to the Authority and delete any copies of such personal data except where required to retain any copies by Law.
- 22.6.8 The Supplier shall indemnify the Authority on a continuing basis against any and all Losses incurred by the Authority arising from the Supplier's Default under this Clause 22.6 and/or any failure by the Supplier or any Sub-Contractor to comply with their respective obligations under Data Protection Laws.
- 22.6.9 The provision of this clause 22.6 applies during the Term and indefinitely after its expiry.

## **23. PUBLICITY AND BRANDING**

23.1 The Supplier shall not:

23.1.1 make any press announcements or publicise this Contract in any way; or

23.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders,

without Approval (the decision of the Authority to Approve or not shall not be unreasonably withheld or delayed).

23.2 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, Equipment, the Supplier System and the Authority System) 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**

### **24. LIABILITY**

24.1 Unlimited Liability

24.1.1 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 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.

24.1.2 The Supplier does not exclude or limit its liability in respect of the indemnity in Clause 21.9 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the indemnity therein.

## 24.2 Financial Limits

24.2.1 Subject to Clause 24.1.1 (Unlimited Liability), the Supplier's total aggregate liability

- (a) in respect of all Losses incurred by the Authority under or in connection with this Contract as a result of Defaults by the Supplier shall in no event exceed:
  - (i) in relation to any Defaults occurring from the Commencement Date to the end of the first Contract Year, the higher of five hundred thousand pounds (£500,000) or a sum equal to one hundred and twenty five per cent (125%) of the Estimated Year 1 Contract Charges;
  - (ii) in relation to any Defaults occurring in each subsequent Contract Year, the higher of five hundred thousand pounds (£500,000) in each such Contract Year or a sum equal to one hundred and twenty five per cent (125%) of the Contract Charges payable to the Supplier under this Contract in the previous Contract Year.

24.2.2 Subject to Clauses 24.1.1 (Unlimited Liability) and 24.2.1 (Financial Limits) and without prejudice to its obligation to pay the undisputed Contract Charges as and when they fall due for payment, the Authority's total aggregate liability in respect of all Losses as a result of Authority Causes shall be limited to:

- (a) in relation to any Authority Causes occurring from the Commencement Date to the end of the first Contract Year, a sum equal to the Estimated Year 1 Contract Charges;
- (b) in relation to any Authority Causes occurring in each subsequent Contract Year that commences during the remainder of the Term, a sum equal to the Contract Charges payable to the Supplier under this Contract in the previous Contract Year; and
- (c) in relation to any Authority Causes occurring in each Contract Year that commences after the end of the Term, a sum equal to the Contract Charges payable to the Supplier under this Contract in the last Contract Year commencing during the Term.

## 24.3 Non-recoverable Losses

24.3.1 Subject to Clause 24.1.1 (Unlimited Liability) 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).

## 24.4 Recoverable Losses

24.4.1 Subject to Clause 24.2.1 (Financial Limits), and notwithstanding Clause 24.3.1 (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 Term 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.

#### 24.5 Miscellaneous

24.5.1 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract.

24.5.2 Any Deductions shall not be taken into consideration when calculating the Supplier's liability under Clause 24.2.1 (Financial Limits).

### 25. INSURANCE

25.1 Without limitation to the generality of Clause 25.2, the Supplier shall ensure that it maintains the policy or policies of insurance as set out at Schedule 14 (Insurance Requirements)

25.2 The Supplier shall effect and maintain such further policy or policies of insurance in respect of all risks which may be incurred by the Supplier arising out of its performance of its obligations under this Contract.

25.3 The Supplier shall effect and maintain the policy or policies of insurance referred to in Clauses 25.1 and 25.2 above for six (6) years after the Expiry Date.

25.4 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in Clauses 25.1 and 25.2 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

25.5 If, for whatever reason, the Supplier fails to give effect to and maintain the insurance policies required under this Clause 25, the Authority may make alternative arrangements to protect its interests and may recover the premium and other costs of such arrangements as a debt due from the Supplier.

25.6 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liability under this Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability in relation to the performance of its obligations under this Contract.

25.7 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Authority (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give

notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

## **J. REMEDIES AND RELIEF**

### **26. AUTHORITY REMEDIES FOR DEFAULT**

#### 26.1 Remedies

26.1.1 Without prejudice to any other right or remedy of the Authority howsoever arising (including under Schedule 3 (Service Levels and Performance)), 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 (and 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 32 (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 32 (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 Services;

26.1.2 Where the Authority exercises any of its step-in rights under Clauses 26.1.1(c)(ii) or 26.1.1(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.

#### 26.2 Rectification Plan Process

- 26.2.1 Where the Authority has instructed the Supplier to comply with the Rectification Plan Process pursuant to Clause 26.1.1(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 ten (10) 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).
- 26.2.2 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 Schedule 6 (Dispute Resolution Procedure).
- 26.2.3 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 recurrence of the Default; and/or
  - (d) will rectify the Default but in a manner which is unacceptable to the Authority.
- 26.2.4 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.
- 26.2.5 If the Authority consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

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

27.1 If the Supplier has failed to:

- 27.1.1 Achieve a Milestone by its Milestone Date;
- 27.1.2 provide the Services in accordance with the Service Levels;

27.1.3 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 11 (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 29 (Authority Termination Rights) except Clause 29.7(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) the Supplier shall not be liable to accrue Service Credits;
  - (ii) the Authority shall not be entitled to any Compensation for Critical Service Level Failure pursuant to Clause 9 (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,in each case, to the extent that the Supplier can demonstrate that the Service Level Failure was caused by the Authority Cause.

27.2 In order to claim any of the rights and/or relief referred to in Clause 27.1, the Supplier shall:

27.2.1 comply with its obligations under Clause 11 (Notification of Authority Cause); and

27.2.2 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.

- 27.3 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.
- 27.4 Without prejudice to Clauses 6.7 (Continuing obligation to provide the Services), if a Dispute arises as to:
- 27.4.1 whether a Supplier Non-Performance would not have occurred but for a Authority Cause; and/or
- 27.4.2 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.
- 27.5 Any Variation that is required to the Implementation Plan or to the Contract Charges pursuant to this Clause 27 shall be implemented in accordance with the Variation Procedure.

## **28. FORCE MAJEURE**

- 28.1 Subject to the remainder of this Clause 28 (and, in relation to the Supplier, subject to its compliance with its obligations in Clause 6.8 (Business Continuity and Disaster Recovery) where used), a Party may claim relief under this Clause 28 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 Event. 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 Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 28.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 28.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 28 to the extent that consequences of the relevant Force Majeure Event:
- 28.3.1 are capable of being mitigated by any of the provision of any Services including the BCDR Services, but the Supplier has failed to do so; and/or
- 28.3.2 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.
- 28.4 Subject to Clause 28.5, 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 Event.
- 28.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. 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 Event.

28.6 Where, as a result of a Force Majeure Event:

28.6.1 an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:

- (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 Event 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;

28.6.2 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 Event to exercise its step-in rights under Clause 26.1.1(b) and 26.1.1(c) (Authority Remedies for Default) as a result of such failure; and/or
  - (ii) to receive Service Credits or withhold and retain any of the Contract Charges as Compensation for Critical Service Level Failure pursuant to Clause 9 (Critical Service Level Failure) to the extent that a Service Level Failure or Critical Service Level Failure has been caused by the Force Majeure Event; 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 Event.

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

28.8 Relief from liability for the Affected Party under this Clause 28 shall end as soon as the Force Majeure Event 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 28.7.

## **K. TERMINATION**

### **29. AUTHORITY TERMINATION RIGHTS**

29.1 Termination in Relation to Guarantee

29.1.1 Where this Contract is conditional upon the Supplier procuring a Guarantee pursuant to Clause 4 (Term and Condition Precedent), the Authority may terminate this Contract by issuing a Termination Notice to the Supplier where:

- (a) the Guarantor withdraws the Guarantee for any reason whatsoever;

- (b) the Guarantor is in breach or anticipatory breach of the Guarantee;
- (c) an Insolvency Event occurs in respect of the Guarantor; or
- (d) the Guarantee becomes invalid or unenforceable for any reason whatsoever,  
and in each case the Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Authority or
- (e) the Supplier fails to provide the documentation required by Clause 4 by the date so specified by the Authority.

## 29.2 Termination on Material Default

29.2.1 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) as a result of any Defaults, the Authority incurs Losses in any Contract Year which exceed 80% of the value of the Supplier's aggregate annual liability limit for that Contract Year as set out in Clauses 24.2.1(a) and 24.2.1(a) (Liability);
- (d) the Authority expressly reserves the right to terminate this Contract for material Default, including pursuant to any of the following Clauses: 5 (Implementation Plan), 6.4.2 (Services), 9.1 (Critical Service Level Failure), 10.4 (Disruption), 16.4 Promoting Tax Compliance, 22.3.9 (Confidentiality), 38.6.2 (Prevention of Fraud and Bribery) where applicable;
- (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;

29.2.2 For the purpose of Clause 29.2.1, 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.

## 29.3 Termination in Relation to Financial Standing

29.3.1 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.

29.4 Termination on Insolvency

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

29.5 Termination on Change of Control

29.5.1 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.

29.5.2 The Supplier shall ensure that any notification made pursuant to Clause 29.5.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

29.5.3 The Authority may terminate this Contract under Clause 29.5 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.

29.6 Termination for breach of Regulations

29.6.1 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).

29.7 Termination Without Cause

29.7.1 The Authority shall have the right to terminate this Contract at any time by issuing a Termination Notice to the Supplier giving written notice of at least forty-five (45) days.

29.8 Not Used

29.9 Not Used

29.10 Termination in Relation to Variation

29.10.1 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.

29.11 Termination in relation to Tax Compliance

29.11.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier in the event that:

(a) the warranty given by the Supplier pursuant to Clause 3.2.5 is materially untrue; or

(b) the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause 16.4; or

- (c) the Supplier fails to provide details of proposed mitigating factors as required by Clause 16.4 which in the reasonable opinion of the Authority, are acceptable.

### **30. SUPPLIER TERMINATION RIGHTS**

#### **30.1 Termination on Authority Cause for Failure to Pay**

30.1.1 The Supplier may, by issuing a Termination Notice to the Authority, terminate this Contract if the Authority fails to pay an undisputed sum due to the Supplier under this Contract which in aggregate exceeds the amount of fifty five thousand (£55,000) pounds (the '**Undisputed Sums Limit**'), and the said undisputed sum due remains outstanding for forty (40) Working Days (the "**Undisputed Sums Time Period**") after the receipt by the Authority of a written notice of non-payment from the Supplier specifying:

- (a) the Authority's failure to pay; and
- (b) the correct overdue and undisputed sum; and
- (c) the reasons why the undisputed sum is due; and
- (d) the requirement on the Authority to remedy the failure to pay; and

this Contract shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice), save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under this Contract including Clause 16.3 (Retention and Set off).

30.1.2 The Supplier shall not suspend the supply of the Services for failure of the Authority to pay undisputed sums of money (whether in whole or in part).

### **31. TERMINATION BY EITHER PARTY**

#### **31.1 Termination for continuing Force Majeure Event**

31.1.1 Either Party may, by, by issuing a Termination Notice to the other Party terminate this Contract if, in accordance with Clause 28.6.1(a) (Force Majeure).

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

32.1 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.

32.2 Any suspension of this Contract under Clause 32.1 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.

32.3 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:

32.3.1 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 29 (Authority Termination Rights) except Clause 29.7 (Termination Without Cause); and

32.3.2 reject the Variation.

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

33.1 Consequences of termination under Clauses 29.1 (Termination in Relation to Guarantee), 29.2 (Termination on Material Default), 29.3 (Termination in Relation to Financial Standing) and 29.10 (Termination in Relation to Variation)

33.1.1 Where the Authority:

(a) terminates (in whole or in part) this Contract under any of the Clauses referred to in Clause 33.1; 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 Term 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.

33.2 Consequences of termination under Clauses 29.7 (Termination without Cause) and 30.1 (Termination on Authority Cause for Failure to Pay)

33.2.1 Where:

(a) the Authority terminates (in whole or in part) this Contract under Clause 29.7 (Termination without Cause); or

(b) the Supplier terminates this Contract pursuant to Clause 30.1 (Termination on Authority Cause for Failure to Pay),

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 29.7 (Termination without Cause).

33.2.2 The Authority shall not be liable under Clause 33.2.1 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.

33.3 Consequences of termination under Clause 31.1 (Termination for Continuing Force Majeure Event)

33.3.1 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 Event pursuant to Clause 31.1 (Termination for Continuing Force Majeure Event).

33.4 Consequences of Termination for Any Reason

33.4.1 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 14 (Records, Audit Access & Open Book Data), 21 (Intellectual Property Rights), 22.3 (Confidentiality), 22.5 (Freedom of Information) 22.6 (Protection of Personal Data), 24 (Liability), 33 (Consequences of Expiry or Termination), 39 (Severance), 41 (Entire Agreement), 42 (Third Party Rights) 44 (Dispute Resolution) and 45 (Governing Law and Jurisdiction), and the provisions of Schedule 20 (Definitions), Schedule 2 (Charges and Invoicing), Schedule 8 (Exit Management), Schedule 6 (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.

**L. MISCELLANEOUS AND GOVERNING LAW**

**34. COMPLIANCE**

34.1 Health and Safety

34.1.1 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.

34.1.2 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.

34.1.3 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.

34.2 Equality and Diversity

34.2.1 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).

### 34.3 Official Secrets Act and Finance Act

34.3.1 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.

### 34.4 Environmental Requirements

34.4.1 The Supplier shall, when working on the Sites, perform its obligations under this Contract in accordance with the Environmental Policy of the Authority.

34.4.2 The Authority shall provide a copy of its written Environmental Policy (if any) to the Supplier upon the Supplier's written request.

## 35. ASSIGNMENT AND NOVATION

35.1 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.

35.2 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:

- 35.2.1 any other Contracting Body; or
- 35.2.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
- 35.2.3 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 35.2.

35.3 A change in the legal status of the Authority shall not, subject to Clause 35.4 affect the validity of this Contract and this Contract shall be binding on any successor body to the Authority.

35.4 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 35.2.3 (the "**Transferee**" in the rest of this Clause) the right of termination of the

Authority in Clause 29.4 (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 29.4 (Termination on Insolvency) and to Supplier or Guarantor in the definition of Insolvency Event were references to the Transferee).

### **36. WAIVER AND CUMULATIVE REMEDIES**

- 36.1 The rights and remedies under this Contract may be waived only by notice in accordance with Clause 43 (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.
- 36.2 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.

### **37. RELATIONSHIP OF THE PARTIES**

- 37.1 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.

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

- 38.1 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:
- 38.1.1 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
  - 38.1.2 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.
- 38.2 The Supplier shall not during the Term:
- 38.2.1 commit a Prohibited Act; and/or
  - 38.2.2 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.
- 38.3 The Supplier shall during the Term:
- 38.3.1 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;
  - 38.3.2 keep appropriate records of its compliance with its obligations under Clause 38.3.1 and make such records available to the Authority on request;

- 38.3.3 if so required by the Authority, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing of 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
- 38.3.4 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.
- 38.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 38.1, or has reason to believe that it has or any of the Supplier Personnel have:
- 38.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- 38.4.2 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
- 38.4.3 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.
- 38.5 If the Supplier makes a notification to the Authority pursuant to Clause 38.4, 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 14 (Records, Audit Access and Open Book Data).
- 38.6 If the Supplier breaches Clause 38.3, the Authority may by notice:
- 38.6.1 require the Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
- 38.6.2 immediately terminate this Contract for material Default.
- 38.7 Any notice served by the Authority under Clause 38.4 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).

## **39. SEVERANCE**

- 39.1 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.
- 39.2 In the event that any deemed deletion under Clause 39.1 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.

- 39.3 If the Parties are unable to resolve the Dispute arising under this Clause 39 within twenty (20) Working Days of the date of the notice given pursuant to Clause 39.2, 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 this Clause 39.

#### **40. FURTHER ASSURANCES**

- 40.1 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.

#### **41. ENTIRE AGREEMENT**

- 41.1 This Contract and the documents referred to in it constitute the entire agreement between the Parties in respect of the matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 41.2 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.
- 41.3 Nothing in this Clause 41 shall exclude any liability in respect of misrepresentations made fraudulently.

#### **42. THIRD PARTY RIGHTS**

- 42.1 The provisions of paragraph 9.9 of Schedule 8 (Exit Management) confers 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.]
- 42.2 Subject to Clause 42.1, a person who is not a Party to this Contract has no right under the CRTPA 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.
- 42.3 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.
- 42.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 42.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

#### **43. NOTICES**

- 43.1 Except as otherwise expressly provided within this Contract, any notices sent under this Contract must be in writing. For the purpose of this Clause 43, an e-mail is accepted as being "in writing".
- 43.2 Subject to Clause 43.3, 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 43.3 and 43.4)	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™ 1 <sup>st</sup> Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. 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)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

43.3 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 43.2:

43.3.1 any Termination Notice (Clause 29 (Authority Termination Rights));

43.3.2 any notice in respect of:

- (a) partial termination, suspension or partial suspension (Clause 32 (Partial Termination, Suspension and Partial Suspension)),
- (b) waiver (Clause 36 (Waiver and Cumulative Remedies))
- (c) Default or Authority Cause; and

43.3.3 any Dispute Notice.

43.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 43.3 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 43.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

43.5 This Clause 43 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).

43.6 For the purposes of this Clause 43, the address and email address of each Party shall be:

[REDACTED] Authority – [REDACTED] Pensions Ombudsman, 11  
Belgrave Road, London, SW1V 1RB. [REDACTED]  
[REDACTED]

43.6.2 Supplier – [REDACTED], Littlefish UK Limited, [REDACTED], 37  
Stoney Street, Nottingham, England, NG1 1LS.  
[REDACTED]

#### **44. DISPUTE RESOLUTION**

- 44.1 The Parties shall resolve Disputes arising out of or in connection with this Contract in accordance with the Dispute Resolution Procedure.
- 44.2 The Supplier shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.

#### **45. GOVERNING LAW AND JURISDICTION**

- 45.1 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.
- 45.2 Subject to Clause 44 (Dispute Resolution) and Schedule 6 (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.

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

[Signatures redacted]

## **SCHEDULE 1: SERVICE REQUIREMENTS**

### 1. INTRODUCTION TO AUTHORITY REQUIREMENTS

This Schedule 1 (Service Requirements) provides a description of the IT Managed Services that shall be provided by Supplier to the Authority under this Contract.



Attachment 3  
Service Requirements

## **SCHEDULE 2: CHARGES AND INVOICING**

### **PART A - CHARGING**

#### **1. PURPOSE OF THIS PART OF THE SCHEDULE**

- 1.1 The purpose of this Part A of the schedule is to set out the provisions relating to the Contract Charges applicable to the Services.
- 1.2 Unless otherwise stated in this Schedule 2 (Charges and Invoicing), all Milestone Payment and Service Charges shall constitute full consideration for the provision of the Services by the Supplier.
- 1.3 With the exception of the hardware and software set out at Annex 3 and Annex 4 of this Schedule ("the Products"), the Milestone Payment and Service Charges will be invoiced in arrears unless otherwise stated in this Schedule 2 (Charges and Invoicing). Products shall be invoiced upon acceptance from the Authority that they have been delivered in accordance with this Contract.
- 1.4 All Charges set out are in British Pounds (GBP) and are exclusive of VAT.
- 1.5 All Charges shall remain valid for the duration of the Initial Term and for the duration of any Extension Period (if elected by the Authority). For the avoidance of any doubt, Indexation of any Contract Charges shall not be permitted under the Contract.

#### **2. MILESTONES PAYMENTS**

- 2.1 The Authority will pay the Milestone Payments as set out in Annex 1 of this Schedule, to the Supplier for successful delivery of Goods and Services related to the applicable Milestones.

#### **3. SERVICE CHARGES**

- 3.1 The Authority will pay the Service Charges as set out at Annex 2 of this Schedule, to the Supplier for all Operational Services in each period from the Operational Services Commencement Date to the end of the Term. The Service Charges shall be made up of:
  - 3.1.1 the following charges (as applicable):
    - (a) Fixed service charges in accordance with paragraph 4 of Part A below;
    - (b) Variable service charges in accordance with paragraph 5 of Part A below;
    - (c) Rate card charges in accordance with paragraph 6 of Part A below;less,
    - (d) any Service Credits payable in accordance with the arrangements set out in Schedule 3 (Service Levels and Performance);

#### **4. FIXED SERVICE CHARGES**

- 4.1 The Service Fixed Charges to be applied is as stated in Table 1 of Annex 2.

#### **5. VARIABLE SERVICE CHARGES**

- 5.1 The variable service charges to be applied is as stated in Table 2 of Annex 2.

## **6. RATE CARD CHARGES**

- 6.1 The Day Rates set out in Table 3 are provisioned for use of any additional project work that may be agreed by the Parties from time to time in accordance with the Variation procedure set out in this Contract under Section D (Governance), Paragraph 15 (Variation).
- 6.2 The Day Rates set out in Table 3 are based upon a standard working day of 8 hours which shall be calculated exclusive of any breaks and/or travelling time.
- 6.3 The various Role Types as set out in Table 3 of Annex 2 to this Schedule shall be provided by the Supplier using one of three Daily Rates, which shall be applied in accordance with the following (depending on the time when the Services are provided):
- 6.3.1 Weekday In Hours – meaning any chargeable Services between the hours of 07:00 to 18:00 (GMT) Monday to Friday, excluding Public Holidays (England), as set out in column 3;
- 6.3.2 Weekend Out of Hours & Weekend Day/Out of Hours – meaning any chargeable services between the hours of 18:00 to 07:00 (GMT) Monday to Friday and between the hours of 00:00 to 23:59:59 Saturday and Sunday, excluding Public Holidays (England), as set out in Column 4;
- 6.3.3 Bank Holiday (England) Day/Out of Hours – meaning any chargeable service services between the hours of 00:00 to 23:59:59 (GMT) during any Public Holidays (England), as set out in Column 5.
- 6.4 On any day where more than 8 hours are worked 1/8<sup>th</sup> of the applicable Daily Rate shall be paid for each extra whole hour that is worked.
- 6.5 On any day where less than 8 hours are worked 1/8<sup>th</sup> of the applicable Daily Rate shall be paid for each whole hour that is worked.
- 6.6 The Supplier shall provide a breakdown of any Day Rates Charges as part of any relevant invoice. For the avoidance of doubt, no risks or contingency costs shall be included in any Day Rate Charges unless agreed by the Parties in writing. The Supplier shall maintain full and accurate records of the time spent by the Supplier's Personnel in providing the Services and shall provide such records to the Authority with each relevant invoice in accordance with Part B of this Schedule 2 (Charges and Invoicing).
- 6.7 The Contract Charges are deemed to include all travel and subsistence costs which are incurred by the Supplier of any person on behalf of the Supplier in the provision of the Services. The Authority shall not be liable to reimburse or otherwise pay for any such costs.
- 6.8 The Supplier shall seek prior Approval from the Authority before Services are provided using the Daily Rates described in paragraph 6.3.2 and 6.3.3.
- 6.9 Without prejudice to the Supplier's other rights and obligations under this Contract, the Supplier shall use reasonable endeavours to provide any additional project work or other work which is based on Day Rates using Weekday In Hours at the Daily Rate described in 6.3.1.

## **7. PAYMENTS FOR DELAYS DUE TO AUTHORITY CAUSE**

- 7.1 If the Supplier is entitled to compensation in accordance with clause 7.4 (Delays to Milestones due to Authority Cause) then such compensation shall consist of those additional costs reasonably and necessarily incurred by the Supplier to the extent that such costs are a direct result of the Authority Cause, provided that this calculation shall not operate as to put the Supplier in a better position than it would have been but for

the occurrence of the Authority Cause and the Supplier has evidenced and used reasonable endeavours to mitigate such costs.

7.2 To the extent that:

7.2.1 any contributory or related breach of this Contract by the Supplier caused or resulted in the Authority Cause; and/or

7.2.2 the Authority gives any advance notification that the Authority Cause is or is likely to occur,

then the compensation amount payable pursuant to paragraph 7.1 of Part A above shall be reduced by a fair and equitable amount.

## 8. SERVICE CREDITS

8.1 Service Credits will be made based on a percentage of Fixed Service Charges (from the Authority to the Supplier in the month in which the Supplier's performance failure occurred (as more particularly detailed in Schedule 2 (Charges and Invoicing) and Schedule 3 (Service Levels and Performance)). In respect of the Combined Incident Performance service level, the percentage shall be based on the Service Desk monthly Fixed Service Charge; in respect of Availability, it shall be based on a percentage of the total monthly Fixed Service Charges minus the Service Desk monthly Fixed Service Charge.

8.2 The liability of the Supplier in respect of Service Credits will be limited in accordance with clause 24 (Limitations on Liability).

8.3 If no further Contract Charges fall due after Service Credits accrue, the Supplier shall issue a credit note to the Authority for a sum equal to any such Service Credits then outstanding which shall be repayable by the Supplier to the Authority as a debt.

8.4 Service Credits shall be applied by the Supplier in accordance with Part B of this Schedule as a financial credit against the Service Charges for the period following the period in which the Service Credit was accrued, except where Authority has otherwise requested in writing for the Service Credit to be 'banked' as credit towards a specific future Contract Charge under this Part A (including without limitation Day Rates for a specific project or product) in which case the Supplier shall record the Service Credit as a financial credit in its accounts owing to the Authority and shall issue a credit note to that effect.

8.5 Where the Authority has banked Service Credits in accordance with paragraph 8.4 but has not incurred any Contract Charges against which the Service Credit was expressly reserved within 6 months of the date that the Service Credit was accrued ("the Unredeemed Credit"), then the Supplier shall credit the next invoice to the amount of the Unredeemed Credit and shall provide prior notification to the Authority of its intention to do so.

## **PART B - INVOICING**

### **9. PURPOSE OF THIS PART OF THE SCHEDULE**

9.1 This Part B of the schedule sets out the method by which the Supplier shall raise invoices to the Authority for payment, together with the requirements which apply to such invoices, and the payment terms thereof.

### **10. SUPPLIER INVOICES**

10.1 The Supplier shall prepare and provide to the Authority for approval a draft pro forma invoice within 10 Working Days of the Commencement Date which shall include, as a minimum, the details set out in paragraph 12.4 of Part B of this Schedule together with such other information as the Authority may reasonably require. If the draft pro forma invoice is not approved by the Authority then the Supplier shall make such amendments as may be reasonably required by the Authority.

10.2 The Supplier shall be entitled to raise an invoice in respect of any payment which falls payable to the Supplier pursuant to the Contract provided that each invoice is delivered to the Authority within 10 Working Days after the end of the period in respect of Contract Charges for Services consumed in that period.

In any event, all invoices must be provided to the Authority within six (6) months of completion of delivery of the relevant Services to which the invoice relates. Invoices delivered after expiry of this period shall be invalid and the Authority shall have no liability in respect of such invoices.

10.3 The Supplier shall invoice the Authority in respect of Services in accordance with the timescales specified for issue of invoices for the Contract Charges as detailed in Part A of this schedule.

10.4 The Supplier shall ensure that each invoice contains the following information:

10.4.1 the date of the invoice;

10.4.2 a unique invoice number;

10.4.3 the period(s) to which the relevant Contract Charge(s) relate;

10.4.4 details of the correct Contract reference;

10.4.5 the reference number of the purchase order issued by the Authority to which it relates (if any);

10.4.6 the dates between which the Services subject of each of the Contract Charges detailed on the invoice were performed;

10.4.7 such management information as is required to enable the Authority (where relevant) to re-charge the Contract Charges to individual operating divisions of the Authority or its business groups;

10.4.8 the methodology applied to calculate the Contract Charges;

10.4.9 the total Contract Charges gross and net of any applicable deductions and, separately, the amount of any disbursements properly chargeable to the Authority under the terms of the Contract, and, separately, any VAT or other sales tax payable in respect of the same;

10.4.10 details of any Service Credits or similar deductions that shall apply to the Contract Charges detailed on the invoice; or details of any 'banked' Service

Credits as may have been banked at the request of the Authority pursuant to paragraph 8.4 of Part A of this Schedule.

- 10.4.11 reference to any reports required by the Authority in respect of the Services to which the Contract Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Authority, then to any such reports as are validated by the Authority in respect of the Services);
  - 10.4.12 a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries; and
  - 10.4.13 the banking details for payment to the Supplier via electronic transfer of funds (i.e name and address of bank, sort code, account name and number).
- 10.5 Each invoice shall at all times be accompanied by sufficient information ("Supporting Documentation") to enable the Authority to reasonably assess whether the Contract Charges detailed thereon are properly payable. Any such assessment by the Authority shall not be conclusive. The Supplier undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice.
- 10.6 The Supplier shall submit, as soon as possible and in any case within ten (10) Working Days after the end of each period all invoices and Supporting Documentation in such format as the Authority may specify from time to time, for the Contract Charges incurred during that period. Invoices and Supporting Documentation shall be submitted to:
- TO: [REDACTED]
- CC: [REDACTED]
- with a copy (again including any Supporting Documentation) to such other person and at such place as the Authority may notify to the Supplier from time to time.
- 10.7 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.
- 10.8 The Authority shall only regard an invoice as valid if it complies with the provisions of this Part B of this schedule. Where any invoice does not conform to the Authority's requirements set out in paragraph 12 of Part B of this schedule, the Authority will return the disputed invoice to the Supplier. The Supplier shall promptly issue a replacement invoice which shall comply with the same.

## 11. PAYMENT TERMS

- 11.1 Subject to the provisions of paragraph 12 of Part B of this schedule, the Authority shall make payment to the Supplier within thirty (30) days of receipt of a valid invoice by the Authority at its nominated address for invoices

**Annex 1 - Milestones**

**Table 1: Milestones**

Milestone	Summary Description of Milestone	Contract Charges		Target Completion Date (Invoice Issued)
		Fixed Element	Variable Element	
Implementation Services (Migration Effort) to implement the Operational Services	<p>Mobilisation, Service Design, Service Configuration/Build, Testing/Acceptance, Training, Transition/On-boarding activities required to move the Authority to the proposed service consisting of a fixed Contract Charge (the Fixed Element) and a Risk Fund (the Variable Element).</p> <p>The Risk Fund has been provisioned as a capped Contract Charge based upon the Supplier’s assessment of all cost risks associated with Transition Services. The Risk Fund is a shared budget that is jointly managed by the Parties through collaborative agreement of the final Implementation Plan. If the Supplier does not require use of some or all of the Risk Fund through collaborative agreement, then the Supplier shall not invoice the Authority for the remaining value of these Variable Element charges.</p> <p>Furthermore, the Risk Fund is a capped Contract Charge, therefore in the event the supplier incurs Implementation Service costs that exceed the capped Risk Pot value then the Supplier shall bear such above and beyond costs in order to achieve successful completion of the Implementation Services.</p> <p>For the avoidance of doubt, the Contract Charges set out here to implement the Operational Services shall be deemed to cover all the Supplier’s upfront implementation and investment costs (with the exception of provision of the Products as set out below), and consequently, the Supplier will only recover these costs as part of the Service Charge once the Operational Service has been successfully implemented.</p>	██████████	██████████ (capped value)	Operational Services Commencement Date in New Government Hub
Provision of Perpetual Software	<p>Provision of the Perpetual Software set out in Table 1 (Perpetual Software) of Annex 3 (Software List below). The Variable Element has been provisioned as a capped Contract Charge based upon the Supplier’s proposed charges for these requirements. However, though clarification dialogue it has been confirmed that the Supplier will seek to reduce the Contract Charges for these requirements through further benchmarking and negotiations with third party resellers during the Implementation Period. Therefore, if lower</p>	N/A	£██████████ (capped value)	Upon Acceptance from the Authority of delivery

	<p>costs can be achieved then the benefit of reductions will be passed through to the Authority.</p> <p>The Supplier commits to limiting its margin to a maximum of █% on an Open Book Data basis for any third party products and services it supplies to the Authority.</p> <p>For the avoidance of doubt this Variable Element is a capped Contract Charge, therefore the Supplier shall be liable for any costs which exceed the cap. The capped value Variable Element is the maximum amount that the Supplier may charge the Authority in respect of the Provision of Perpetual Software.</p>			
<p>Provision of Hardware</p>	<p>Provision of the Hardware set out in Table 1 (Hardware) of Annex 4 (Hardware List below). The Variable Element has been provisioned as a capped Contract Charge based upon the Supplier's proposed charges for these requirements. However, through clarification dialogue it has been confirmed that the Supplier will seek to reduce the Contract Charges for these requirements through further benchmarking and negotiations with third party resellers during the Implementation Phase. Therefore, if lower costs can be achieved then the benefit of reductions will be passed through to the Authority.</p> <p>The Supplier commits to limiting its margin to a maximum of █% on an Open Book Data basis for any third party products and services it supplies to the Authority.</p> <p>For the avoidance of doubt this Variable Element is a capped Contract Charge, therefore the Supplier shall be liable for any costs which exceed the cap. The capped value Variable Element is the maximum amount that the Supplier may charge the Authority in respect of the Provision of Hardware.</p>	<p>N/A</p>	<p>£ █ (capped value)</p>	<p>Upon Acceptance from the Authority of delivery</p>
<p>Pre-Transition Services (Migration Effort) to implement the initial Operational Services at Belgrave Road site</p>	<p>Provision of network connectivity into Belgrave Road site ahead of transition to the New Government Hub. The Variable Element has been provisioned as a capped Contract Charge based upon the Supplier's proposed charges for these requirements. However, through clarification dialogue it has been confirmed that the Supplier will seek to reduce the Contract Charges for these requirements through collaborative review of the solution, and benchmarking and negotiation with third parties during the Implementation Phase. Therefore, if lower costs can be achieved then the benefit of reductions will be passed through to the Authority.</p> <p>For the avoidance of doubt this Variable Element is a capped Contract Charge, therefore the Supplier shall be liable for any costs which exceed the cap. The capped value Variable Element is the maximum amount that the Supplier may charge the Authority in respect of</p>	<p>N/A</p>	<p>£ █ (capped value)</p>	<p>Upon Acceptance from the Authority of delivery</p>

	pre-implementation services to implement the initial Operational Services at Belgrave Road.			
--	---	--	--	--

**Annex 2 – Service Charges**

**Table 1: Fixed Charge**

Fixed IT Managed Service Element for the Operational Services <sup>1</sup>	Initial Term						Extension Period	
	Year 1 <sup>2</sup>		Year 2		Year 3		Year 4	
	Monthly Charge	Annual Charge	Monthly Charge	Annual Charge	Monthly Charge	Annual Charge	Monthly Charge	Annual Charge
Service Desk – Incident Management	██████	██████	██████	██████	██████	██████	██████	██████
Platform	██████	██████	██████	██████	██████	██████	██████	██████
Fixed Network and Voice Services	██████	██████	██████	██████	██████	██████	██████	██████

<sup>1</sup> The Fixed IT Managed Service Element costs for the Operational Services are inclusive of fixed Exit Management services. Exit Management services shall be invoked by the Authority in accordance with Schedule 8 (Exit Management).

<sup>2</sup> IT Managed Service Elements shall only become chargeable upon the Authority’s acceptance and approval for the Supplier to proceed to provide the Operational Services on the Operational Services Commencement Date and the provision of those Services by the Supplier (for example if the Implementation period is three months, then Year 1 annual pricing shall consist of payments for nine months for the applicable Managed Service Elements. Upon commencement of this Contract it is anticipated that the monthly charges shall start to be incurred at the start of month four following the Commencement Date.

End User Service – Software / Licence Provision (Refer to Annex 3, Table 2 for itemised descriptions)	██████	██████	██████	██████	██████	██████	██████	██████
Mobile Network and Voice Services (inclusive of new devices every 24 months)	██████	██████	██████	██████	██████	██████	██████	██████
Totals	██████	██████	██████	██████	██████	██████	██████	██████

**Table 2: Variable Charges**

Variable IT Managed Service Element For the Operational Services	Description	Charges / Reductions
Add/Remove a Standard User to the Service (Excluding End User Hardware)	Service Desk - ██████ per user per month; Self-Service & Desk-side - ██████ per user per month; 8x8 Telephony - ██████ per user per month; 8x8 Telephony Call Recording - ██████ per user per month; Software excluding Visio/Project - ██████ per user per month. End User Hardware would be an additional purchase cost.	The monthly Fixed IT Managed Service Element Charges for the Operational Services shall be adjusted accordingly for the add/removal of a standard user from the estate: <ul style="list-style-type: none"> <li>Add user = ██████ increment to the monthly charges</li> <li>Remove = ██████ reduction to the monthly charges</li> </ul>
Azure Platform Consumption: Increments / Decrements	The Supplier has provided initial estimates and sizing with respect to the Azure platform required, presented in the Azure Estimates tab of the LF TPO Financial Submission v3.0  Where sizing changes following design, utilisation and any requirement for additional capacity from change to user populations,	The Supplier is a Cloud Services Partner (CSP) and obtains up to the minute pricing from Microsoft through their partner portal a  As charges are consumption based, the Supplier will receive invoices from Microsoft on a monthly basis, to

	<p>the respective consumption based charging will apply as obtained through the Microsoft pricing portal.</p>	<p>which the Supplier will add an administrative charge of █%, on an open book basis, in line with third party hardware and software provision.</p>
<p>Fixed Telephony: 8x8 Tariff Exclusions</p>	<p>The 8x8 Fixed Telephony Solution tariff is inclusive of Line Rental, Connection Charges, unlimited UK Outbound calls and unlimited Inbound calls. International dial codes are not inclusive of the tariff and pence per minute costs are provided under Charges / Reductions section.</p> <p>An Inclusive International Calling Package add-on is available at an additional monthly charge as provided under the Contract Charges / Reductions section. This package Virtual Office Premium Plus is inclusive of</p> <p>Unlimited calls to select international locations. Mobile app, softphone, virtual meetings, call recording.</p> <p>Supports landline and mobile:</p> <p>Australia, Belgium, Brazil, Canada, China, Chile, Denmark, Dominican Republic, Finland, France, Germany, Greece, Guam, Hong Kong, Hungary, India, Indonesia, Ireland, Israel, Malaysia, Malta, Mexico, Netherlands, New Zealand, Norway, Peru, Puerto Rico, Romania, Singapore, Slovakia, South Korea, South Africa, Spain, Sweden, Thailand, United Kingdom, United States</p> <p>Supports just landline:</p> <p>Argentina, Cyprus, Italy, Luxembourg, Japan, Poland, Portugal, Switzerland, Taiwan, Turkey</p> <p>International rates apply to all other locales not mentioned above. Calls to premium, special and information service numbers are not included. SMS available in the US only.</p>	<p>8x8 International Call Tariff Rates (where Inclusive International Calling Package is not subscribed or exceeded) [Attached pricing schedule redacted]</p> <p>Inclusive International Calling Package = £█ per user per month. For the avoidance of doubt this charge is an alternative charge for the Virtual Office Pro charge (of █) for selected users have International Calls enabled.</p>

Mobile Telephony: Tariff Exclusions	Smartphones deployed on an the EE network shall be registered on a 4G tariff that is inclusive of Line Rental, 8GB Data (including EU data roaming) per month, unlimited SMS text messages and unlimited airtime minutes (excluding premium rate services and overseas numbers). Tariff exclusions and associated Charges for exclusions are provided under Charges / Reductions section.	<i>Prior to the procurement of third party Mobile Voice and Network service the Parties shall incorporate the associated Tariff exclusions and associated Charges for exclusions here using the variation procedure set out in this Contract under Section D (Governance), Paragraph 15 (Variation).</i>

**Table 3: Rate Card Charges**

Role Type (Equivalent)	Role Description	Daily Rate <sup>3</sup>		
		Weekday In Hours	Weekday Out of Hours & Weekend Day/Out of Hours	Public Holiday (England) Day/Out of Hours
Project Manager (Project Manager: SFIA Ensure/Advise)	IT Project Manager will be responsible for the administration of network and server infrastructure within all departments, planning of technology projects, managing our team of IT professionals, implementing technology security and the execution of all technology-related tasks and initiatives.	██████	██████	██████
Project Coordinator (Project Officer: SFIA Apply)	Coordinating project schedules, resources, equipment and information. Liaising with clients to identify and define project requirements, scope and objectives. Ensuring that clients' needs are met as the project evolves	██████	██████	██████
Technical Specialist Architect (Technical Architect: SFIA Enable)	A focused role which has specific and relevant capabilities to a particular area of architectural expertise. Fulfils a particular need where there is demand in an organisation.	██████	██████	██████

<sup>3</sup> Remote Discount – A 10% discount will be applied on Daily Rates where a working day can be delivered remotely in respect of the Service required and the Role Type. For Consultancy engagements of more than 10 consecutive days and/or 10 continuous Working Days (which includes where the 10 Working Day continuous period is broken up by a weekend during which the Consultancy Services are not provided by the Supplier); and whether ordered together or on a per day basis; then a 12% discount will also be applied to the Daily Rates set out above.

Role Type (Equivalent)	Role Description	Daily Rate <sup>3</sup>		
		Weekday In Hours	Weekday Out of Hours & Weekend Day/Out of Hours	Public Holiday (England) Day/Out of Hours
Enterprise Architect (Solutions Architect SFIA Initiate/Influence)	The Enterprise Architect represents the broadest-scoped architecture role in a delivery or change project / programme (Product or Programme Architect are synonyms), where the Service, as described by GDS, represents meeting user needs and outcomes with the combination of technology solutions and business processes. Within a delivery context, the Enterprise Architect will work closely with the Product Owner and Delivery Manager to ensure the business outcomes are met within the delivery constraints, and the Technical Architect for the translation into the right technology solutions. Additionally the Enterprise Architect will work with Policy, Strategy, business and enterprise architecture representatives to ensure delivered solutions balance the needs of a diverse stakeholder group.	██████	██████	██████
Data Security Architect (Security Engineer: SFIA Enable)	Security analysts ensure the information stored on computers or networks is not disclosed to unwanted parties or modified inadvertently, and may also create and maintain security systems. If the data is compromised, security analysts repair the damage and take measures to seal the security hole that enabled the data compromise. Data security analysts typically work under the supervision of an information technology manager.	██████	██████	██████

**Annex 3 – Software List**

**Table 1: Perpetual Software and Itemised Charges**

Item	Product SKU	Manufacturer Part Number	Qty	Unit Price	Price Total
360 Systems Protective Marking. 65 users			1		
360 Systems Protective Marking - Annual Maintenance			1		
Ivanti Patch for SCCM Year 1			80		
Ivanti Patch for SCCM Year 2+ annual			80		
SCCM per server license			2		
SCCM Per client license			80		
Dolphin Supernova Screen Magnifier			2		
Nuance Dragon naturally Speaking			2		
BitTitan Migration Manager			70		
Fortitoken 2FA Sogt Token 65 lics			1		
Fortigate NGFW BYOL License			1		
Fortigate annual support			1		
Total					

**Table 2: Monthly Software Charges and Itemised Charges**

Item	Product SKU	Manufacturer Part Number	Qty	Unit Price	Price Total
Microsoft 365 E3 Gov			65		
Project Professional Gov			1		
Visio Professional Gov			1		
Exclaimer 365 Email Signatures			65		
Mimecast M2A			65		
Mimecast Secure Message Send			65		
BitDefender/Symantec Anti virus			75		
Cisco Umbrella			65		
Total					
8x8 - Virtual Office Pro			65		
8x8 - Additional storage for 18 months recording retention			65		

Total				
Mobile Phone Contract 8 phones	8			
		Standard Software per User		

**Annex 4 – Hardware List**

Product Description	Product SKU	Manufacturer Part Number	Qty	Unit Price	Price Total
Lenovo MiiX 720 Tablet/Hybrid Laptop with Detachable keyboard & Stylus. I5 7200U, 8GB Ram, 256GB SSD	4257031	80VV003UUK	69		
Plantronics Voyager Bluetooth Headset SfB Enabled	206110-01	28928916	65		
Plantroncs Blackwire C320-M Binaural USB Headset	85619-01	5054629292457	69		
HP Prodisplay P232 23 inch Monitor 1920x1080 VGA/Displayport	3427755	K7X31AA#ABU	65		
HP USB Keyboard UK	2671431	QY776AT#ABU	65		
HP USB Mouse	2484576	H2C21AA#ABB	65		
ThinkPad USB 3 Dock	40A70045 UK	4053162941281	65		
HP Officejet Pro 8715 All-in-One	4155592	K7S37A#BHC	2		
Samsung Galaxy S8 64GB Mobile Phone			8		

### **SCHEDULE 3: SERVICE LEVELS AND PERFORMANCE**

This Schedule (Service Levels and Performance) 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. GENERAL PROVISIONS**

- 1.1 The Supplier Representative shall be proactive and shall ensure that all Service Levels in this Contract are achieved to the highest standard throughout the Term.
- 1.2 The Supplier shall provide a managed service through the provision of a dedicated Contract manager (who can be the same person as the Supplier Representative) where required on matters relating to:
  - 1.2.1 Supply 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 The Supplier accepts and acknowledges that failure to meet the Service Level Performance Measures set out in this Schedule will result in Service Credits becoming due to the Authority.
- 1.4 The objectives of the Service Levels and Service Credits are to:
  - 1.4.1 ensure that the Services are of a consistently high quality and meet the requirements of the Authority;
  - 1.4.2 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
  - 1.4.3 incentivise the Supplier to comply with and to expeditiously remedy any failure to comply with the Service Levels.

#### **2. SERVICE BEDDING IN PERIOD**

- 2.1 Subject to paragraph 2.2. below, the Supplier shall provide the Services to the Service Levels set out in this Schedule from the Operational Services Commencement Date (or such earlier date as may be agreed by the Parties in the Implementation Plan).
- 2.2 The Authority agrees that for eight (8) weeks commencing on the Operational Services Commencement Date to be the Service Bedding In Period in order to establish and update its requirements under this Schedule to achieve improved Service Level performance from the Supplier, taking into account the Supplier Solution.
- 2.3 During the Service Bedding In Period, the Supplier's performance against the Service Levels set out in this schedule shall be measured and reported, but only for the purpose of reviewing and assessing the Service Levels and Service baseline (and the tolerances that have been set). Service Credits shall not apply during a Service Bedding In Period.

- 2.4 At the end of the Service Bedding In Period the Service baseline and Service Levels (including the calculations and formula which underpin them) shall be reviewed and assessed against the measurements gathered and may be amended under the Variation Procedure. The Service Levels as agreed at the Commencement Date shall continue to apply after the Service Bedding In Period except where the Parties agree otherwise in accordance with the Variation Procedure.

### 3. SERVICE LEVELS

- 3.1 Annex 1 of this Schedule sets out the Service Levels the performance of which the Parties have agreed will apply and will be measured in respect of the Services.
- 3.2 The Supplier shall monitor its performance of this Contract and Service delivery by reference to the relevant performance criteria for achieving the Service Levels shown in Annex 1 and shall send the Authority a Performance Monitoring Report detailing the level of service which was achieved in accordance with the of this Schedule 11 (Records and Records Provision) for each Service Period.
- 3.3 The Supplier shall, at all times, provide the Services in such a manner that the performance of the Services meet or exceed the Service Level Targets set for each Service Level.
- 3.4 The Supplier shall be deemed to have achieved a Service Level if the Supplier's performance in a given Service Period in respect of a Service Level has met or exceeded the Service Level Target as set out in Annex 1 of this Contract.
- 3.5 If the level of performance of the Supplier of any element of the provision by it of the Services during the Term:
- 3.5.1 is likely to or fails to meet the Service Level Target or
- 3.5.2 is likely to cause or causes a Critical Service Failure to occur,
- 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 8 of this Contract (Service Levels and Service Credits), 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) if a Service Level Failure has occurred, deduct from the Contract Charges, the applicable Service Credits payable by the Supplier to the Authority in accordance with the formula for that Service Level set out in Annex 1 of this Schedule
  - (d) if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure in accordance with Clause 9 of this Contract (Critical Service Level Failure) (including subject, for the avoidance of doubt, the proviso in Clause 9.1.2 of this Contract in relation to Material Breach).

- 3.6 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.

#### **4. SERVICE CREDITS**

- 4.1 Schedule 2 (Charges and Invoicing) sets out the process used to calculate a Service Credit payable to the Authority as a result of a Service Level Failure in a given service period which, for the purpose of this Schedule, shall be a recurrent period of one (1) Month during the Term (the "**Service Period**").
- 4.2 Annex 1 of this Schedule includes details of each Service Credit available to each Service Level Performance Criterion if the applicable Service Level Performance Measure is not met by the Supplier.
- 4.3 The Authority shall use the Monthly Performance Reports supplied by the Supplier under Schedule 11 (Reports) to verify the calculation and accuracy of the Service Credits, if any, applicable to each relevant Service Period. Application of Service Credits shall be discretionary and at the sole discretion of the Authority, based on the information provided by the Supplier and subject to full review by the Parties of the Monthly Performance Reports at the Service Review meeting for the applicable Service Period.
- 4.4 The Supplier will provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of performance by the Supplier and to support the calculations by the Supplier of any Service Credits due.
- 4.5 Service Credits are a reduction of the amounts payable in respect of the Services and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with Schedule 2 (Charges and Invoicing) unless expressly directed otherwise by the Authority in accordance with paragraph 8.4 of Part A of Schedule 3 (Service Levels and Performance).

#### **5. NATURE OF SERVICE CREDITS**

- 5.1 The Supplier confirms that it has modelled the Service Credits and has taken them into account in setting the level of the Contract Charges. Both Parties agree that the Service Credits are a reasonable method of price adjustment to reflect poor performance.

#### **6. SERVICE CREDIT FAILURE THRESHOLD**

- 6.1 For the purposes of this Contract the **Service Credit Failure Threshold** shall be the Supplier accruing Service Credits which exceed 36% of the total Fixed Service Charges during any 12 month rolling period.

#### **7. CRITICAL SERVICE LEVEL FAILURE**

- 7.1 If a Critical Service Level Failure occurs, the Authority may exercise its rights to terminate this Contract in whole or in part pursuant to Clause 33.1 or 33.2 (Termination by the Authority).

#### **8. PERMITTED MAINTENANCE**

- 8.1 The Supplier shall create and maintain a rolling schedule of planned maintenance to in respect of the ICT environment used in the performance of the Services ("Maintenance Schedule").
- 8.2 The Supplier shall provide to the Authority with a draft Maintenance Schedule for Approval within twenty (20) Working Days of the Commencement Date;
- 8.3 Once the Maintenance Schedule has been Approved, the Supplier shall only undertake such planned maintenance (which shall be known as "Permitted Maintenance") in accordance with the Maintenance Schedule.
- 8.4 The Supplier shall give as much notice as is reasonably practicable to the Customer prior to carrying out any Emergency Maintenance.
- 8.5 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the ICT Environment and/or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the ICT Environment and the provision of the Services.
- 8.6 Permitted Maintenance that has been Approved by the Authority will be discounted for the purposes of calculation of Availability Service Levels under this Schedule.
- 8.7 For the avoidance of doubt, Emergency Maintenance will not be discounted from the Availability Service Level calculation except where such Emergency Maintenance has become reasonably necessary as a direct result of Authority Cause or due to a Force Majeure Event.

## ANNEX 1: SERVICE LEVELS

### 1. CRITERIA 1 – INCIDENTS

- 1.1 The Service Levels set out for this Criteria 1 (Incidents) shall be measured in respect of incidents at the point at which such incidents arise in the delivery of the Services and which are received by the Supplier during Core Support hours or during hours which are supported by On Call Support.
- 1.2 Service Level performance for P1 to P3 Incidents shall be calculated under this Contract using a Combined Incident Resolution Performance Service Level as set out in Table 2 and at paragraphs 1.11 to 1.13 below.
- 1.3 Response Times and Resolution Times shall relate to UK time which may be either GMT or BST.
- 1.4 Core Support hours shall be within the hours of 07:00 to 18:00 on Working Days only. For the avoidance of doubt, for the purposes of calculating Response Times and Resolution Times, measurement of the times shall stop at 18:00 hours on a Working Day and shall resume at 07:00 hours on the next Working Day.
- 1.5 Updates to the Service Desk in respect of Incident resolution progress shall be during the hours of 07:00 to 18:00 on Working Days.
- 1.6 The Incident Classifications are as follows:

Priority	Description
1 (most serious)	<p>A Service Failure which, in the reasonable opinion of the Authority,</p> <ul style="list-style-type: none"> <li>• affects Multiple Users and multiple systems affected or the service impacted is a priority system.</li> <li>• Complete service loss (e.g. major network failure) or loss of major service line where all users or key users (such as the Executive Board) are affected. Major impact on business operations.</li> <li>• causes significant financial loss and/or disruption to the Authority</li> <li>• has Regulatory or Legal implications</li> <li>• compromises our ability to support our ministers effectively</li> <li>• compromises our ability to respond to urgent parliamentary questions</li> <li>• compromises the Authority 's reputation</li> <li>• makes the Authority data vulnerable to loss, corruption or abuse</li> </ul>

	<ul style="list-style-type: none"> <li>• results in any material loss or corruption of Authority Data.</li> <li>• No workaround is possible</li> </ul> <p>Non- exhaustive examples:</p> <ul style="list-style-type: none"> <li>• Failure of the Service to provide user authentication service allowing unauthorised access to the Authority systems and data.</li> <li>• A Critical system down</li> <li>• Severe loss of functionality to a critical system</li> <li>• Loss of power to data centre causing failure of services;</li> </ul>
2	<p>A Service Failure which, in the reasonable opinion of the Authority:</p> <p>affects multiple users and/or a single system</p> <p>has a major (but not critical) adverse impact on the activities of the Authority and no work around is available; or</p> <ul style="list-style-type: none"> <li>• causes a financial loss and/or disruption to the Authority which is more than trivial but less severe than the significant financial loss described in the definition of a Severity 1 Service Failure.</li> <li>• Affects significant numbers of users (though fewer than above)</li> </ul> <p>Significant impact on business operations</p> <p>Non-exhaustive examples:</p> <ul style="list-style-type: none"> <li>• Corruption of organisational database tables;</li> <li>• Loss of ability to update the Authority Data.</li> </ul> <p>Partial service loss (e.g. telephone service).</p>
3	<p>A Service Failure which, in the reasonable opinion of the Authority:</p>

	<ul style="list-style-type: none"> <li>• has a major adverse impact on the activities of the Authority which can be reduced to a moderate adverse impact due to the availability of a contingency;</li> <li>• have a moderate adverse impact on the activities of the Authority ; or</li> <li>• has a minor adverse impact on the provision of the Service.</li> </ul> <p>Non-exhaustive examples:</p> <p>Loss of a system or service affecting a limited number of users across the estate or is limited to a small number of locations</p> <p>Single user is affected or single item of equipment failure where there is an alternative in place;</p> <p>partial application loss for small group of users.</p> <p>Loss of a system or service affecting a small number of users or system failure/lack of access limited to a matter of hours</p> <p>Loss of some data which can be recovered by user and/or Supplier effort within a day</p> <p>Non-exhaustive examples:</p> <p>Some loss of some data which is recoverable with a minimum of user effort in a matter of hours</p> <p>Loss of a Single item of equipment (e.g. personal computer, printer) where no alternative exists for the user.</p> <p>Cosmetic faults on applications</p> <p>No impact on business operations.</p>
--	--

1.7 a Service Failure which results in the non-Availability of the Services will always be classified as either Priority 1 or Priority 2.

1.8 For each Incident Classification, Table 1 below contains:

1.8.1 an internal Supplier target Response Time and target Service Level for the Response Time;

1.8.2 an internal Supplier Resolution Time and Service Level for the Resolution Time;

Table 1

<u>Incident Classification</u>	<u>Response Time</u>	<u>Response Time SLA (internal Supplier SLA Target)</u>	<u>Resolution Time Service Level Target *</u>	<u>Resolution Time SLA (internal Supplier SLA Target)</u>
<u>1</u>	<u>15 minutes</u>	<u>95%</u>	<u>4 hours</u>	<u>95%</u>
<u>2</u>	<u>30 minutes</u>	<u>95%</u>	<u>8 hours</u>	<u>95%</u>
<u>3</u>	<u>2 hours</u>	<u>95%</u>	<u>72 hours</u>	<u>95%</u>

***\*Response Time is defined as the time between the Authority logging an Incident (by phone, or desk to desk interface) and when the Supplier commences work to Fix the incident and has notified the Authority accordingly.***

***\*Resolution Time is defined as the amount of time between when the Authority first notified the Help Desk of an incident and when that problem is actually solved by the Supplier.***

- 1.9 The Supplier shall, as part of its reporting requirements, report monthly at the Performance Review meetings on its service level performance in respect of its own internal service level targets (as described in columns 3 and 5 of Table 1 above).

**INCIDENT RESOLUTION SERVICE LEVELS AND SERVICE CREDITS:**

- 1.10 Service Levels and Service Credits in respect of Incident Resolution shall be measured and applied using a Combined Incident Resolution performance metric across all Incident Classifications as set out in Table 2 below.
- 1.11 The Parties agree that Service Credits shall only apply in respect of Incident Resolution Service Levels where the Supplier’s performance as measured using the Combined Incident Resolution Service Level is below 90%.
- 1.12 The Parties acknowledge and agree that although no Service Credits apply for Supplier performance of the Combined Incident Resolution Service Level at 90% or above, the Supplier is still required to achieve the Service Level Target of 95% as specified in column 2 of Table 2 below. Failure to achieve the Service Level Target shall be dealt with as a Service Level Failure in accordance with the terms of this Contract save that no Service Credits in respect of the Combined Incident Resolution Service Level shall be payable unless the Combined Incident Resolution Service Level achieved by the Supplier is below 90%.

Table 2

<b>Incident Classification</b>	<b>Service Level Performance Band *</b>	<b>Service credit (percentage of the total monthly fixed Service Desk Charges)</b>
1 to 3 Combined Incident Resolution Performance Service Level	95% and above (Band 1 – “Service Level Target”)	0%
	80 to 89.9% (Band 2)	4%
	70 to 79.9% (Band 3)	8%
	Less than 70% (70% is the Service Level Threshold)	12%

\*service level achieved will be rounded up to 1 decimal place. The Parties agree that no Service Credits shall be applied for combined performance at 90% or above.

- 1.13 Combined Incident Resolution Performance is calculated as the total number each Incident Classification failed occurrences multiplied by the weighting for each Incident Classification; which is then added together and subtracted from 100%, as follows:
- 1.13.1  $100 \text{ minus } ((\text{Number of failed Incident 1} \times 12\%) \text{ plus } (\text{Number of failed Incident 2} \times 4\%) \text{ plus } (\text{Number of failed Incident 3} \times 2\%)) = \text{Combined Incident Resolution Performance service level achieved.}$
- 1.14 The Combined Incident Resolution Performance achieved will fall under one of the Service Level performance bandings (or if below 70% shall be below the Service Level Threshold). Service Credits shall be applied in accordance with Table 2 above depending on the Service Level performance band achieved.
- 1.15 An example of how Combined Incident Resolution Performance will be calculated is as follows:

Table 3

<b>Incident Classification</b>	<b>Incidents which failed to achieve the Resolution Time Service Level Target (see Table 1)*</b>	<b>% Performance Reduction (a fixed weighting attributed by the Authority to each Incident Classification)</b>	<b>% accumulated (Incidents which failed to achieve SLA x % Performance Reduction weighting)</b>
1	1	12%	1x12%=12%
2	2	4%	2x4%=8%
3	0	4%	0x4% = 0%
		<b>Total</b>	<b>20%</b>

This is intended to be an example of how the calculation will be made	100% minus Total Accumulated = Combined Service Level achieved for Incidents 1 to 3	80%
Service Level Performance Band (see table 2 above)	80% = between 80 to 89.9% (Band 2)	Band 2 = 4% Service Credit in accordance with Table 2 above.

\*an incident will be deemed failed and subject to inclusion in the Combined Incident Resolution Service Level calculation if the Supplier fails to resolve the incident within the Resolution Time Service Level Target set out in Table 1 above.

## INCIDENT CLOSURE

- 1.16 Subject to paragraph 1.17 below, an Incident shall be deemed to be closed and the Supplier’s obligations in respect of that Incident shall end when the first of the following occurs:
- 1.16.1 When the Service Desk is notified that a Fix, which may be a workaround (i.e a temporary solution which doesn’t fix the underlying cause), has been expressly Accepted by Authority; or
  - 1.16.2 When the Supplier, acting reasonably, reaches a decision that the Incident requires Fourth Line Support for its resolution and notifies the Help Desk accordingly; or
  - 1.16.3 When the Supplier, acting reasonably, reaches a decision that the Incident is assessed to be outside of the scope of the Service Requirements and the Supplier notifies the Service Desk and the Authority accordingly.
  - 1.16.4 The Authority uses the Fix in the production environment which resolves the Incident; or
  - 1.16.5 A period of one (1) month has elapsed following the delivery of a Fix by the Supplier to the Authority for Acceptance (with clear instructions of how and when the Fix should be applied by the Supplier or the Authority in order to the resolve the Incident) and the Authority has not notified Supplier of any failure of the Fix to resolve the Incident,
- 1.17 Any disputes in relation to the closing of an Incident shall be referred to the Dispute Resolution Procedure where the Parties shall determine using the appropriate escalation points whether an Incident was reasonably closed by the Supplier in accordance with Paragraph 1.16 above.

## 2. CRITERIA 2 – AVAILABILITY

- 2.1 The Supplier will measure the Availability of the Infrastructure and Telephony systems and will monitor them in accordance with the agreed performance monitoring obligations set out in this Schedule and Schedule 11 (Reports).
- 2.2 The Service will be Available (and "Available" will be interpreted accordingly) when;
  - 2.2.1 Authority end users are able to access and utilise all of the Operational Services during service Core Support Hours; by the availability of Active Directory services to enable Authority user authentication (and assuming as such that the Microsoft Azure tenancy that underpins Active Directory (as provisioned and supported directly by Microsoft) is available and performant to fulfil the availability of the Active Directory services that sit atop it).; and
  - 2.2.2 the Supplier system is able to process the Authority's Data and to provide any required reports and functionality within the timescales set out in the Services Requirements and elsewhere in this Contract (as measured on a 24 hour x 7 day a week basis).
- 2.3 Availability will be measured as a percentage of the total time that the Service is in uptime during a Service Period, in accordance with Table 2a and using the calculations set out in table 2b. For the purposes of the Availability calculation, the total number of available minutes per Service Period will be 10000.2 (166.67 hours)
- 2.4 Service Credits shall apply to each of the Infrastructure and Telephony systems in their own right so a failure to achieve target performance in each of the systems shall result in the relevant Service Credit being applied to each failure as set out in table 2c.
- 2.5 Without prejudice to any of the Authority's other rights and remedies under this Contract (including in respect of Service Credits), for the avoidance of doubt, the Authority may recover any Service Credits for Service Level Failures under both the Incident Service Credit mechanism and under the Availability Service Credit mechanism where there has been a relevant Service Level failure under Availability which results in a Service Credit under both.

Table 2a

<b>System</b>	<b>"Service Level Target"</b>
Infrastructure	[99.5% and above]
Telephony	[99.5% and above]

Table 2b

<b>• Calculation of Availability per Service Period</b>				
<b>• Total number of minutes (excluding permitted maintenance)</b>	<b>• Total number of minutes of Service Downtime (excluding permitted maintenance)</b>	<b>• Formula</b>	<b>• Equals</b>	<b>• Availability</b>

<ul style="list-style-type: none"> <li>MP</li> </ul>	<ul style="list-style-type: none"> <li>SD</li> </ul>	<ul style="list-style-type: none"> <li><math>\frac{(MP - SD)}{MP} \times 100</math></li> </ul>	<ul style="list-style-type: none"> <li>Equals</li> </ul>	<ul style="list-style-type: none"> <li>Service Availability</li> </ul>
<ul style="list-style-type: none"> <li><i>worked example 10000.2 total minutes</i></li> </ul>	<ul style="list-style-type: none"> <li>200</li> </ul>	<ul style="list-style-type: none"> <li><math>\frac{10000.2 - 200}{10000.2} \times 100</math></li> <li>10000.2</li> </ul>	<ul style="list-style-type: none"> <li>Equals</li> </ul>	<ul style="list-style-type: none"> <li>98%</li> </ul>

**SERVICE CREDITS FOR AVAILABILITY**

Table 2c

Service Level		Performance *	Service Credit (based on a percentage of the total monthly Fixed Service Charge minus the Service Desk Fixed Service Charge)
Infrastructure Availability	>>	99.5% and above (Band 1 - "Service Level Target")	0%
		97.6% to 99.4% (Band 2)	4%
Telephony Availability		95.2% to 97.5% (Band 3)	8%
		Less than 95.2% (Service Level Threshold)	12%

\*service level achieved will be rounded up to 1 decimal place

#### **SCHEDULE 4: SUPPLIER SOLUTION**

***The incorporation of the Supplier's Solution and Tender into this Contract does not operate to transfer any risk that the Supplier's Solution or Tender is complete or will meet the Authority's Service Requirements. The Supplier shall remain fully liable in respect of ensuring that its solution and delivery of the Services meets the Service Requirements.***

#### **PART A: SUPPLIER SOLUTION/TENDER**

[Redacted – Commercially Sensitive and confidential]

**SCHEDULE 5: CHANGE CONTROL NOTE**

<p><b>This Change Control Note (“CCN”) is made by and between:</b></p>	
<p>(1) <b>Littlefish UK Limited</b>, a company registered in England and Wales under company number 04700876 and at Price House, 37 Stoney Street, Nottingham, England, NG1 1LS (“<b>Supplier</b>”)</p>	
<p>(2) <b>The Office of The Pensions Ombudsman</b> is at 11 Belgrave Road, London, SW1V 1RB (the “<b>Authority</b>”).</p>	
<p>pursuant to, and subject to, the terms and conditions of the Agreement for The Office of The Pensions Ombudsman with reference number 20130 (OJEU ref: 2017/S 146-301823 (the “<b>Agreement</b>”) between the Parties. The terms of the Agreement shall apply to this CCN except to the extent expressly excluded or modified by the terms of this CCN.</p>	
CCN Reference No	
CCN Issue No	
Title of Change	
CCN Originator	
Date of Request	
Response Required by:	[insert date that a Response is Required from the Authority/Supplier]
<b>Reason for Change</b>	
[insert details]	
<b>Full Details of Change</b>	
[insert details]	

Impact Assessment and Variation Pricing/Changes to Charges			
[insert details]			
Implementation Plan			
[insert any implementation plan required to effect the change]			
Timetable for Testing and Implementation			
[insert details]			
Amendments Required to the Terms and Conditions and/ or Schedules			
[insert details]			
Evidence to support change in costs/price			
[insert details]			
Schedule of Payments			
[insert details]			
Other Issues			
Agreed for and on behalf of the Authority		Agreed for and on behalf of Supplier	
Signature:		Signature:	
Title:		Title:	

Date:		Date:	
<b>Rejected</b>	<b>Y / N</b>	<b>Rejected</b>	<b>Y / N</b>
<b>Reason for Rejection ;</b>		<b>Reason for Rejection ;</b>	
<b>Actions;</b>		<b>Actions;</b>	

## SCHEDULE 6: DISPUTE RESOLUTION PROCEDURE

### 1. DEFINITIONS

1.1 In this Schedule 6, 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;
<b>"Expert"</b>	the person appointed by the Parties in accordance with paragraph 5 of this Schedule
<b>"Mediation Notice"</b>	has the meaning given to it in paragraph 3.2 of this Schedule; and
<b>"Mediator"</b>	the independent third party appointed in accordance with paragraph 4 of this Schedule.

### 2. INTRODUCTION

2.1 If a Dispute arises then:

2.1.1 the representative of the Authority Representative 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;

2.2.3 the names and contact details of the Parties' respective escalation points; and

2.2.4 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 2.7 of this Schedule, 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, the Parties shall seek to resolve Disputes:

2.4.1 first by commercial negotiation (as prescribed in paragraph 3 of this Schedule);

2.4.2 then by mediation (as prescribed in paragraph 4 of this Schedule); and

2.4.3 lastly by recourse to arbitration (as prescribed in paragraph 6 of this Schedule) or litigation (in accordance with Clause 45 of this Contract (Governing Law and Jurisdiction)).

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.

- 2.5 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use 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.
- 2.6 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.5 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:
  - 2.6.1 in paragraph 3.2.3, ten (10) Working Days;
  - 2.6.2 in paragraph 4.2, ten (10) Working Days;
  - 2.6.3 in paragraph 5.2, five (5) Working Days; and
  - 2.6.4 in paragraph 6.2, ten (10) Working Days.
- 2.7 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 Parties’ respective escalation points as set out in paragraph 3.3 below.
- 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; or
  - 3.2.3 the Parties have not settled the Dispute in accordance with paragraph 3.1 of this Schedule 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.

3.3 Escalation Points:

Authority	Supplier
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p>

#### 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 an ICT technical, 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 President of the British Computer Society (or any other association that has replaced the British Computer Society).

#### 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.
- 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 or be subject to the jurisdiction of the courts in accordance with Clause 45 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 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 45 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, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 of this Schedule or commence court proceedings in the courts in accordance with Clause 45 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, 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, 6.4.6 and 6.4.7 of this Schedule);
  - 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 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 7: BUSINESS CONTINUITY AND DISASTER RECOVERY

### 1. SUPPLIER BCDR PLAN

1.1 The Supplier's Outline BCDR Plan is attached at Annex 1 to this Schedule.

### 2. DEFINITIONS

2.1 In this Schedule, the following definitions shall apply:

<b>"Business Continuity Plan"</b>	has the meaning given to it in paragraph 3.2.1(b) of this Schedule;
<b>"Disaster Recovery Plan"</b>	has the meaning given to it in 3.2.1(c) of this Schedule;
<b>"Disaster Recovery System"</b>	means the system embodied in the processes and procedures for restoring the provision of Services following the occurrence of a disaster;
<b>"Review Report"</b>	has the meaning given to it in paragraph 7.2 of this Schedule;
<b>"Supplier's Proposals"</b>	has the meaning given to it in paragraph 7.2.3 of this Schedule;

### 3. BCDR PLAN

3.1 By the 14 March 2018, the Supplier shall prepare and deliver to the Authority for the Authority's written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

3.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and

3.1.2 the recovery of the Services in the event of a Disaster.

3.2 The BCDR Plan shall:

3.2.1 be divided into three parts:

(a) Part A which shall set out general principles applicable to the BCDR Plan;

(b) Part B which shall relate to business continuity (the "Business Continuity Plan"); and

(c) Part C which shall relate to disaster recovery (the "Disaster Recovery Plan"); and

3.2.2 unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of paragraphs 3, 4 and 5.

3.3 Following receipt of the draft BCDR Plan from the Supplier, the Authority shall:

1.1.2 review and comment on the draft BCDR Plan as soon as reasonably practicable; and

- 1.1.3 notify the Supplier in writing that it approves or rejects the draft BCDR Plan no later than twenty (20) Working Days after the date on which the draft BCDR Plan is first delivered to the Authority.
- 3.4 If the Authority rejects the draft BCDR Plan:
  - 1.1.4 the Authority shall inform the Supplier in writing of its reasons for its rejection; and
  - 1.1.5 the Supplier shall then revise the draft BCDR Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft BCDR Plan to the Authority for the Authority's Approval within twenty (20) Working Days of the date of the Authority's notice of rejection. The provisions of paragraphs 3.3 and 3.4 of this Schedule shall apply again to any resubmitted draft BCDR Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

#### **4. PART A OF THE BCDR PLAN AND GENERAL PRINCIPLES AND REQUIREMENTS**

- 4.1 Part A of the BCDR Plan shall:
  - 4.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
  - 4.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the provision of the Services and any services provided to the Authority by a Related Supplier;
  - 4.1.3 contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Suppliers with respect to issues concerning business continuity and disaster recovery where applicable;
  - 4.1.4 detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Authority and any of its other Related Supplier in each case as notified to the Supplier by the Authority from time to time;
  - 4.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;
  - 4.1.6 contain a risk analysis, including:
    - (a) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
    - (b) identification of any single points of failure within the provision of Services and processes for managing the risks arising therefrom;
    - (c) identification of risks arising from the interaction of the provision of Services and with the services provided by a Related Supplier; and
    - (d) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
  - 4.1.7 provide for documentation of processes, including business processes, and procedures;

- 4.1.8 set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-Contractors) and for the Authority;
  - 4.1.9 identify the procedures for reverting to “normal service”;
  - 4.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
  - 4.1.11 identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the BCDR Plan; and
  - 4.1.12 provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority’s business continuity plans.
- 4.2 The BCDR Plan shall be designed so as to ensure that:
- 4.2.1 the Services are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
  - 4.2.2 the adverse impact of any Disaster, service failure, or disruption on the operations of the Authority is minimal as far as reasonably possible;
  - 4.2.3 it complies with the relevant provisions of ISO/IEC 27002 and all other industry standards from time to time in force; and
  - 4.2.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
- 4.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the provision of Services.
- 4.4 The Supplier shall not be entitled to any relief from its obligations under the Service Levels or to any increase in the Contract Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.

## **5. BUSINESS CONTINUITY PLAN - PRINCIPLES AND CONTENTS**

- 5.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the provision of Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Authority expressly states otherwise in writing:
- 5.1.1 the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Services; and
  - 5.1.2 the steps to be taken by the Supplier upon resumption of the provision of Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 5.2 The Business Continuity Plan shall:
- 5.2.1 address the various possible levels of failures of or disruptions to the provision of Services;
  - 5.2.2 set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such goods, services and steps, the “Business Continuity Services”);

5.2.3 specify any applicable Service Levels with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Service Levels in respect of the provision of other Services during any period of invocation of the Business Continuity Plan; and

5.2.4 clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

## **6. DISASTER RECOVERY PLAN - PRINCIPLES AND CONTENTS**

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

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

6.3 The Disaster Recovery Plan shall include the following:

6.3.1 the technical design and build specification of the Disaster Recovery System;

6.3.2 details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:

- (a) data centre and disaster recovery site audits;
- (b) backup methodology and details of the Supplier's approach to data back-up and data verification;
- (c) identification of all potential disaster scenarios;
- (d) risk analysis;
- (e) documentation of processes and procedures;
- (f) hardware configuration details;
- (g) network planning including details of all relevant data networks and communication links;
- (h) invocation rules;
- (i) Service recovery procedures; and
- (j) steps to be taken upon resumption of the provision of Services to address any prevailing effect of the failure or disruption of the provision of Services;

6.3.3 any applicable Service Levels with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Service Levels in respect of the provision of other Services during any period of invocation of the Disaster Recovery Plan;

6.3.4 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;

6.3.5 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and

6.3.6 testing and management arrangements.

## **7. REVIEW AND AMENDMENT OF THE BCDR PLAN**

- 7.1 The Supplier shall review the BCDR Plan (and the risk analysis on which it is based):
- 7.1.1 on a regular basis and as a minimum once every six (6) months;
  - 7.1.2 within three calendar months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 7; and
  - 7.1.3 where the Authority requests any additional reviews (over and above those provided for in paragraphs 7.1.1 and 7.1.2 of this Schedule) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.
- 7.2 Each review of the BCDR Plan pursuant to paragraph 7.1 of this Schedule shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within the period required by the BCDR Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Authority a report (a "Review Report") setting out:
- 7.2.1 the findings of the review;
  - 7.2.2 any changes in the risk profile associated with the provision of Services; and
  - 7.2.3 the Supplier's proposals (the "Supplier's Proposals") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any goods, services or systems provided by a third party.
- 7.3 Following receipt of the Review Report and the Supplier's Proposals, the Authority shall:
- 7.3.1 review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
  - 7.3.2 notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Authority.
- 7.4 If the Authority rejects the Review Report and/or the Supplier's Proposals:
- 7.4.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and

- 7.4.2 the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within twenty (20) Working Days of the date of the Authority's notice of rejection. The provisions of paragraphs 7.3 and 7.4 of this Schedule shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 7.5 The Supplier shall as soon as is reasonably practicable after receiving the Authority's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

## **8. TESTING OF THE BCDR PLAN**

- 8.1 The Supplier shall test the BCDR Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to paragraph 8.2 of this Schedule, the Authority may require the Supplier to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
- 8.2 If the Authority requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 8.3 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Authority a report setting out:
- 8.3.1 the outcome of the test;
  - 8.3.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
  - 8.3.3 the Supplier's proposals for remedying any such failures.
- 8.4 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.
- 8.5 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Supplier of any of its obligations under this Contract.
- 8.6 The Supplier shall also perform a test of the BCDR Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

**9. INVOCATION OF THE BCDR PLAN**

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

**ANNEX 1: SUPPLIER'S BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN**

**OUTLINE PLAN**

**[REDACTED – COMMERCIALY SENSITIVE AND CONFIDENTIAL]**

## SCHEDULE 8: EXIT MANAGEMENT

### 1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

<b>"Exclusive Assets"</b>	means those Supplier Assets used by the Supplier or a Key Sub-Contractor which are used exclusively in the provision of the Services;
<b>"Exit Information"</b>	has the meaning given to it in paragraph 4.1 of this Schedule;
<b>"Exit Manager"</b>	means the person appointed by each Party pursuant to paragraph 3.4 of this Schedule for managing the Parties' respective obligations under this Schedule;
<b>"Net Book Value"</b>	means the net book value of the relevant Supplier Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Customer of even date with this Contract;
<b>"Non-Exclusive Assets"</b>	means those Supplier Assets (if any) which are used by the Supplier or a Key Sub-Contractor in connection with the Services but which are also used by the Supplier or Key Sub-Contractor for other purposes;
<b>"Registers"</b>	means the register and configuration database referred to in paragraphs 3.1.1 and 3.1.2 of this Schedule;
<b>"Termination Assistance"</b>	means the activities to be performed by the Supplier pursuant to the Exit Plan, and any other assistance required by the Authority pursuant to the Termination Assistance Notice;
<b>"Termination Assistance Notice"</b>	has the meaning given to it in paragraph 6.1 of this Schedule;
<b>"Termination Assistance Period"</b>	means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to paragraph 6.2 of this Schedule;
<b>"Transferable Assets"</b>	means those of the Exclusive Assets which are capable of legal transfer to the Authority;
<b>"Transferable Contracts"</b>	means the Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Authority or any

Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation;

**"Transferring Assets"** has the meaning given to it in paragraph 9.2.1 of this Schedule;

**"Transferring Contracts"** has the meaning given to it in paragraph 9.2.2(c) of this Schedule.

## **2. INTRODUCTION**

2.1 This Schedule describes provisions that should be included in the Exit Plan, the duties and responsibilities of the Supplier to the Authority leading up to and covering the Expiry Date and the transfer of service provision to the Authority and/or a Replacement Supplier.

2.2 The objectives of the exit planning and service transfer arrangements are to ensure a smooth transition of the availability of the Services from the Supplier to the Authority and/or a Replacement Supplier at the Expiry Date.

## **3. OBLIGATIONS DURING THE TERM TO FACILITATE EXIT**

3.1 During the Term, the Supplier shall:

3.1.1 create and maintain a Register of all:

(a) Supplier Assets, detailing their:

- (i) make, model and asset number;
- (ii) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
- (iii) Net Book Value;
- (iv) condition and physical location; and
- (v) use (including technical specifications); and

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

3.1.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;

3.1.3 agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and

3.1.4 at all times keep the Registers up to date, in particular in the event that Assets, Sub-Contracts or other relevant agreements are added to or removed from the Services.

3.2 The Supplier shall:

- 3.2.1 procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Contract; and
- 3.2.2 (unless otherwise agreed by the Authority in writing) procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation at the request of the Authority to the Authority (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Services (or part of them) without restriction (including any need to obtain any consent or approval) or payment by the Authority.
- 3.3 Where the Supplier is unable to procure that any Sub-Contract or other agreement referred to in paragraph 3.2.2 of this Schedule which the Supplier proposes to enter into after the Commencement Date is assignable and/or capable of novation to the Authority (and/or its nominee) and/or any Replacement Supplier without restriction or payment, the Supplier shall promptly notify the Authority of this and the Parties shall (acting reasonably and without undue delay) discuss the appropriate action to be taken which, where the Authority so directs, may include the Supplier seeking an alternative Sub-Contractor or provider of Services to which the relevant agreement relates.
- 3.4 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within three (3) months of the Commencement Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-Contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite Authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Contract and all matters connected with this Schedule and each Party's compliance with it.

#### **4. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES**

- 4.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
  - 4.1.1 details of the Service(s);
  - 4.1.2 a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
  - 4.1.3 an inventory of Authority Data in the Supplier's possession or control;
  - 4.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
  - 4.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
  - 4.1.6 all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Contract; and
  - 4.1.7 such other material and information as the Authority shall reasonably require, (together, the "Exit Information").

- 4.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this paragraph 4.2 of this Schedule disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-Contractors' prices or costs).
- 4.3 The Supplier shall:
- 4.3.1 notify the Authority within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Services and shall consult with the Authority regarding such proposed material changes; and
  - 4.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Authority.
- 4.4 The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than four (4) updates in any six (6) month period.
- 4.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
- 4.5.1 prepare an informed offer for those Services; and
  - 4.5.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

## **5. EXIT PLAN**

- 5.1 The Supplier shall, within three (3) months after the Commencement Date, deliver to the Authority an Exit Plan which:
- 5.1.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Authority and/or its Replacement Supplier on the expiry or termination of this Contract;
  - 5.1.2 complies with the requirements set out in paragraph 5.3 of this Schedule;
  - 5.1.3 is otherwise reasonably satisfactory to the Authority.
- 5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 5.3 Unless otherwise specified by the Authority or Approved, the Exit Plan shall set out, as a minimum:
- 5.3.1 how the Exit Information is obtained;
  - 5.3.2 the management structure to be employed during both transfer and cessation of the Services;
  - 5.3.3 the management structure to be employed during the Termination Assistance Period;
  - 5.3.4 a detailed description of both the transfer and cessation processes, including a timetable;

- 5.3.5 how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);
- 5.3.6 details of contracts (if any) which will be available for transfer to the Authority and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Services will be available for such transfer);
- 5.3.7 proposals for the training of key members of the Replacement Supplier's personnel in connection with the continuation of the provision of the Services following the Expiry Date charged at rates agreed between the Parties at that time;
- 5.3.8 proposals for providing the Authority or a Replacement Supplier copies of all documentation:
  - (a) used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and
  - (b) relating to the use and operation of the Services;
- 5.3.9 proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Services;
- 5.3.10 proposals for the identification and return of all Authority Property in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);
- 5.3.11 proposals for the disposal of any redundant Services and materials;
- 5.3.12 procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information
- 5.3.13 how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period; and
- 5.3.14 proposals for the supply of any other information or assistance reasonably required by the Authority or a Replacement Supplier in order to effect an orderly handover of the provision of the Services.

## **6. TERMINATION ASSISTANCE**

- 6.1 The Authority shall be entitled to require the provision of Termination Assistance at any time during the Term by giving written notice to the Supplier (a "Termination Assistance Notice") at least four (4) months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
  - 6.1.1 the date from which Termination Assistance is required;
  - 6.1.2 the nature of the Termination Assistance required; and

- 6.1.3 the period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) months after the date that the Supplier ceases to provide the Services.
- 6.2 The Authority shall have an option to extend the Termination Assistance Period beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Authority shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier to such effect.

## **7. TERMINATION ASSISTANCE PERIOD**

- 7.1 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:
- 7.1.1 continue to provide the Services (as applicable) and, if required by the Authority pursuant to paragraph 6.1 of this Schedule, provide the Termination Assistance;
- 7.1.2 in addition to providing the Services and the Termination Assistance, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
- 7.1.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Schedule without additional costs to the Authority;
- 7.1.4 provide the Services and the Termination Assistance at no detriment to the Service Level Performance Measures, save to the extent that the Parties agree otherwise in accordance with paragraph 7.3; and
- 7.1.5 at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.
- 7.2 Without prejudice to the Supplier's obligations under paragraph 7.1.3 of this Schedule, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in paragraph 7.1.2 of this Schedule without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Assistance or the Exit Plan shall be subject to the Variation Procedure.
- 7.3 If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Assist during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Level Performance Measure(s), the Parties shall vary the relevant Service Level Performance Measure(s) and/or the applicable Service Credits to take account of such adverse effect.

## **8. TERMINATION OBLIGATIONS**

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

- 8.2 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Schedule), the Supplier shall:
- 8.2.1 cease to use the Authority Data;
  - 8.2.2 provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
  - 8.2.3 erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
  - 8.2.4 return to the Authority such of the following as is in the Supplier's possession or control:
    - (a) all copies of the Authority Software and any other software licensed by the Authority to the Supplier under this Contract;
    - (b) all materials created by the Supplier under this Contract in which the IPRs are owned by the Authority;
    - (c) any parts of the ICT Environment and any other equipment which belongs to the Authority;
    - (d) any items that have been on-charged to the Authority, such as consumables; and
    - (e) all Authority Property issued to the Supplier under Clause 21 of this Contract (Authority Property). Such Authority Property shall be handed back to the Authority in good working order (allowance shall be made only for reasonable wear and tear);
    - (f) any sums prepaid by the Authority in respect of Services not Delivered by the Expiry Date;
  - 8.2.5 vacate any Authority Premises;
  - 8.2.6 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier and/or any Supplier Personnel;
  - 8.2.7 provide access during normal working hours to the Authority and/or the Replacement Supplier for up to twelve (12) months after expiry or termination to:
    - (a) such information relating to the Services as remains in the possession or control of the Supplier; and
    - (b) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this paragraph.

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

## **9. ASSETS, SUB-CONTRACTS AND SOFTWARE**

- 9.1 Following notice of termination of this Contract and during the Termination Assistance Period, the Supplier shall not, without the Authority's prior written consent:
- 9.1.1 terminate, enter into or vary any Sub-Contract;
  - 9.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets; or
  - 9.1.3 terminate, enter into or vary any licence for software in connection with the provision of Services.
- 9.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to paragraph 7.1.5 of this Schedule, the Authority shall provide written notice to the Supplier setting out:
- 9.2.1 which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier ("Transferring Assets");
  - 9.2.2 which, if any, of:
    - (a) the Exclusive Assets that are not Transferable Assets; and
    - (b) the Non-Exclusive Assets,  
the Authority and/or the Replacement Supplier requires the continued use of; and
    - (c) which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the "Transferring Contracts"),
- in order for the Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Services or the Replacement Services.
- 9.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where the cost of the Transferring Asset has been partially or fully paid for through the Contract Charges at the expiry

Date, in which case the Authority shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Contract Charges.

- 9.4 Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same.
- 9.5 Where the Supplier is notified in accordance with paragraph 9.2.2 of this Schedule that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
- 9.5.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
- 9.5.2 procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 9.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 9.7 The Authority shall:
- 9.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
- 9.7.2 once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 9.8 The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.
- 9.9 The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to paragraph 9.6 of this Schedule in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.

## **10. SUPPLIER PERSONNEL**

- 10.1 The Supplier shall not take any step (expressly or implicitly and directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier.
- 10.2 During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the

case for transferring their employment to the Authority and/or the Replacement Supplier.

- 10.3 The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 10.4 The Supplier shall not for a period of twelve (12) months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-Contractors whose employment or engagement is transferred to the Authority and/or the Replacement Supplier, unless approval has been obtained from the Authority which shall not be unreasonably withheld.
- 10.5 The Supplier acknowledges and agrees that the structure of its business model means that a Relevant Transfer is not anticipated at the exit from this Contract and the Supplier shall indemnify the Authority on a continuing basis against any and all Losses incurred by the Authority in the event that the exit of this Contract and transfer of the Services to a Replacement Supplier and/or to the Authority, results in a Relevant Transfer, including any redundancy costs and/or Employee Liabilities that may arise as a result of a Relevant Transfer occurring.

## **11. CHARGES**

- 11.1 Except as otherwise expressly specified in this Contract, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan, the Termination Assistance and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

## **12. APPORTIONMENTS**

- 12.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
- 12.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;
- 12.1.2 the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
- 12.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 12.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under paragraph 12.1 of this Schedule as soon as reasonably practicable.

## **SCHEDULE 9: IMPLEMENTATION AND TESTING**

### **PART A: IMPLEMENTATION**

#### **1. THE PURPOSE OF THIS SCHEDULE IS**

- 1.1 to describe the requirements, activities and outcomes to be performed by the Supplier to ensure smooth commencement of the Services with effect from the Commencement Date and ensuring the timely and effective commencement of the Operational Services from the Operational Services Commencement Date;
- 1.2 define a process for the preparation, agreement and implementation of the detailed Implementation Plan to deliver the Services; and
- 1.3 to identify the Milestones (and associated Deliverables)
- 1.4 to provide an overview of Testing of the Service and Deliverables.

#### **2. OUTLINE IMPLEMENTATION PLANS**

- 2.1 The Supplier provided an Outline Implementation Plan as part of its Tender, which is attached at Annex 1 of this Schedule 9.
- 2.2 All changes to the Outline Implementation Plan shall be subject to the Variation Procedure provided that the Supplier shall not attempt to postpone any of the Milestones using the Variation Procedure or otherwise (except in accordance with Clause 27 (Authority Cause)).

#### **3. APPROVAL OF THE DETAILED IMPLEMENTATION PLAN**

- 3.1 The Supplier shall submit a draft of the detailed Implementation Plan to the Authority for approval within fifteen (15) Working Days of the Commencement Date
- 3.2 The Supplier shall ensure that the draft detailed Implementation Plan:
  - 3.2.1 incorporates all of the Milestones and Milestone Dates set out in the Outline Implementation Plan;
  - 3.2.2 includes (as a minimum) the Supplier's proposed Deliverables, timescales and activities and Testing in respect of each of the Milestones;
  - 3.2.3 clearly outlines all the steps required to implement the Milestones and/or any other implementation activity to be achieved (including roles, responsibilities and resources of the Parties and of third parties) together with a plan for the rest of the programme, in conformity with the Authority Requirements;
  - 3.2.4 is produced using a software tool as specified, or agreed by the Authority;
  - 3.2.5 sets out all proposed approval/closure criteria for all Milestones;
  - 3.2.6 includes a Risk, Issues and Assumptions Log which identifies and explains any underpinning issues, assumptions and risks associated with the detailed Implementation Plan;
  - 3.2.7 sets out a list of Authority Responsibilities;

- 3.2.8 sets out full details of all migration and transition activity that need to be completed; along with details of any additional governance arrangements which will be applied during the implementation phase;
- 3.2.9 includes details of how the Supplier will co-ordinate and implement activity and knowledge transfer from the Authority's existing operational and service management teams (including Authority third parties and the incumbent Supplier) and training for the Authority and its users; and
- 3.2.10 includes a Test Plan for each Milestone (and where applicable, each Deliverable within that Milestone)
- 3.3 The Authority shall have the right to require the Supplier to include any reasonable changes or provisions in the detailed Implementation Plan before it is submitted to the Authority in accordance with clause 5 (Implementation Plan) and under this Schedule.
- 3.4 Following receipt of the draft detailed Implementation Plan from the Supplier, the Authority shall:
  - 3.4.1 review and comment on the draft detailed Implementation Plan as soon as reasonably practicable; and
  - 3.4.2 notify the Supplier in writing that it approves or rejects the draft detailed Implementation Plan no later than fifteen (15) Working Days after the date on which the draft detailed Implementation Plan is first delivered to the Authority.
- 3.5 If the Authority rejects the draft detailed Implementation Plan:
  - 3.5.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and
  - 3.5.2 the Supplier shall then revise the draft detailed Implementation Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft detailed Implementation Plan to the Authority for the Authority's approval within ten (10) Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 3.4 and this Paragraph 3.5 shall apply again to any resubmitted draft detailed Implementation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 3.6 If the Authority approves the draft detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of the Authority's notice of approval.
- 4. UPDATES TO AND MAINTAINANCE OF THE DETAILED IMPLEMENTATION PLAN**
- 4.1 After approval of the detailed Implementation Plan in accordance with paragraph 3 of this Schedule, it shall be maintained and updated on a weekly basis by the Supplier as may be necessary to reflect the then current state of the implementation of the Services.
- 4.2 Save for any amendments which are of a type identified and notified by the Authority (at the Authority's discretion) to the Supplier in writing as not requiring approval, any material amendments to the detailed Implementation Plan shall be subject to the Variation Procedure (and for the avoidance of doubt any amendments to elements of the detailed Implementation Plan which reflect the contents of the Outline Implementation Plan shall be deemed to be material amendments) provided that in no circumstances shall the Supplier alter or attempt to alter any Milestone Date except in accordance with clause 27 (Supplier Relief Due to Authority Cause).

- 4.3 Until such time as the updated detailed Implementation Plan is approved by the Authority, the detailed Implementation Plan then existing (that is to say prior to the update) shall apply.
- 4.4 In addition to maintaining and updating the detailed Implementation Plan in accordance with this schedule, the Supplier shall submit an updated detailed Implementation Plan within twenty (20) Working Days of receiving notification from the Authority, or such longer period as the Parties may agree (provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure), of being advised by the Authority of an event reasonably identified by the Authority as requiring a revised detailed Implementation Plan.
- 4.5 Any such revised detailed Implementation Plan shall be submitted by the Supplier for approval in accordance with the procedure set out in this paragraph 4.
- 4.6 The Parties shall consider and review the detailed Implementation Plan and progress towards its successful implementation at the Monthly Service Review meetings held in accordance with Schedule 10 (Governance) and at such shorter frequency as may be required in respect of any governance arrangements that are established for the purposes of Implementation in accordance with paragraph 3.2.8 of this Schedule. In preparation for such meetings, the current detailed Implementation Plan shall be provided by the Supplier to the Authority not less than five Working Days in advance of each meeting of those Boards.

## **5. Milestones and Milestone Dates**

- 5.1 The Supplier shall perform its obligations so as to Achieve each Milestone by the Milestone Date and comply with the Implementation Plan.
- 5.2 Changes to the Milestones and activities set out in the Implementation Plan after it has been Approved shall only be made in accordance with the Variation Procedure and provided that the Supplier shall not attempt to postpone any of the Milestones or activities using the Variation Procedure or otherwise (except in accordance with clause 27 (Supplier Relief Due to Authority Cause)).
- 5.3 Where specified by the Authority in the Implementation Plan, 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.

## PART B: TESTING

### 6. DEFINITIONS

6.1 In this Schedule, the following definitions shall apply:

<b>"Component"</b>	means any constituent parts of the Services, bespoke or COTS, hardware or software;
<b>"COTS"</b>	means commercially available off the shelf software, being software that is commonly used and is provided in a standard form and on standard licence terms which are not typically negotiated by the licensor;
<b>"Test" and "Testing"</b>	means any tests required to be carried out pursuant to this Contract as set out in the Test Plan (where used) and <b>"Tested"</b> shall be construed accordingly;
<b>"Test Issue"</b>	means any variance or non-conformity of the Services or Deliverables from their requirements as set out in the Order Form;
<b>"Test Plan"</b>	means a plan: a) for the Testing of Deliverables; and b) setting out other agreed criteria related to the achievement of Milestones, as described further in this Schedule;
<b>"Test Reports"</b>	means the reports to be produced by the Supplier setting out the results of Tests;
<b>"Test Success Criteria"</b>	means, in relation to a Test, the test success criteria for that Test as referred to in paragraph 11 of this Schedule;

### 7. INTRODUCTION

7.1 This Part B sets out the approach to Testing and the different Testing activities to be undertaken, including the preparation and agreement of the Testing Plans.

### 8. RISK

8.1 The issue of a Milestone Achievement Certificate shall not:

8.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Authority's requirements for that Deliverable or Milestone; or

8.1.2 affect the Authority's right subsequently to reject:

(a) all or any element of the Deliverables; or

(b) any Milestone to which the Milestone Achievement Certificate relates.

8.2 Notwithstanding the issuing of any Milestone Achievement Certificate, the Supplier shall remain solely responsible for ensuring that:

8.2.1 the Services are implemented in accordance with this Contract; and

8.2.2 each Service Level is met.

## **9. TESTING OVERVIEW**

- 9.1 All Tests conducted by the Supplier shall be conducted in accordance with the Testing Plans
- 9.2 The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.
- 9.3 The Authority shall be entitled to review the relevant Test Reports and logs on request.
- 9.4 Any Disputes between the Supplier and the Authority regarding this Testing shall be referred to the Dispute Resolution Procedure.

## **10. TEST PLAN**

- 10.1 The Supplier shall develop a Test Plan as soon as practicable after the Commencement Date but in any case no later than fifteen (15) Working Days (or such other period as the Parties may agree) after the Commencement Date.
- 10.2 The Test Plan shall include an overview of how Testing will be conducted in accordance with the Implementation Plan and will set out the processes and procedures used to capture, record and classify Test Issues and Test results including use of Test Reports and logs and details of any personnel, assets, technical environments and configurations which will be used to support Testing and how they will be used.
- 10.3 Each Test Plan shall also include as a minimum:
  - 10.3.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested and, for each Test, the specific Test Success Criteria to be satisfied;
  - 10.3.2 a detailed procedure for the Tests to be carried out
- 10.4 The Authority shall not unreasonably withhold or delay its Approval of the Testing Plans provided that the Supplier shall implement any reasonable requirements of the Authority in the Test Plans.

## **11. TEST SUCCESS CRITERIA**

- 11.1 The Test Success Criteria for all Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to paragraph 10 of this Schedule.

## **12. TESTING**

- 12.1 The Supplier shall manage the progress of Testing in accordance with the relevant Test Plans.
- 12.2 The Supplier shall provide to the Authority in relation to each Test the final Test Report within 5 Working Days (or such other period as the Parties may agree in writing) of completion of Testing.
- 12.3 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including an overview of the Testing conducted, identification of the Test Success Criteria which have been satisfied or not (including reasons why a Test may have failed); details of incomplete or postponed Tests; and specifications of

any hardware and software used when Testing (and changes that may have been applied for the purpose of Testing):

- 12.4 When the Supplier has completed a Milestone it shall submit any Deliverables relating to that Milestone for Testing.
- 12.5 Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved, the Authority shall be entitled to recover from the Supplier, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.
- 12.6 Notwithstanding the issuing of any Milestone Achievement Certificate, the Supplier shall remain solely responsible for ensuring that the Services are provided in accordance with this Contract.
- 12.7 The Authority shall be entitled, without prejudice to any other rights and remedies that it has under this Contract, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.

### **13. ISSUE OF MILESTONE ACHIEVEMENT CERTIFICATE**

- 13.1 The Authority shall issue a Milestone Achievement Certificate in respect of a given Milestone as soon as is reasonably practicable following:
  - 13.1.1 the successful completion of all Tests in respect of all Deliverables related to that Milestone; and
  - 13.1.2 performance by the Supplier to the reasonable satisfaction of the Authority of any other tasks identified in the Implementation Plan as associated with that Milestone (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).
- 13.2 If a Milestone is not Achieved, the Authority shall promptly issue a report to the Supplier setting out:
  - 13.2.1 the issues in relation to the Test;
  - 13.2.2 any other reasons for the relevant Milestone not being Achieved.
- 13.3 Provided there are no Test issues which would, in the reasonable opinion of the Authority, adversely affect the provision of the Services, the Authority shall issue a Milestone Achievement Certificate.

### **ANNEX 1: OUTLINE IMPLEMENTATION PLAN (SEE SCHEDULE 4: SUPPLIER SOLUTION – TRANSITION DELIVERY)**

## ANNEX 2: MILESTONE ACHIEVEMENT CERTIFICATE

To: [insert name of Supplier]

From: [insert name of Authority]

[insert Date dd/mm/yyyy]

Dear Sirs,

### MILESTONE ACHIEVMENT CERTIFICATE

Milestone:

**[Guidance Note to Authority: Insert description of the relevant Milestones]**

We refer to the agreement ("**Contract**") relating to the provision of the Services between the [insert Authority name] ("**Authority**") and [insert Supplier name] ("**Supplier**") dated [insert Commencement Date dd/mm/yyyy].

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

[We confirm that all the Deliverables relating to Milestone [number] have been tested successfully in accordance with the Testing Plan relevant to this Milestone]

**[\*Guidance Note: delete as appropriate]**

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Authority]

## **SCHEDULE 10: GOVERNANCE**

### **1. INTRODUCTION**

- 1.1 This schedule describes the procedures that will be used to manage the relationship between the Authority and the Supplier under the Contract.

### **2. ESTABLISHMENT OF THE BOARDS**

- 2.1 Boards shall be established by the Authority under this Contract on which both the Supplier and the Authority shall be represented.
- 2.2 The Supplier and the Authority shall each appoint a representative for the purposes of the governance obligations under this Schedule.
- 2.3 Both Parties will ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.

### **3. BOARD STRUCTURE & REPRESENTATION**

- 3.1 The Supplier shall use reasonable endeavours to ensure that any Authority Board representative has at all times a counterpart Supplier Board representative of equivalent seniority and expertise.
- 3.2 Each Party shall ensure that its Board representatives shall make all reasonable efforts to attend Board meetings at which that Board representative's attendance is required. If any Board representative is not able to attend a Board meeting, that person shall use all reasonable endeavours to ensure that:
- 3.2.1 a delegate attends the relevant Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and
  - 3.2.2 that he/she is debriefed by such delegate after the Board meeting.
- 3.3 A chairperson shall be appointed by the Authority for the Annual Governance Board and Strategic Steering Group. The chairperson shall be responsible for:
- 3.3.1 scheduling Board meetings;
  - 3.3.2 setting the agenda for Board meetings and circulating to all attendees in advance of such meeting;
  - 3.3.3 chairing the Board meetings;
  - 3.3.4 monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings;
  - 3.3.5 ensuring that minutes for Board meetings are recorded and disseminated electronically to the appropriate persons and to all Board meeting participants within seven Working Days after the Board meeting; and
  - 3.3.6 facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.
- 3.4 Board meetings shall be quorate as long as at least [two] *[DN: Authority to consider and amend as appropriate]* representatives from each party are present.
- 3.5 The Parties shall ensure, as far as reasonably practicable, that all Boards shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall use endeavours to ensure that Board Representatives are

empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

#### **4. ROLE OF THE ANNUAL GOVERNANCE BOARD**

4.1 The Annual Governance Board shall be established by the Parties and shall:

- 4.1.1 review Service performance;
- 4.1.2 review and determine the Authority's IT and business strategy and provide guidance on policy matters which may impact on the implementation of the Services
- 4.1.3 Assess the appropriateness of this Contract and ensure that this Contract is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by the Authority and the commercial benefit derived by the Supplier; including consideration of ongoing Continuous Improvement Plans and any benchmarking reviews undertaken by the Authority or on its behalf; and
- 4.1.4 authorise the commissioning and initiation of new business change projects and shall assess opportunities for improvement within the Service or future services;

#### **5. ROLE OF THE STRATEGIC STEERING GROUP**

5.1 The Strategic Steering Group shall be established by the Parties and shall:

- 5.1.1 receive and consider the details set out in the Quarterly Report;
- 5.1.2 report its findings to the Annual Governance Board;
- 5.1.3 serve as the escalation point for disputes arising from the Monthly Service Review meetings;
- 5.1.4 assess the alignment of the Services to the Authority's current and future requirements of the Services;
- 5.1.5 assess the alignment of the alignment of the Service baseline (where Service Bedding In Period has been agreed by the Authority), against the actual occurrence of the components that form the Service baseline;
- 5.1.6 to assess Service Levels and the Supplier's performance against them.

5.2 The Strategic Steering Group shall Meet:

- 5.2.1 within one (1) week of the Quarterly Report being provided by the Supplier to the Authority.
- 5.2.2 take place at such location and time (within normal business hours) as the authority shall reasonably require unless otherwise agreed in advice
- 5.2.3 be attended by the Authority's Business director, business manager and the equivalent roles within the supplier

#### **6. MONTHLY SERVICE REVIEW**

6.1 The Authority and the Supplier shall meet to discuss the Monthly Performance Reports on a monthly basis (unless otherwise agreed). The Monthly Service Review meetings will be the forum for the review of:

- 6.1.1 Service performance against the performance monitoring regime (including without limitation Service Levels achieved, Service Level Failures, Critical Service Level Failures, Incidents, Availability, Service Desk Contact Volumes, Service Request Volumes, Telephone answering statistics etc.) and as may be more particularly set out at Schedule 3 (Service Levels and Performance);
- 6.1.2 user experience assessment (including Authority and Authority user satisfaction survey results and the Supplier's Annual IT survey);
- 6.1.3 Contract review (contracted devices);
- 6.1.4 Dispute resolution;
- 6.1.5 Continuous Improvement Plan implementation, updates and progress;
- 6.2 The Monthly Service Review meetings will:
  - 6.2.1 take place within one (1) week of the monthly reports being issued by the Supplier
  - 6.2.2 take place at such location and time (within normal business hours) as the authority shall reasonably require unless otherwise agreed in advice
  - 6.2.3 be attended by the Authority's Business director, business manager and the equivalent roles within the supplier

## **7. CONTRACT MANAGEMENT**

- 7.1 Both parties will pro-actively manage risks attributed to them under the terms of this Contract
- 7.2 The Supplier will develop, operate, maintain and amend, as agreed with the Authority, processes for:
  - 7.2.1 the identification and management of risks. A project risk register will be completed by the Supplier and submitted for review by both parties at the Monthly Service Review;
  - 7.2.2 the identification and management of issues;
  - 7.2.3 monitoring and controlling any plans to be delivered under this Contract;
  - 7.2.4 Monitoring and controlling any other documents required under this Contract;
  - 7.2.5 identifying, reviewing and reporting on any opportunities for improvement of the Services as required under Paragraph 10 of this Schedule (Continuous Improvement)

## **8. SATISFACTION SURVEYS AND ANNUAL IT SURVEY**

- 8.1 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.
- 8.2 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.

FW-1.1.1 All other suggestions for improvements to the provision of Services shall be dealt with as part of the continuous improvement programme pursuant to paragraph 10 of this Schedule (Continuous Improvement) where used.

- 8.3 The Supplier shall undertake an annual IT survey of the Authority's users to gauge and benchmark the Service as a whole. This survey shall incorporate a review of current service quality as well as questioning users as to additional services they may like to receive. The results shall be shared with the Authority at the monthly Service Review for discussion and where applicable feedback shall be incorporated into the Continuous Improvement Programme.

## **9. BENCHMARKING**

- 9.1 Notwithstanding the Supplier's obligations under Paragraph 10 of this Schedule (Continuous Improvement), the Authority shall be entitled to 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 Term.
- 9.2 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 paragraph 9.1 above (including the use of an independent benchmarking provider, subject to reasonable and appropriate confidentiality undertakings).
- 9.3 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.
- 9.4 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.

## **10. CONTINUOUS IMPROVEMENT**

- 10.1 The Supplier shall adopt a policy of continuous improvement and shall have an ongoing obligation throughout the Term to identify new or potential improvements to the provision of the Services with a view to reducing the Service costs (including the Contract Charges) and/or improving the quality and efficiency of the Services and their supply to the Authority.
- 10.2 The Supplier shall produce, within 90 Working Days of the Commencement Date and within 2 weeks of the start of each Contract Year, a plan for reviewing the provision of the Services and reducing the Contract Charges produced by the Supplier for that Contract Year (the "Continuous Improvement Plan") for the Approval of the Authority. The Continuous Improvement Plan shall include, as a minimum, proposals in respect of the following:
- 10.2.1 the emergence of new and evolving relevant technologies which could improve the provision of the Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
  - 10.2.2 new or potential improvements to the provision of the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and Authority support services in relation to the Services;
  - 10.2.3 changes in 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

- 10.2.4 changes to the ICT Environment, Sites, business processes and ways of working that would enable reductions in the total energy consumed annually in the provision of the Services.
- 10.3 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.
- 10.4 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.

## **SCHEDULE 11: REPORTS AND RECORDS PROVISION**

### **1. REPORTS - GENERAL**

- 1.1 Within 20 Working Days of the Commencement Date, the Supplier shall provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) the template form for the draft Reports described in Annex 1.
- 1.2 If the Parties fail to agree on a draft template form for the Reports the Authority shall determine what shall be included by the Supplier in each Report and the format.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Report specified in this Schedule (and more particularly set out at Annex 1) to the Authority at the frequencies referred to in Annex 1.
- 1.4 Any disagreement in connection with the preparation and/or approval of Reports, other than under paragraph 1.2 above in relation to the contents of a Report, shall be treated as a Dispute.
- 1.5 The Supplier acknowledges and agrees that the Authority may publish the Reports to the extent reasonably necessary (and subject to the Authority's obligation under the FOIA to apply any exemptions) in order for the Authority to comply with its obligations under the government's Transparency policy.

### **2. PERFORMANCE REPORTS**

- 2.1 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.
- 2.2 The Supplier shall report all failures to achieve Service Levels and any Critical Service Level Failure to the Authority in accordance with the processes set out in this Schedule.
- 2.3 The Supplier shall provide the Authority with performance monitoring reports ("Monthly Performance Reports") in accordance with the processes set out in this Schedule and the timescales set out at Annex 1, such reports to contain as a minimum (and in addition to the information set out in Annex 1 of this Schedule), the following information in respect of the relevant Service Period just ended:
  - 2.3.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
  - 2.3.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
  - 2.3.3 any Service Failures or Critical Service Level Failures and details in relation thereto;
  - 2.3.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
  - 2.3.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
  - 2.3.6 such other details as the Authority may reasonably require from time to time.
- 2.4 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 and the calculations of the amount of Service Credits for any specified Service Period.

### **3. OTHER REPORTS**

- 3.1 The Authority may also require any or all of the following reports which the Supplier shall be required to provide within a reasonable timescale at the request of the Authority:
- 3.1.1 delay reports;
  - 3.1.2 reports relating to Testing and tests carried out under Clause 16 (Security) and Schedule 7 (Business Continuity and Disaster Recovery);
  - 3.1.3 reports in relation to Implementation and/or any specific project activity;
  - 3.1.4 annual reports on the Insurances; and
  - 3.1.5 Force Majeure Event reports.

### **4. RECORDS**

- 4.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Annex 2 (together "Records"):
- 4.1.1 in accordance with the requirements of The National Archives and Good Industry Practice;
  - 4.1.2 in chronological order;
  - 4.1.3 in a form that is capable of audit;
  - 4.1.4 at its own expense; and
  - 4.1.5 in accordance with the Online Repository provisions set out at Paragraph 5 of this Schedule.
- 4.2 The Supplier shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.
- 4.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.
- 4.4 The Supplier shall, during the Term and a period of at least 7 years following the expiry or termination of this Contract, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.
- 4.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least 7 years after the expiry or termination of this Contract.
- 4.6 Without prejudice to the foregoing, the Supplier shall provide the Authority:
- 4.6.1 as soon as they are available, and in any event within 60 Working Days after the end of the first 6 months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it

is)) be required to be sent to shareholders as at the end of and for each such 6 month period; and

- 4.6.2 as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than 130 Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.

## **5. ONLINE REPOSITORY**

- 5.1 The Supplier shall during the Term, provide access to an online shared folder for Authority nominated users (the "Virtual Library")
- 5.2 The Supplier shall upload and maintain the latest versions of the following Contract documents to the Virtual Library which shall be fully accessible by the Authority for viewing and download at all times:
- 5.2.1 copies of all Contract plans (including the Implementation Plans, Exit Plan, Security Management Plan, Quality Plans, BCDR Plan and any other plans required under this Contract);
  - 5.2.2 all Reports which the supplier is required to provide under this Contract;
  - 5.2.3 Any Service Performance information including performance against SLAs;
  - 5.2.4 invoices (together with a summary of the amount billed by the Supplier to the Authority);
  - 5.2.5 registers (including those relating to risk and assets);
  - 5.2.6 inventories;
  - 5.2.7 minutes of meetings,
  - 5.2.8 manuals, training documentation and other system information/know-how
  - 5.2.9 processes and procedures;
  - 5.2.10 Change documentation; and
  - 5.2.11 other information and documentation:
    - (a) as may be more particularly specified in this Contract; and
    - (b) which the Authority may notify to the Supplier in writing from time to time.

**ANNEX 1: REPORTS**

TITLE	CONTENT	FORMAT	FREQUENCY
Monthly Service Report	<p>Service Desk Contact Volumes</p> <p>Service Request Volumes</p> <p>Performance against SLA and accrual of Service Credits</p> <p>Telephone Answering Statistics</p> <p>Authority and Authority user Satisfaction Survey Results</p> <p>Details of all unresolved tickets at month end</p> <p>Details of all tickets that did not meet agreed service levels</p> <p>Patch update reports</p> <p>Status of backups</p> <p>Annual IT Survey Results</p>	<p>in a format to be agreed by the Parties within 20 Working Days of the Commencement Date</p>	<p>Monthly</p> <p>(and within 10 Working Days of the end of the previous calendar Month)</p>
Quarterly Report	<p>updates/details of inventory of licences, licence numbers and renewals;</p> <p>updates, details and status of system documentation and diagrams;</p> <p>details and updates of the security status of the Service (for example Cyber Essentials assurances);</p> <p>reports of anti-virus applications for supported devices;</p> <p>status of bandwidth and resource allocation and utilisation</p> <p>updates and details of the asset register, including software</p>	<p>in a format to be agreed by the Parties within 20 Working Days of the Commencement Date</p>	<p>Quarterly (by no later than 5 Working Days of the last day of the end of March June, September and December in each Contract Year)</p>
(Charges)	<p>Summary of undisputed sums paid to sub-contractors demonstrating compliance with clause 18.3.2 of the Terms and Conditions</p>	<p>in a format to be agreed by the Parties within 20 Working Days of the Commencement Date</p>	<p>Quarterly (by no later than 5 Working Days of the last day of the end of March June, September and December in each Contract Year)</p>
(Major sub-			

<i>contra ctors)</i>			
--------------------------	--	--	--

***ANNEX 2: Records to be kept by the Supplier***

1. The records to be kept by the Supplier are:
2. This Agreement, its Schedules and all amendments to such documents.
3. All other documents which this Contract expressly requires to be prepared.
4. Records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel.
5. Notices, reports and other documentation submitted by any Expert.
6. All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and the underlying IT Environment and Supplier Equipment.
7. Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
8. All formal notices, reports or submissions made by the Supplier to the Authority Representative in connection with the provision of the Services.
9. All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.
10. Documents prepared by the Supplier in support of claims for the Contract Charges.
11. Documents submitted by the Supplier pursuant to the Variation Procedure.
12. Documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure.
13. Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and/or the Guarantor, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.
14. Invoices and records related to VAT sought to be recovered by the Supplier.
15. Financial records, including audited and un-audited accounts of the Guarantor and the Supplier.
16. Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
17. All documents relating to the insurances to be maintained under this Contract and any claims made in respect of them.
18. All journals and audit trail data in respect of the security aspects of the Service
19. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Contract.

## **SCHEDULE 12: AUTHORITY RESPONSIBILITIES**

***This Schedule may be further refined by the Parties in accordance with the Implementation Plan that is agreed***

### **1. INTRODUCTION**

- 1.1 The responsibilities of the Authority set out in this Schedule 12 (Authority Responsibilities) and any columns headed "Authority Responsibilities" in the Implementation Plan table[s] shall constitute the exclusive Authority Responsibilities under this Contract.
- 1.2 The responsibilities specified within this schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.

### **2. THE GENERAL OBLIGATIONS**

- 2.1 The Authority shall:
  - 2.1.1 perform those obligations which are set out in the clauses of this Contract and the paragraphs of the schedules (except Schedule 1 (Service Requirements) and Schedule 4 (Supplier Solution))
  - 2.1.2 use its reasonable endeavours to provide the Supplier with access to appropriate members of the Authority's staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term;
  - 2.1.3 provide sufficient and suitably qualified staff to fulfil the Authority's roles and duties under this Contract as defined in the Implementation Plan;
  - 2.1.4 use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Contract provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority; and
  - 2.1.5 procure for the Supplier such agreed access and use of the Authority's premises, facilities, including relevant ICT systems as is reasonably required for the Supplier to comply with its obligations under this Contract, such access to be provided during the Authority's normal working hours on each Working Day or otherwise as agreed by the Authority (such agreement not to be unreasonably withheld or delayed).

### **3. SPECIFIC OBLIGATIONS**

- 3.1 The Authority shall, in relation to this Contract, perform the Authority's responsibilities set out below.

The Parties acknowledge and agree that the Authority Responsibilities shall be determined in detail during the Implementation phase and shall only apply under this Contract subject to Authority approval.

3.2 The Authority agrees that it has the following Authority Responsibilities, which are described at a high level in the table below. Further details in relation to each Authority Responsibility will be set out in detail as part of the Implementation Plan:

Service	Supplier	Authority
Service Desk	✓	
Support Request Registration & Management	✓	
3 <sup>rd</sup> Party Support Request Management	✓	
Desktop & Application Management	✓	
Problem Management	✓	
Change Management	✓	
Configuration Management	✓	
Customer Contracted 3 <sup>rd</sup>		✓

<b>Party Relationship Management</b>		
<b>Authority Contracted 3<sup>rd</sup> Party Contractual Management</b>		✓
<b>Infrastructure Support and Management</b>	✓	
<b>Server &amp; Storage Support</b>	✓	
Server & Storage Application Support	✓	
Server Operating System Patch Management	✓	
Desktop Operating System Patch Management	✓	
<b>Network Device Support</b>	✓	

Configuration Backup (at Belvedere Road)	✓	
Configuration Change (at Belvedere Road)	✓	
Patch Management (at Belvedere Road)	✓	
GovWifi and Internet Connection at Canary Wharf		✓
<b>Infrastructure Monitoring</b>	✓	
Availability Monitoring	✓	
Performance Monitoring	✓	
Capacity Management	✓	

Network Device Monitoring (at Belvedere Road)	✓	
<b>Infrastructure Administration</b> (relevant applications)	✓	
<b>Backup Management</b>	✓	
Backup Reporting	✓	
<b>Endpoint Security Management</b>	✓	
<b>Printer Administration</b> (remote)	✓	
Physical Printer Administration (consumables, etc.)		✓
<b>Hardware Maintenance (Break/fix)</b>		✓
<b>On-Demand On-site</b>	✓	

<b>Support Engineer</b>		
-----------------------------	--	--

- 3.3 The Parties acknowledge that the Supplier’s responsibilities set out above in this Paragraph 3 are without prejudice to the Supplier’s obligations and responsibilities set out elsewhere in the Contract including Schedule 4 (Supplier Solution). If there is any conflict between such other of the Supplier’s obligations and responsibilities and the Supplier’s responsibilities in the table above in this Paragraph 3 such other of the Supplier’s obligations and responsibilities shall apply and prevail.

**USE OF SITE, SUPPORTED INFRASTRUCTURE, CUSTOMER IT EQUIPMENT, THIRD-PARTY PRODUCTS, CONTRACTS AND AUTHORITY STAFF**

- 3.4 The Authority shall provide all persons authorised by the Supplier with full, safe and uninterrupted access including remote access to the Site, the Supported Infrastructure and the other Authority IT Equipment as may reasonably be required for the purpose of performing the Services. Where the Services are to be performed at the Site the Authority shall provide adequate working and storage space and office (including telephone) facilities for use by the Supplier’s Personnel and take reasonable care to ensure their safety.
- 3.5 Without prejudice to the Supplier’s obligations under clause 2.1, tthe Authority shall be responsible for obtaining all necessary consents from third parties for the use by the Supplier of any third-party software application used in any part of the supported Operating Environment by the Authority that is owned by a third-party (including without limitation third-party owned Intellectual Property), documentation, products and other materials (including, without limitation, software and know-how) (“**Third-party Products**”) which:
- 3.5.1 the Authority is permitted to use;
  - 3.5.2 is reasonably required for use by the Supplier in connection with the provision of the Services.

The Supplier shall provide reasonable cooperation in this regard.

- 3.6 If the Authority fails to obtain any consent under clause 3.5 or if the Authority determines that the cost of obtaining such consent is unreasonable, the Parties shall co-operate and may agree alternative Third-party Products (that the Authority will procure and pay for) which may replace those in respect of which consent has not been or cannot, except at unreasonable cost, be obtained. For the avoidance of doubt the Supplier shall not be liable for any failure to provide the Services or comply with any other obligation under this Contract to the extent that such failures arises from the absence of any consent to use a third-party product described in clause 3.5.
- 3.7 The Authority shall maintain in force all current software maintenance agreements with the vendors of supported third-party software applications used by the Authority and the Authority shall ensure adequate assistance from such vendors at all times if required. The Supplier will use its reasonable endeavours to comply with the terms of

any such agreements that are notified to the Supplier in advance in writing, but this is subject to the Authority complying with its obligations under clauses 3.5 and 3.6.

- 3.8 The Authority shall ensure that all personnel assigned by it to provide assistance to the Supplier shall have the requisite skill, qualifications and experience to perform the tasks assigned to them.

#### **1.1 ADDITIONAL CUSTOMER OBLIGATIONS**

- 3.9 The Authority shall ensure that appropriate environmental conditions are maintained for the Authority IT equipment and shall take all reasonable steps to ensure that the Operating Environment support by the Supplier and the Authority IT equipment is operated in a proper manner by the Authority's employees (including without limitation) compliance with manufacturer's and licensor's user manuals, operation instructions and guidelines).

- 3.10 The Authority shall nominate an Authorised Representative to be available to liaise with, and respond to queries from, the Supplier's Authorised Representative (for example, as to the resolution of conflicting priorities between two or more items of support or maintenance).

- 3.11 The Authority shall:

3.11.1 co-operate with the Supplier in performing the Services and provide any assistance or information as may reasonably be required by the Supplier;

3.11.2 report faults promptly to the Supplier;

- 3.12 The Authority warrants that:

3.12.1 it is the owner of the Authority IT Equipment or is authorised by the owners of the Authority IT Equipment to make it available to the Supplier and to permit the Supplier to access and use the same for the purposes contemplated by this Contract

3.12.2 the details of the Authority IT equipment given to the Supplier are complete and accurate to the best of their knowledge; and

3.12.3 that all data and other information provided by it to the Supplier is not obscene, defamatory or likely to result in any claim being made against the Supplier by any third-party.

- 3.13 The Authority shall at its own expense execute all documents and do all acts and things reasonably required by the Supplier to give effect to the terms of this Contract and shall provide access to all information and documentation which is within its possession which is reasonably required by the Supplier to enable it to fulfil its obligations.

- 3.14 Where the Authority has a complaint in relation to the Services:

- 3.15 the Authority shall notify the Supplier of the complaint within 10 Business Days of the event giving rise to such complaint; and

- 3.16 shall provide sufficient details to the Supplier to allow it to investigate such complaint within 20 Business Days of the event giving rise to it.

## SCHEDULE 13: STANDARDS

### 1. CONTRACT STANDARDS

1.1 The Supplier shall at all times during the Term comply with the Standards including but not limited to the following:

#### ***Service Management Standards***

- 1.1 BS EN ISO 9001:2015 "Quality Management System" standard or equivalent.
- 1.2 ITIL v3 2011 "IT Service Management".
- 1.3 ISO/IEC 20000:2011 Parts 1-4 "ITSM Specification for Service Management".
- 1.4 ISO 10007 "Quality management systems – Guidelines for configuration management".
- 1.5 ISO 22301 - "Societal Security — Business continuity management systems — Requirements" and ISO 22313 - "Societal Security — Business continuity management systems — Guidance"

#### ***Environmental Standards***

- 1.6 BS EN ISO 14001 Environmental Management System standard or equivalent.
- 1.7 Directive 2012/19/EU on Waste Electrical and Electronic Equipment (or equivalent) and Directive 2011/65/EU on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (or equivalent).

#### ***Portfolio, Programme and Project Management Standards***

- 1.8 PRINCE2 and MSP methodologies. ISO 21500:2012 "Guidance on project management". ISO/IEC/IEEE 16326-2009 "Systems and Software Engineering—Life Cycle Processes—Project Management" or equivalent methodology.

#### ***Infrastructure Safety Standards***

- 1.9 BS EN 60950-1:2006+A12:2011 or subsequent replacements for hardware.
- 1.10 BS EN 60065:2002+A12:20011 or subsequent replacements for audio, video and similar electronic apparatus.
- 1.11 BS EN 60825-1:2007 or subsequent replacement for laser printers or scanners using lasers.
- 1.12 BS EN 41003:2009 or subsequent or subsequent replacements for apparatus for connection to any telecommunications network.

#### ***Accessible IT Standards***

- 1.13 the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.0 Conformance Level AA.
- 1.14 ISO/IEC 13066-1:2011 Information Technology - Interoperability with assistive technology (AT) – Part 1: Requirements and recommendations for interoperability.
- 1.15 BS 8878:2010 Web Accessibility Code of Practice.

#### ***Information Technology Standards***

- 1.16 <https://www.gov.uk/government/publications/open-standards-principles>
- 1.17 Government Open Data Standards -  
<https://www.gov.uk/government/publications/open-standards-for-government>
- 1.18 Technology Code of Practice -  
<https://www.gov.uk/government/publications/technology-code-of-practice/technology-code-of-practice>
- 1.19 <https://www.gov.uk/public-services-network#psn-standards>
- 1.20 <https://www.gov.uk/government/publications/greening-government-ict-strategy>
- 1.21 <https://www.gov.uk/government/publications/open-source-open-standards-and-re-use-government-action-plan>
- 1.22 Government Security Policy Framework -  
<https://www.gov.uk/government/publications/security-policy-framework>

### ***Architecture and Design Standards***

- 1.23 COBIT 5 and TOGAF 9.1 Architecture Framework and Standards.
- 1.24 BS 7000-1:2008 "Design management systems. Guide to managing innovation"
- 1.25 BS 7000-3:1994 "Design management systems. Guide to managing service design"

### ***Connectivity Standards***

- 1.26 GSi v4.1 (although no new connections are being accepted by GSi after 12/12).
- 1.27 PCI DSS V3.2 (Card payment network)
- 1.28 e-Government Interoperability Framework (e-GIF v6.1, 18/31/2005)
- 1.29 e-GIF Technical Standards Catalogue (v6.2, 2/9/2005)
- 1.30 e-Government Metadata Standard (e-GMS v3.1, 29/8/2008)
- 1.31 Information Age Government Security Framework or equivalent.

### ***Information Security Management Standards***

- 1.32 ISO 27001 Information Security Management standard or equivalent.

### ***Manual of Protective Security Standards***

- 1.33 Manual of Protective Security (MPS) or equivalent

### ***Cyber Essentials Scheme***

- 1.34 Cyber Essentials Scheme Basic Certificate and/or Cyber Essentials Scheme Plus Certificate - <https://www.gov.uk/government/publications/cyber-essentials-scheme-overview>

### ***Miscellaneous***

- 1.35 Off-payroll working in the public sector: reform of the intermediaries legislation (IR35) - <https://www.gov.uk/government/publications/off-payroll-working-in-the-public-sector-reform-of-the-intermediaries-legislation-technical-note>
- 1.36 The Suppliers shall comply with the Governments supplier standard for digital and technology service providers when it is published. A draft of the standard was published for consultation in September 2016 and the consultation closed in December 2016. The

final standard is expected to be published in 2017 -  
<https://www.gov.uk/government/consultations/supplier-standard-for-digital-and-technology-service-providers>

## **SCHEDULE 14: 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 14 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 use reasonable endeavours to ensure that the public liability policy contains 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:
- 2.2 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;
- 2.3 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
- 2.4 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.

### **4. EVIDENCE OF POLICIES**

- 4.1 The Supplier shall, by the Commencement Date, and within fifteen (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 Contract. 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":
- 5.2** 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:
- 5.2.1** details of the policy concerned; and
  - 5.2.2** its proposed solution for maintaining the minimum limit of indemnity specified; and
- 5.3** 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:
- 5.3.1** 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
  - 5.3.2** 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**

- 7.1.1** 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.
- 7.1.2** 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 twenty thousand pounds (£20,000) 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.
- 7.1.3** Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.1.4** 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;

2.2 happening during the period of insurance (as specified in Paragraph 5 of this Annex 1 to this Schedule 14) 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 five million pounds £5,000,000 in respect of any one occurrence, the number of occurrences being unlimited, but one million pounds (£1,000,000) any one occurrence and in the aggregate per annum in respect of products and pollution liability.

#### **4. PERIOD OF INSURANCE**

4.1 From the Commencement Date for the Term and renewable on an annual basis unless agreed otherwise by the Authority in writing.

#### **5. COVER FEATURES AND EXTENSIONS**

5.1 Indemnity to principals clause.

#### **6. PRINCIPAL EXCLUSIONS**

6.1 War and related perils.

6.2 Nuclear and radioactive risks.

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

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

6.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

6.6 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.

6.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

- 6.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

## **PART B: PROFESSIONAL INDEMNITY INSURANCE**

### **1. INSURED**

1.1 The Supplier

### **2. INTEREST**

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

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

3.1 Not less than five million pounds £5,000,000 in respect of any one claim and in the aggregate per annum.

### **4. PERIOD OF INSURANCE**

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

### **5. COVER FEATURES AND EXTENSIONS**

5.1 Retroactive cover to apply to any claims made policy wording in respect of this Contract or retroactive date to be no later than the Commencement Date.

### **6. PRINCIPAL EXCLUSIONS**

6.1 War and related perils

6.2 Nuclear and radioactive risks

**PART C: 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 of £5,000,000 for the purposes of this Contract).

**SCHEDULE 15: COMMERCIALY SENSITIVE INFORMATION**

**1. REQUIREMENTS**

- 1.1 The Supplier has identified the information which it reasonably believes is genuinely commercially-sensitive and which it believes the disclosure of which would be contrary to the public interest and therefore exempt from disclosure under section 43 of the FOIA. Such information is listed below in Table 1. Where possible, the Supplier has sought to identify the duration after which the Information will cease to fall into the category of “commercially-sensitive”. For the avoidance of doubt, the Authority will use the information below when determining whether information falls to be disclosed under the FOIA and/or Transparency provisions.
- 1.2 All commercially sensitive information provided by the Supplier to the Authority (or to its permitted auditors) will be treated as confidential in accordance with the Authority’s obligations under this Contract.

**Table 1**

<b>Number</b>	<b>Date</b>	<b>Item Description and Reason for Sensitivity</b>	<b>Duration of Sensitivity</b>

## SCHEDULE 16: SECURITY

### 1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

**"Baseline Security Requirements"** means those requirements outlined in Annex 1 of this Schedule

**"Breach of Security"** means the occurrence of:

- a) any unauthorised access to or use of the Services, the Sites, the ICT Environment and/or any 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,

in either case as more particularly set out in:

(1) the Baseline Security Requirements in Annex 1 to this Schedule; and

(2) the Security Policy (as may be notified to the Supplier by the Authority and/or which is available on request from the Authority);

**"ISMS"** the information security management system developed by the Supplier in accordance with paragraph 2 (ISMS) as updated from time to time in accordance with this Schedule;

**"Security Policy Framework"** the HMG Security Policy Framework <https://www.gov.uk/government/publications/security-policy-framework>; and

**"Security Tests"** has the meaning given in paragraph 6.1 of this Schedule (Testing of the ISMS).

### 2. INTRODUCTION

2.1 The Parties acknowledge that the purpose of the ISMS and the Security Management Plan are to ensure a good organisational approach to security under which the specific requirements of this Contract will be met.

2.2 Both Parties shall provide a reasonable level of access to any members of their personnel for the purposes of designing, implementing and managing security.

2.3 The Supplier shall use as a minimum, Good Industry Practice, in the day to day operation of any system holding, transferring or processing Authority Data and any system that could directly or indirectly have an impact on that information, and shall ensure that the Authority Data remains under the effective control of the Supplier at all times.

- 2.4 The Supplier shall ensure the up-to-date maintenance of a security policy relating to the operation of its own organisation and system and on request shall supply this document as soon as practicable to the Authority.
- 2.5 The Authority and the Supplier acknowledge that information security risks are shared between the Parties and that a compromise of either the Supplier or the Authority's security provisions represents an unacceptable risk to the Authority requiring immediate communication and co-operation between the Parties.

### **3. ISMS**

- 3.1 If requested by the Authority, by the date specified in the Implementation Plan the Supplier shall, develop and submit to the Authority for the Authority's Approval an information security management system for the purposes of this Contract, which shall comply with the requirements of paragraphs 3.3 to 3.4 of this Schedule (Security).
- 3.2 The Supplier shall be responsible for the effective performance of the ISMS.
- 3.3 The ISMS shall:
  - 3.3.1 unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Authority Premises, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and any ICT, information and data (including the Authority's Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Contract;
  - 3.3.2 meet the relevant standards in ISO/IEC 27001 and ISO/IEC 27002 in accordance with Paragraph 7; and
  - 3.3.3 at all times provide a level of security which:
    - (a) is in accordance with Good Industry Practice, Law and this Contract;
    - (b) complies with the Baseline Security Requirements;
    - (c) complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4);
    - (d) addresses issues of incompatibility with the Supplier's own organisational security policies;
    - (e) complies with ISO/IEC27001 and ISO/IEC27002 in accordance with paragraph 7; and
    - (f) complies with the Authority's ICT policies.
  - 3.3.4 document the security incident management processes and incident response plans;
  - 3.3.5 document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Services of any new threat, vulnerability or exploitation technique of which the Supplier becomes aware, prioritisation of security patches, testing of security patches, application of security patches, a process for Authority approvals of exceptions, and the reporting and audit mechanism detailing the efficacy of the patching policy; and
  - 3.3.6 be certified by (or by a person with the direct delegated authority of) a Supplier's main board representative, being the Chief Security Officer, Chief Information Officer, Chief Technical Officer or Chief Financial Officer (or

equivalent as agreed in writing by the Authority in advance of issue of the relevant Security Management Plan).

- 3.4 In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in paragraph 3.3 of this Schedule, the Supplier shall immediately notify the Authority Representative of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier as to which provision the Supplier shall comply with.
- 3.5 If the ISMS submitted to the Authority pursuant to paragraph 3.1 of this Schedule is Approved by the Authority, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the ISMS is not Approved by the Authority, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission of the ISMS to the Authority..
- 3.6 Approval by the Authority of the ISMS pursuant to paragraph 3.5 of this Schedule or of any change or amendment to the ISMS shall not relieve the Supplier of its obligations under this Schedule.

#### **4. SECURITY MANAGEMENT PLAN**

- 4.1 By the 14 March 2018, the Supplier shall prepare and submit to the Authority for Approval in accordance with paragraph 4 of this Schedule a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of paragraph 4.2 of this Schedule.
- 4.2 The Security Management Plan shall:
  - 4.2.1 comply with the Baseline Security Requirements and Security Policy;
  - 4.2.2 identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule is complied with by the Supplier;
  - 4.2.3 detail the process for managing any security risks from Sub-contractors and third parties authorised by the Authority with access to the Services, processes associated with the delivery of the Services, the Authority Premises, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and any ICT, information and data (including the Authority Confidential Information and Authority Data) and any system that could directly or indirectly have an impact on that information, data and/or Services;
  - 4.2.4 unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Authority Premises, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and any ICT, information and data (including the Authority's Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Contract;
  - 4.2.5 set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that

- the Services comply with the provisions of this Schedule (including the requirements set out in paragraph 4.2 of this Schedule);
- 4.2.6 demonstrate that the Supplier's approach to delivery of the Services has minimised the Authority and Supplier effort required to comply with this Schedule through consideration of available, appropriate and practicable pan-government accredited services (for example, 'platform as a service' offering from the G-Cloud catalogue);
- 4.2.7 set out the plans for transitioning all security arrangements and responsibilities from those in place at the Commencement Date to those incorporated in the ISMS at the date set out in the Implementation Plan for the Supplier to meet the full obligations of the security requirements set out in Annex 1 (Security) to this Schedule;
- 4.2.8 set out the scope of the Authority System that is under the control of the Supplier;
- 4.2.9 be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards; and
- 4.2.10 be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Authority engaged in the Services and shall reference only documents which are in the possession of the Authority or whose location is otherwise specified in this Schedule.
- 4.3 If the Security Management Plan submitted to the Authority pursuant to paragraph 4.1 of this Schedule is Approved by the Authority, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not approved by the Authority, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission to the Authority of the Security Management Plan.
- 4.4 Approval by the Authority of the Security Management Plan pursuant to paragraph 4.3 of this Schedule or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Schedule.
- 5. AMENDMENT AND REVISION OF THE ISMS AND SECURITY MANAGEMENT PLAN**
- 5.1 The ISMS and Security Management Plan shall be fully reviewed and updated by the Supplier from time to time and at least annually to reflect:
- 5.1.1 emerging changes in Good Industry Practice;
- 5.1.2 any change or proposed change to the Supplier System, the Services and/or associated processes;
- 5.1.3 any new perceived or changed security threats; and
- 5.1.4 any reasonable request by the Authority.
- 5.2 The Supplier shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security

Management Plan at no additional cost to the Authority and changes shall be implemented in accordance with the Variation Procedure.

## **6. TESTING OF THE ISMS**

- 6.1 The Supplier shall conduct tests of the ISMS (“Security Tests”) from time to time and at least annually and additionally after any change or amendment to the ISMS or the Security Management Plan. Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority.
- 6.2 Without prejudice to any other right of audit or access granted to the Authority pursuant to this Contract, the Authority and/or its authorised representatives shall be entitled, at any time and without giving notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Authority may notify the Supplier of the results of such tests after completion of each such test. If any such Authority test adversely affects the Supplier's ability to deliver the Services so as to meet the Service Level Performance Measures, the Supplier shall, subject to Clause 27, be granted relief against any resultant under-performance for the period of the Authority test.
- 6.3 Where any Security Test carried out pursuant to paragraphs 6.2 or 6.23 of this Schedule reveals any actual or potential Breach of Security, the Supplier shall promptly notify the Authority of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Authority's prior written Approval, the Supplier shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or security requirements (as set out in Annex 1 (Security) to this Schedule) or the requirements of this Schedule, the change to the ISMS or Security Management Plan shall be at no cost to the Authority.
- 6.4 If any repeat Security Test carried out pursuant to paragraph 6.3 of this Schedule reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall constitute a material Default of this Contract.

## **7. COMPLIANCE OF THE ISMS WITH ISO/IEC 27001 AND ISO/IEC 27002**

- 7.1 The Authority shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001 and ISO/IEC 27002.
- 7.2 If, on the basis of evidence provided by such security audits, it is the Authority's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 or ISO/IEC 27002 is not being achieved by the Supplier, then the Authority shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001 and ISO/IEC 27002. If the Supplier does not become compliant within the required time then the Authority shall have the right to obtain an independent audit against these standards in whole or in part.

7.3 If, as a result of any such independent audit as described in paragraph 7.2 of this Schedule the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 or ISO/IEC 27002 then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Authority in obtaining such audit.

## **8. BREACH OF SECURITY**

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

8.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 8.1 of this Schedule, the Supplier shall:

8.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Authority) necessary to:

- (i) minimise the extent of actual or potential harm caused by any Breach of Security;
- (ii) remedy such Breach of Security or any potential or attempted Breach of Security or protect the integrity of the ISMS against any such Breach of Security or any potential or attempted Breach of Security;
- (iii) apply a tested mitigation against any such Breach of Security or attempted Breach of Security and, provided that reasonable testing has been undertaken by the Supplier, if the mitigation adversely affects the Supplier's ability to deliver the Services so as to meet the Service Level Performance Measures, the Supplier shall be granted relief against any resultant under-performance for such period as the Authority, acting reasonably, may specify by written notice to the Supplier;
- (iv) prevent a further Breach of Security or any potential or attempted Breach of Security in the future exploiting the same root cause failure;
- (v) supply any requested data to the Authority or the Computer Emergency Response Team for UK Government ("GovCertUK") on the Authority's request within two (2) working days and without charge (where such requests are reasonably related to a possible incident or compromise); and

(b) as soon as reasonably practicable provide to the Authority full details (using such reporting mechanism as defined by the ISMS) of the Breach of Security or the potential or attempted Breach of Security, including a root cause analysis where required by the Authority.

8.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the ISMS with the Security Policy or Baseline Security Requirements or the requirements of this Schedule, then any required change to the ISMS shall be at no cost to the Authority.

## 9. VULNERABILITES AND CORRECTIVE ACTION

- 9.1 The Authority and the Supplier acknowledge that from time to time vulnerabilities in the ICT Environment will be discovered which unless mitigated will present an unacceptable risk to the Authority's information.
- 9.2 The severity of threat vulnerabilities for Supplier COTS Software and Third Party COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the ISMS and using the appropriate vulnerability scoring systems including:
- 9.2.1 the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST <http://nvd.nist.gov/cvss.cfm>); and
- 9.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.
- 9.3 The Supplier shall procure the application of security patches to vulnerabilities within a maximum period from the public release of such patches with those vulnerabilities categorised as 'Critical' within 14 days of release, 'Important' within 30 days of release and all 'Other' within 60 Working Days of release, except where:
- 9.3.1 the Supplier can demonstrate that a vulnerability is not exploitable within the context of any Service (e.g. because it resides in a software component which is not running in the service) provided vulnerabilities which the Supplier asserts cannot be exploited within the context of a Service must be remedied by the Supplier within the above timescales if the vulnerability becomes exploitable within the context of the Service;
- 9.3.2 the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of 5 days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Authority; or
- 9.3.3 the Authority agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the ISMS.
- 9.4 The Supplier Solution and Implementation Plan shall include provisions for major version upgrades of all Supplier COTS Software and Third Party COTS Software to be upgraded within 6 months of the release of the latest version, such that it is no more than one major version level below the latest release (normally codified as running software no older than the 'n-1 version') throughout the Term unless:
- 9.4.1 where upgrading such Supplier COTS Software and Third Party COTS Software reduces the level of mitigations for known threats, vulnerabilities or exploitation techniques, provided always that such upgrade is made within 12 months of release of the latest version ; or
- 9.4.2 is agreed with the Authority in writing.
- 9.5 The Supplier shall:
- 9.5.1 implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent Central Government Body;

- 9.5.2 ensure that the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;
  - 9.5.3 ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the ICT Environment by actively monitoring the threat landscape during the Term;
  - 9.5.4 pro-actively scan the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) for vulnerable components and address discovered vulnerabilities through the processes described in the ISMS as developed under Paragraph 3.3.5;
  - 9.5.5 from the date specified in the Security Management Plan provide a report to the Authority within five (5) Working Days of the end of each month detailing both patched and outstanding vulnerabilities in the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) and any elapsed time between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report;
  - 9.5.6 propose interim mitigation measures to vulnerabilities in the ICT Environment known to be exploitable where a security patch is not immediately available;
  - 9.5.7 remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the ICT Environment); and
  - 9.5.8 inform the Authority when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the ICT Environment and provide initial indications of possible mitigations.
- 9.6 If the Supplier is unlikely to be able to mitigate the vulnerability within the timescales under this Paragraph 9, the Supplier shall immediately notify the Authority.
- 9.7 A failure to comply with Paragraph 9.3 shall constitute a Notifiable Default, and the Supplier shall comply with the Rectification Plan Process.

## **ANNEX 1: BASELINE SECURITY REQUIREMENTS**

### **1. HIGHER CLASSIFICATIONS**

- 1.1 The Supplier shall not handle Authority information classified SECRET or TOP SECRET except if there is a specific requirement and in this case prior to receipt of such information the Supplier shall seek additional specific guidance from the Authority.

### **2. END USER DEVICES**

- 2.1 When Authority Data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or system component which has been formally assured through a recognised certification process of the UK Government Communications Electronics Security Group (“CESG”) to at least Foundation Grade, for example, under the CESG Commercial Product Assurance scheme (“CPA”).
- 2.2 Devices used to access or manage Authority Data and services must be under the management authority of Authority or Supplier and have a minimum set of security policy configuration enforced. These devices must be placed into a ‘known good’ state prior to being provisioned into the management authority of the Authority. Unless otherwise agreed with the Authority in writing, all Supplier devices are expected to meet the set of security requirements set out in the CESG End User Devices Platform Security Guidance (<https://www.gov.uk/government/collections/end-user-devices-security-guidance--2>). Where the guidance highlights shortcomings in a particular platform the Supplier may wish to use, then these should be discussed with the Authority and a joint decision shall be taken on whether the residual risks are acceptable. Where the Supplier wishes to deviate from the CESG guidance, then this should be agreed in writing on a case by case basis with the Authority.

### **3. DATA PROCESSING, STORAGE, MANAGEMENT AND DESTRUCTION**

- 3.1 The Supplier and Authority recognise the need for the Authority’s information to be safeguarded under the UK Data Protection regime or a similar regime. To that end, the Supplier must be able to state to the Authority the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks Authority Data will be subject to at all times.
- 3.2 The Supplier shall agree any change in location of data storage, processing and administration with the Authority in advance where the proposed location is outside the UK. Such approval shall not be unreasonably withheld or delayed unless specified otherwise in this Agreement and provided that storage, processing and management of any Authority Data is only carried out offshore within:
- 3.2.1 the European Economic Area (EEA);
  - 3.2.2 in the US if the Supplier and or any relevant Sub-contractor have signed up to the US-EU Safe Harbour Agreement; or
  - 3.2.3 in another country or territory outside the EEA if that country or territory ensures an adequate level of protection by reason of its domestic law or of the international commitments it has entered into which have been defined as adequate by the EU Commission.
- 3.3 The Supplier shall:
- 3.3.1 provide the Authority with all Authority Data on demand in an agreed open format;

- 3.3.2 have documented processes to guarantee availability of Authority Data in the event of the Supplier ceasing to trade;
- 3.3.3 securely destroy all media that has held Authority Data at the end of life of that media in line with Good Industry Practice; and
- 3.3.4 securely erase any or all Authority Data held by the Supplier when requested to do so by the Authority.

#### **4. NETWORKING**

- 4.1 The Authority requires that any Authority Data transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device must be encrypted using a product or system component which has been formally assured through a certification process recognised by CESG, to at least Foundation Grade, for example, under CPA or through the use of pan-government accredited encrypted networking services via the Public Sector Network ("PSN") framework (which makes use of Foundation Grade certified products).
- 4.2 The Authority requires that the configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice.

#### **5. SECURITY ARCHITECTURES**

- 5.1 The Supplier shall apply the 'principle of least privilege' (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of IT systems which will process or store Authority Data.
- 5.2 When designing and configuring the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) the Supplier shall follow Good Industry Practice and seek guidance from recognised security professionals with the appropriate skills and/or a CESG Certified Professional certification (<http://www.cesg.gov.uk/awaresstraining/IA-certification/Pages/index.aspx>) for all bespoke or complex components of the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier).

#### **6. PERSONNEL SECURITY**

- 6.1 Supplier Personnel shall be subject to pre-employment checks that include, as a minimum: identity, unspent criminal convictions and right to work.
- 6.2 The Supplier shall agree on a case by case basis Supplier Personnel roles which require specific government clearances including system administrators with privileged access to IT systems which store or process Authority Data.
- 6.3 The Supplier shall prevent Supplier Personnel who are unable to obtain the required security clearances from accessing systems which store, process, or are used to manage Authority Data except where agreed with the Authority in writing.
- 6.4 All Supplier Personnel that have the ability to access Authority Data or systems holding Authority Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Authority in writing, this training must be undertaken annually.
- 6.5 Where the Supplier or Sub-Contractors grants increased ICT privileges or access rights to Supplier Personnel, those Supplier Personnel shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need

elevated privileges or leave the organisation, their access rights shall be revoked within one (1) Working Day.

## **7. IDENTITY, AUTHENTICATION AND ACCESS CONTROL**

7.1 The Supplier shall operate an access control regime to ensure all users and administrators of the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) are uniquely identified and authenticated when accessing or administering the Services. Applying the 'principle of least privilege', users and administrators shall be allowed access only to those parts of the ICT Environment that they require. The Supplier shall retain an audit record of accesses.

## **8. AUDIT AND MONITORING**

8.1 The Supplier shall collect audit records which relate to security events in the systems or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include:

8.1.1 Logs to facilitate the identification of the specific asset which makes every outbound request external to the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier). To the extent the design of the Services allows such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers.

8.1.2 Security events generated in the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) and shall include: privileged account logon and logoff events, the start and termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.

8.2 The Supplier and the Authority shall work together to establish any additional audit and monitoring requirements for the ICT Environment.

8.3 The Supplier shall retain audit records collected in compliance with this Paragraph 8 for a period of at least 6 months.

**SCHEDULE 17: SOFTWARE AND KEY-SUBCONTRACTORS**

***Supplier Software***

SFTWARE	SUPPLIER (IF AN AFFILIATE OF THE SUPPLIER)	PURPOSE	NUMBER OF LICENCES	DESCRIPTION AND FURTHER DETAILS

***Third Party Software***

SFTWARE	SUPPLIER	PURPOSE	NUMBER OF LICENCES	DESCRIPTION AND FURTHER DETAILS
Microsoft 365 E3 Gov	Microsoft	End User Software Services	65	
Project Professional Gov	Microsoft	End User Software Services	1	
Visio Professional Gov	Microsoft	End User Software Services	1	
Exclaimer 365 Email Signatures	Exclaimer	End User Software Services	65	
Mimecast M2A	Mimecast	End User Software Services	65	
Mimecast Secure Message Send	Mimecast	End User Software Services	65	
BitDefender/Symantec Anti virus	Microsoft	End User Software Services	75	
Cisco Umbrella	Cisco	End User Software Services	65	
360 Systems Protective Marking. 65 users	30 Systems	Platform Services	1	
Ivanti Patch for SCCM Year 1	Ivanti	Platform Services	80	
SCCM per server license	Microsoft	Platform Services	2	

SCCM Per client license	Microsoft	Platform Services	80	
Dolphin Supernova Screen Magnifier	Dolphin	Platform Services	2	
Nuance Dragon naturally Speaking	Nuance	Platform Services	2	
BitTitan Migration Manager	BitTitan	Platform Services	70	
Fortitoken 2FA Sogt Token 65 lics	Fortinet	Platform Services	1	
Fortigate NGFW BYOL License	Fortinet	Platform Services	1	

**1. KEY SUBCONTRACTORS**

- 1.1 In accordance with Clause 18.2 **18.1.2**(Appointment of Key Sub-contractors), the Supplier is entitled to sub-contract its obligations under this Contract to the Key Sub-contractors listed in the table below.
- 1.2 The Parties agree that they will update this Schedule periodically to record any Key Sub-contractors appointed by the Supplier with the consent of the Authority after the Commencement Date for the purposes of the delivery of the Services.

Key Sub-contractor name and address (if not the same as the registered office)	Registered office and company number	Related product/Service description	Key Sub-contract price expressed as a percentage of total projected Contract Charges over the Term	Key role in delivery of the Services
8x8	1 Rosemont Road, London, Nw3 6NG 09154870	Virtual Office Pro	10%	Provision of Cloud Telephony Services

## SCHEDULE 18: FINANCIAL DISTRESS

### 1. DEFINITIONS

In this Schedule, the following definitions shall apply:

- “**Credit Rating Level**” a credit rating level as specified in Annex 1;
- “**Credit Rating Threshold**” the minimum Credit Rating Level for the Supplier as set out in Annex 1 and for each Key Sub-contractor as set out in Schedule 17 (*Software and Key-Subcontractors*); and
- “**Rating Agency**” means the ratings agency Dun and Bradstreet

### 2. CREDIT RATING AND DUTY TO NOTIFY

- 2.1** The Supplier warrants and represents to the Authority for the benefit of the Authority that as at the Commencement Date the long term credit ratings issued for the Supplier by the Rating Agency is as set out in Annex 1 or better.
- 2.2** The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if there is any downgrade in the credit rating issued by the Rating Agency for the Supplier (and in any event within 5 Working Days of the occurrence of the downgrade).
- 2.3** If there is any downgrade credit rating issued by the Rating Agency for the Supplier, the Supplier shall ensure that the Supplier’s auditors thereafter provide the Authority within 10 Working Days of the end of each Contract Year and within 10 Working Days of written request by the Authority (such requests not to exceed 4 in any Contract Year) with written calculations of the quick ratio for the Supplier at the end of each Contract Year or such other date as may be requested by the Authority. For these purposes the “quick ratio” on any date means:

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

where:

- A is the value at the relevant date of all cash in hand and at the bank of the Supplier;
- B is the value of all marketable securities held by the Supplier determined using closing prices on the Working Day preceding the relevant date;
- C is the value at the relevant date of all account receivables of the Supplier; and
- D is the value at the relevant date of the current liabilities of the Supplier;

**2.4** The Supplier shall:

- 2.4.1** regularly monitor the credit ratings of the Supplier and each Key Sub-contractor with the Rating Agency and

**2.4.2** promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event or Key Sub-contractor Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-contractor Financial Distress Event (and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event, the Key Sub-contractor Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event or a Key Sub-contractor Financial Distress Event).

**2.5** For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraph 3.1.1 the credit rating of the Supplier or relevant Key Sub-contractor (as the case may be) shall be deemed to have dropped below the applicable Credit Rating Threshold if the Rating Agency has rated the Supplier or relevant Key Sub-contractor (as the case may be) at or below the Credit Rating Threshold.

### **3. CONSEQUENCES OF A FINANCIAL DISTRESS EVENT**

**3.1** In the event of:

**3.1.1** the credit rating of the Supplier or any Key Sub-contractor dropping below the applicable Credit Rating Threshold;

**3.1.2** the Supplier or any Key Sub-contractor issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;

**3.1.3** there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier or any Key Sub-contractor;

**3.1.4** the Supplier or any Key Sub-contractor committing a material breach of covenant to its lenders;

**3.1.5** a Key Sub-contractor notifying the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; or

**3.1.6** any of the following:

**(a)** commencement of any litigation against the Supplier or any Key Sub-contractor with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m;

**(b)** non-payment by the Supplier or any Key Sub-contractor of any financial indebtedness;

**(c)** any financial indebtedness of the Supplier or any Key Sub-contractor becoming due as a result of an event of default; or

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

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

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

**3.2** In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1.5 the Authority shall not exercise any of its rights or remedies under Paragraph 3.3 without first giving the Supplier 10 Working Days to:

**3.2.1** rectify such late or non-payment; or

**3.2.2** demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.

**3.3** The Supplier shall (and shall procure that any relevant Key Sub-contractor shall):

**3.3.1** at the request of the Authority, meet the Authority as soon as reasonably practicable (and in any event within 3 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Agreement; and

**3.3.2** where the Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 3.33.3.1) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement:

(a) submit to the Authority for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing); and

(b) provide such financial information relating to the Supplier or the Guarantor as the Authority may reasonably require.

**3.4** The Authority shall not withhold its approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Authority does not approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Authority within 5 Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by the Authority or referred to the Dispute Resolution Procedure under Paragraph 3.5.

**3.5** If the Authority considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Supplier's obligations in accordance with the

Agreement, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.

**3.6** Following approval of the Financial Distress Service Continuity Plan by the Authority, the Supplier shall:

**3.6.1** on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Agreement;

**3.6.2** where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 3.6.1 submit an updated Financial Distress Service Continuity Plan to the Authority for its approval, and the provisions of Paragraphs 3.4 and 3.5 shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and

**3.6.3** comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

**3.7** Where the Supplier reasonably believes that the relevant Financial Distress Event under Paragraph 3.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 3.6.

#### **4. TERMINATION RIGHTS**

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

**4.1.1** the Supplier fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2.4.2

**4.1.2** the Parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 3.3 to 3.5; and/or

**4.1.3** the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 3.6.3.

#### **5. PRIMACY OF CREDIT RATINGS**

**5.1.1** Without prejudice to the Supplier's obligations and the Authority's rights and remedies under Paragraph 2, if, following the occurrence of a Financial Distress Event pursuant to any of Paragraphs 3.1.2 to 3.1.6 the Rating Agency reviews and reports subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

**(a)** the Supplier shall be relieved automatically of its obligations under Paragraphs 3.3 to 3.6; and

- (b) the Authority shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 3.3.2(b)

**ANNEX 1: Credit Ratings And credit rating thresholds**

Entity	Credit Rating Level (long term)	Credit Rating Threshold
Supplier	■	■
8x8	as rated by the Rating Agency at the Commencement Date	■

## SCHEDULE 19: GOODS

### 1. Provision of the Goods

- 1.1 The Supplier acknowledges and agrees that the Authority relies on the skill and judgment of the Supplier in the provision of the Goods and the performance of its obligations under this Contract.
- 1.2 The Supplier shall ensure that the Goods
  - 1.2.1 comply in all respects with the description of the Goods in the Service Requirement and as may be agreed by the Parties;
  - 1.2.2 are supplied in accordance with the provisions of this Contract.

### 2. Time of Delivery of the Goods

- 2.1 The Supplier shall provide the Goods on the date(s) specified in the Implementation Plan and the Milestone Dates (if any).
- 2.2 Subject to Clause 4.2.5, where the Goods are physically delivered by the Supplier, the point of delivery shall be when the Goods are removed from the transporting vehicle and transferred at the Sites.
- 2.3 At the Authority's option, Delivery of Goods shall include unloading and stacking of the Goods by the Supplier Personnel at such place as the Authority shall reasonably direct. Where the Goods are collected by the Authority, the point of delivery shall be when the Goods are loaded on the Authority's vehicle.
- 2.4 Unless expressly agreed to the contrary, the Authority shall not be obliged to accept delivery of the Goods by instalments. If, however, the Authority does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its Delivery shall, without prejudice to any other rights or remedies of the Authority howsoever arising, entitle the Authority to terminate the whole or any unfulfilled part of this Contract for material Default without further liability to the Authority.
- 2.5 The Supplier shall undertake timed deliveries and out-of-hours deliveries as specified in this Contract. Timed delivery is delivery on a specified date and within a defined time range specified by the Authority on that date. The Authority shall be able to reject early deliveries and late deliveries at no cost to the Authority where a timed delivery or out-of-hours delivery has been specified.
- 2.6 The Supplier shall deliver the Goods to secure locations as directed by the Authority and in accordance with the Authority's security requirement.

### 3. Location and Manner of Delivery of the Goods and the Services

- 3.1 The Supplier shall ensure that the Supplier Personnel comply with the Authority's security requirements while on Site. Where Supplier Personnel are required to undertake personnel security clearance procedures to access the Sites the Authority shall notify the Supplier at least ten (10) Working Days in advance of the delivery date.
- 3.2 If requested by the Authority prior to Delivery, the Supplier shall provide the Authority with a sample or samples of Goods for evaluation and Approval, at the Supplier's cost and expense.
- 3.3 The Goods shall be marked, stored, handled and delivered in a proper manner and in accordance the Authority's instructions, Good Industry Practice, and any applicable Standards and any Law.

3.4 On dispatch of any consignment of the Goods the Supplier shall send the Authority an advice note specifying the means of transport, the place and date of dispatch, the number of packages, their weight and volume together with the all other relevant documentation and information required to be provided under any Laws.

#### **4. Risk and Ownership in Relation to the Goods**

4.1 Without prejudice to any other rights or remedies of the Authority howsoever arising:

4.1.1 risk in the Goods shall pass to the Authority at the time of Delivery; and

4.1.2 ownership of the Goods shall pass to the Authority on the earlier of Delivery of the Goods or payment by the Authority of the Contract Charges

#### **5. Undelivered Goods**

5.1 In the event that any of the Goods are not Delivered in accordance with Clauses 1 to 3 of this Schedule or the Goods are Damaged or lost ("**Undelivered Goods**") the Authority, without prejudice to any other rights and remedies of the Authority howsoever arising, shall be entitled to withhold payment of the applicable Charges for the Goods that were not so Delivered until such time as the Undelivered Goods are Delivered.

5.2 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 1 to 3 and meet the relevant Milestone Date (if any) to be a material Default.

#### **5.3 Warranty**

5.4 The Supplier hereby guarantees the Goods for the Warranty Period against faulty materials and workmanship.

5.5 If the Authority shall within such Warranty Period give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such Warranty Period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies of the Authority howsoever arising) promptly remedy such faults or defects (whether by repair or replacement as pursuant to the applicable published warranty terms of the manufacturer) free of charge.

5.6 The Supplier warrants to the Authority that all components of any Specially Written Software shall:

(a) be free from material design and programming errors;

(b) perform in all material respects in accordance with the relevant specifications; and

(c) not infringe any Intellectual Property Rights.

5.7 Where Goods are repaired or replaced under Warranty, the repaired or replaced Goods shall have either the remainder of the original Warranty Period or where offered a full Warranty Period as if supplied as new under the Contract.

5.8 In undertaking any repairs to the Goods, the Supplier shall not replace any parts or components of the Ordered Goods with parts or components that are of lower quality or which are unsuitable for use in their designed purpose either by the Authority or a replacement service provider, prior to the expiry or termination of the Contract (howsoever arising).

5.9 Where there is fault in any Ordered Goods which cannot be repaired, the Supplier shall ensure and procure that any data residing in any Ordered Goods is removed or destroyed in accordance with HMG Infosec Standard 5 Baseline (at no additional cost

to the Authority) prior to such Ordered Goods being returned to any manufacturer or other third party for disposal.

- 5.10 The Authority has the sole option to remove and retain any hard drives or solid state drives prior to the return of Goods to the Supplier at no additional cost to the Authority.
- 5.11 The Supplier confirms that where a Authority has an in-house warranty provider or technical staff who undertake warranty repair work, the Supplier shall work with the in-house warranty provider and/or technical staff to provide any required training to enable the transfer of warranty repair work without cost or loss of service to the Authority. Where this reduces the cost to the Supplier of providing the Warranty, the Supplier shall pass such cost savings on to the Authority.

## **6. Obligation to Remedy of Default in the Supply of the Goods**

- 6.1 Without prejudice to any other rights and remedies of the Authority howsoever arising, the Supplier shall, where practicable:
  - 6.1.1 remedy any breach of its obligations in this Clause 4 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
  - 6.1.2 meet all the costs of, and incidental to, the performance of such remedial work.

## **7. Continuing Obligation to Provide the Goods and Services**

- 7.1 The Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the provision of the Goods notwithstanding:
  - 7.1.1 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;
  - 7.1.2 the existence of an unresolved Dispute; and/or
  - 7.1.3 any failure by the Authority to pay any Chargesunless the Supplier is entitled to terminate this Contract under Clause 30.1 (Termination on Authority Cause) for failure by the Authority to pay undisputed Charges.

## **8. Over Delivered Goods**

- 8.1 The Authority shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity agreed under this Contract ("Over-Delivered Goods").
- 8.2 If the Authority elects not to accept such Over-Delivered Goods it may, without prejudice to any other rights and remedies of the Authority howsoever arising, give notice in writing to the Supplier to remove them within five (5) Working Days and to refund to the Authority any expenses incurred by the Authority as a result of such over-delivery (including but not limited to the costs of moving and storing the Over-Delivered Goods).
- 8.3 If the Supplier fails to comply with the Authority's notice under Clause 8.2, the Authority may dispose of such Over-Delivered Goods and charge the Supplier for the costs of such disposal. The risk in any Over-Delivered Goods shall remain with the Supplier.

## **9. Responsibility for Damage to or Loss of the Goods**

- 9.1 Without prejudice to the Supplier's other obligations to provide the Goods in accordance with this Contract, the Supplier accepts responsibility for all damage to or loss of the Goods if:
- 9.1.1 the same is notified in writing to the Supplier within ten (10) Working Days of receipt and inspection of the Goods by the Authority, the Supplier and Authority shall agree the date of inspection of the Delivered Goods in the Implementation Plan where used;
  - 9.1.2 in the event that no date for inspection is specified in the Implementation Plan (or elsewhere in the Contract), such damage and/or loss is notified in writing to the Supplier within three (3) Working Days of the Delivery of the Goods at the Authority's nominated site; and
  - 9.1.3 the Goods have been handled by the Authority in accordance with the Supplier's instructions.
- 9.2 Where the Supplier accepts responsibility under Clause 9.1, it shall, at its sole option, replace or repair the Goods (or part thereof) within such time as is reasonable having regard to the circumstances and as agreed with the Authority. Return of the Damaged Goods shall be at the Supplier's cost. For the avoidance of doubt, the Authority shall not approve any Damaged or lost Goods as Delivered, and for the purposes of the Implementation Plan such Goods shall be deemed as Undelivered Goods.
- 9.3 Goods Replacement/Substitution**
- 9.3.1 In the event that the Goods become genuinely unavailable after the Supplier has accepted and/or confirmed the Authority's order and is contractually bound, the Supplier shall offer the Authority a replacement model or equivalent substitute goods at no additional cost to the Authority. The equivalent substitute goods shall be of an equivalent or higher specification and provide the same or additional functionality than the Goods they replace. It shall be the Authority's sole decision whether to accept the replacement model

**SCHEDULE 20: 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 Test, to successfully pass such Test without any Test Issues in accordance with the Test Strategy Plan and in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone and <b>"Achieved"</b> , <b>"Achieving"</b> and <b>"Achievement"</b> 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>"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>"Annual Governance Board"</b>	the management board described in paragraph 2.3 of Schedule 10 (Governance);
<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) 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;</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> </ul>

	f) successors or assigns of any of the above;
<b>"Authority"</b>	means the Pensions Ombudsman
<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 Background IPR"</b>	means: <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 and procedures;</li> <li>b) IPRs created by the Authority independently of this Contract; and/or</li> <li>c) Crown Copyright which is not available to the Supplier otherwise than under this Contract;</li> </ul> but excluding IPRs owned by the Authority subsisting in the Authority Software;
<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>	means: <ul style="list-style-type: none"> <li>a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, 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 the Authority System 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 Schedule 12 (Authority Responsibilities) or agreed in writing between the Parties from time to time in connection with this Contract;
<b>"Authority Software"</b>	means any software identified in the Service Requirements (or as may be agreed by the Parties) along with all other software; which is owned by or licensed to the Authority and which is or will be used by the Supplier for the purposes of providing the Services;
<b>"Authority System"</b>	means the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with this Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Services;
<b>"Authority's Confidential Information"</b>	means: <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 Contract; and</li> <li>c) information derived from any of the above;</li> </ul>
<b>"BCDR Plan"</b>	means the plan prepared pursuant to paragraph 2 of Schedule 7 (Business Continuity and Disaster Recovery), as may be amended from time to time;
<b>"BCDR Services"</b>	means the Business Continuity Services and Disaster Recovery Services;
<b>"Boards"</b>	means the forums, groups and boards established by the Parties under Schedule 10 (Governance) and as may be established for the purposes of the Implementation period;
<b>"Business Continuity Services"</b>	has the meaning given to it in paragraph 4.2.2 of Schedule 7 (Business Continuity and Disaster Recovery);
<b>"Commencement Date"</b>	means the date of commencement of this Contract which is also the date of this agreement as set out at the start of this Contract;
<b>"Contract"</b>	means this contract between the Authority and the Supplier consisting of Contract Terms and Conditions and

	the Schedules, including any documents annexed or referenced by them;
<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 Schedule 2 (Charges and Invoicing) for the full and proper performance by the Supplier of its obligations under this Contract less any Deductions;
<b>"Contract Year"</b>	means a period of twelve consecutive (12) Months commencing on the Commencement Date or each anniversary thereof;
<b>"Critical Service Level Failure"</b>	<p>any of the following events:</p> <ul style="list-style-type: none"> <li>a) the Supplier accruing Service Credits which exceed the Service Credit Failure Threshold (which is 36% of the total Fixed Service Charges during a 12 month rolling period);</li> <li>b) The Supplier performs at a standard below the Service Level Threshold for any Service Level for any month;</li> <li>c) The Supplier fails to meet or exceed Service Level Band 2 performance for 2 consecutive months or for 3 months in any 6 month period in respect of any Service Level;</li> <li>d) The Supplier fails to meet or exceed Service Level Band 3 performance for 2 consecutive months or for 2 months in any 6 month period in respect of any Service Level</li> </ul>
<b>"Contract Terms"</b>	means these terms and conditions entered by the Parties in respect of the provision of the Services, together with the Schedules hereto;
<b>"Central Government Body"</b>	<p>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:</p> <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 Terms 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>"Commercially Sensitive Information"</b>	means the Confidential information listed at Schedule 15 (if any) 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 Authority 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 9.1.2 (Critical Service Level Failure);
<b>"Condition Precedent"</b>	has the meaning given to it in Clause 4.3;
<b>"Confidential Information"</b>	means the Authority's Confidential Information and/or the Supplier's Confidential Information, as the context specifies;
<b>"Continuous Improvement Plan"</b>	means a plan for improving the provision of the Services and/or reducing the Contract Charges produced by the Supplier pursuant to Schedule 10 Paragraph 10 (Continuous Improvement);
<b>"Contracting Body"</b>	means the Authority, the Authority and any other contracting authorities as defined by the Public Contracts regulations 2015;
<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;
<b>"Costs"</b>	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:</p> <ul style="list-style-type: none"> <li>a) the cost to the Supplier or the Key Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including: <ul style="list-style-type: none"> <li>i) base salary paid to the Supplier Personnel;</li> <li>ii) employer's national insurance contributions;</li> <li>iii) pension contributions;</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>iv) car allowances;</li> <li>v) any other contractual employment benefits;</li> <li>vi) staff training;</li> <li>vii) work place accommodation;</li> <li>viii) work place IT equipment and tools reasonably necessary to provide the Services (but not including items included within limb (b) below); and</li> <li>ix) reasonable recruitment costs, as agreed with the Authority;</li> </ul> <p>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;</p> <p>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;</p> <p>but excluding:</p> <ul style="list-style-type: none"> <li>a) Overhead;</li> <li>b) financing or similar costs;</li> <li>c) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term whether in relation to Supplier Assets or otherwise;</li> <li>d) taxation;</li> <li>e) fines and penalties;</li> <li>f) amounts payable under Paragraph 9 of Schedule 10 (Governance) where used; and</li> <li>g) non-cash items (including depreciation, amortisation, impairments and movements in provisions);</li> </ul>
<p><b>"Crown"</b></p>	<p>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;</p>

"Crown Body"	means any department, office or executive agency of the Crown;
"CRTPA"	means the Contracts (Rights of Third Parties) Act 1999;
"Damaged"	means Goods that contain a Defect;
"Data Controller"	has the meaning given to it in the Data Protection Laws;
"Data Loss Event"	a breach of any system containing Personal Data that causes unauthorised access to Personal Data, actual or potential loss of Personal Data;
"Data Processor"	has the meaning given to it in the Data Protection Laws;
"Data Protection Laws"	any law, statute, 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, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 1998 and , with effect from 25 May 2018, the GDPR);
"Data Subject"	has the meaning given to it in the Data Protection Laws;
"Data Subject Access Request"	means a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to access his or her Personal Data;
"Deductions"	means all Service Credits or any other deduction which the Authority is paid or is payable under this Contract;
"Default"	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) after the words, 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;
"Defect"	means any of the following: <ul style="list-style-type: none"> <li>a) any error, damage or defect in the manufacturing of a Deliverable; or</li> <li>b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or</li> <li>c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Authority or the Documentation (including any adverse effect on response times) regardless of whether or not it</li> </ul>

	<p>prevents the relevant Deliverable from passing any Test required under this Contract; or</p> <p>d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Authority or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract;</p>
<b>"Delay"</b>	<p>means:</p> <p>a) a delay in the Achievement of a Milestone by its Milestone Date; or</p> <p>b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;</p>
<b>"Deliverable"</b>	<p>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;</p>
<b>"Delivery"</b>	<p>means, in respect of the Services, the time at which the Services have been provided or performed by the Supplier as confirmed by the issue by the Authority of a Milestone Achievement Certificate in respect of the relevant Milestone thereof (if any) or otherwise in accordance with this Contract and accepted by the Authority and <b>"Deliver"</b> and <b>"Delivered"</b> shall be construed accordingly;</p>
<b>"Disaster"</b>	<p>means the occurrence of one or more unplanned events which, either separately or cumulatively, mean that the Services, or a material part thereof will be (or could reasonably be anticipated to be) interrupted, unavailable and/or impaired;</p>
<b>"Disaster Recovery Services"</b>	<p>means the services embodied in the processes and procedures for restoring the provision of Services following the occurrence of a Disaster, as detailed further in Schedule 7 (Business Continuity and Disaster Recovery);</p>
<b>"Disclosing Party"</b>	<p>has the meaning given to it in Clause 22.3.1 (Confidentiality);</p>
<b>"Dispute"</b>	<p>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;</p>

<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 6 (Dispute Resolution Procedure);
<b>"Documentation"</b>	<p>means all documentation as:</p> <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>"Emergency Maintenance"</b>	<p>means ad hoc and unplanned maintenance provided by the Supplier where:</p> <ul style="list-style-type: none"> <li>a) the Authority reasonably suspects that the ICT Environment or the Services, or any part of the ICT Environment or the Services, has or may have developed a fault, and notifies the Supplier of the same; or</li> <li>b) the Supplier reasonably suspects that the ICT Environment or the Services, or any part the ICT Environment or the Services, has or may have developed a fault;</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;

<p><b>"Environmental Information Regulations or EIRs"</b></p>	<p>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;</p>
<p><b>"Environmental Policy"</b></p>	<p>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;</p>
<p><b>"Estimated Year 1 Contract Charges"</b></p>	<p>means the sum in pounds estimated by the Authority to be payable by it to the Supplier as the total aggregate Contract Charges from the Commencement Date until the end of the first Contract Year as set out in Schedule 2 (Charges and Invoicing);</p>
<p><b>"Expedited Dispute Timetable"</b></p>	<p>means the timetable set out in paragraph 2.6 of Schedule 6 (Dispute Resolution Procedure);</p>
<p><b>"Expiry Date"</b></p>	<p>means:</p> <ul style="list-style-type: none"> <li>a) the end date of the Initial Period or, if exercised by the Authority the end date of any Extension Period; or</li> <li>b) if this Contract is terminated before the date specified in (a) above, the earlier date of termination of this Contract;</li> </ul>
<p><b>"Extension Period"</b></p>	<p>means, the extension term of this Contract from the end date of the Initial Period to the end date of the extension period (such end date as notified by the Authority to the Supplier in accordance with Clause 4.2);</p>
<p><b>"Financial Distress Event"</b></p>	<p>means the occurrence of one or more of the events listed in paragraph 3.1 of Schedule 18 (Financial Distress)</p>
<p><b>"Financial Distress Service Continuity Plan"</b></p>	<p>a plan in accordance with Schedule 18 (Financial Distress) setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that a Financial Distress Event occurs;</p>
<p><b>"Fixed Service Charges"</b></p>	<p>means those Contract Charges described as such in Schedule 2 (Charges and Invoicing);</p>
<p><b>"FOIA"</b></p>	<p>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;</p>
<p><b>"Force Majeure"</b></p>	<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</li> </ul>

	<p>Affected Party from performing its obligations under this Contract;</p> <p>b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</p> <p>c) acts of the Crown, local government or Regulatory Bodies;</p> <p>d) fire, flood or any disaster; and</p> <p>e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:</p> <p>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</p> <p>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</p> <p>iii) any failure of delay caused by a lack of funds;</p>
<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 Event;
<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 (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>"GDPR"</b>	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);
<b>"Goods"</b>	means the goods to be provided by the Supplier to the Authority as set out in this Contract;

<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>"Guarantor"</b>	means the person in the event that a Guarantee is required under this Contract acceptable to the Authority to give a Guarantee;
<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 Environment"</b>	means the Authority System and the Supplier System;
<b>"Impact Assessment"</b>	has the meaning given to it in Clause 15.1.3 (Variation Procedure);
<b>"Implementation Period"</b>	means from the Commencement Date to the relevant Operational Services Commencement Date of the applicable service workstream;
<b>"Implementation Plan"</b>	means the full implementation plan to be developed by the Supplier in accordance with Clause 5 and Schedule 9 (Implementation and Testing);
<b>"Implementation Services"</b>	means the design, build, test, implementation, transition, migration and roll out services and activities to be provided by the Supplier (including those set out at Schedule 1 (Service Requirements) which are required and reasonably necessary to be performed before the Operational Services can be performed;
<b>"Initial Period"</b>	means the initial term of this Contract which shall be for three (3) years from the Commencement Date;
<b>"Information"</b>	has the meaning given to it under section 84 of the Freedom of Information Act 2000;
<b>"Insolvency Event"</b>	means, in respect of the Supplier or Guarantor (as applicable): <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> </ul>

	<ul style="list-style-type: none"> <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 an administrator is given; or</li> <li>f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</li> <li>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</li> <li>h) where the Supplier or Guarantor or Guarantor 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</li> <li>i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;</li> </ul>
<p><b>"Intellectual Property Rights" or "IPR"</b></p>	<p>means</p> <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>
<p><b>"IPR Claim"</b></p>	<p>means any claim of infringement or alleged infringement (including the defence of such infringement or alleged</p>

	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 Sub-Contract"</b>	means each Sub-Contract with a Key Sub-Contractor;
<b>"Key Sub-Contractor"</b>	means any Sub-Contractor: <ul style="list-style-type: none"> <li>a) listed in Schedule 17 (Software and Key Sub-Contractors);</li> <li>b) which, in the opinion of the Authority , performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or</li> <li>c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Contract Charges forecast to be payable under this Contract;</li> </ul>
<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>"Licensed Software"</b>	means all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Authority for the purposes of or pursuant to this Contract, including any Supplier Software, Third Party Software and/or any Specially Written Software;
<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 "Loss" shall be interpreted accordingly;
<b>"Maintenance Schedule"</b>	has the meaning given to it in Schedule 3 (Service Levels) (Maintenance of the ICT Environment);
<b>"Malicious Software"</b>	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

<b>"Man Day"</b>	means 8 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>"Month"</b>	means a calendar month and <b>"Monthly"</b> shall be interpreted accordingly;
<b>"Monthly Performance Reports"</b>	means the performance reports which the Supplier must provide to the Authority in accordance with Schedule 11 (Reports and Records Provision), Schedule 10 (Governance) and Schedule 3 (Service Levels and Performance);
<b>"New Release"</b>	means an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
<b>"Occasion of Tax Non Compliance"</b>	<p>means:</p> <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's submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences</li> </ul>

	<p>which is not spent at the Commencement Date or to a civil penalty for fraud or evasion;</p>
<p><b>"Open Book Data"</b></p>	<p>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:</p> <ul style="list-style-type: none"> <li>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 hardware and software;</li> <li>b) operating expenditure relating to the provision of the Services including an analysis showing: <ul style="list-style-type: none"> <li>i) the unit costs and any other consumables and bought-in services;</li> <li>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;</li> <li>iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin.</li> </ul> </li> <li>c) Overheads;</li> <li>d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;</li> <li>e) the Supplier profit achieved over the Term and on an annual basis;</li> <li>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;</li> <li>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</li> <li>h) the actual Costs profile for each Service Period.</li> </ul>
<p><b>"Open Source Software"</b></p>	<p>means computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes;</p>

<b>"Operating Environment"</b>	means the Authority System and the Sites;
<b>Operational Services</b>	means the main IT managed service to be provided by the Supplier following successful implementation of the Implementation Services;
<b>"Operational Services Commencement Date"</b>	means the date, or where there is a phased approach to implementation of the Services, the dates, on which the Operational Services commence in accordance the Implementation Plan following successful testing and the issue by the Authority of a Milestone Achievement Certificate for the final Milestone in respect of the Service due to go live;
<b>"Other Supplier"</b>	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;
<b>"Overhead"</b>	means those amounts which are intended to recover a proportion of the Supplier's or the Key Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of "Costs";
<b>"Parent Company"</b>	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;
<b>"Party"</b>	means the Authority or the Supplier and <b>"Parties"</b> shall mean both of them;
<b>"Personal Data"</b>	personal data (as given to it in the Data Protection Laws) which is Processed by the Contractor or any Sub-Contractor on behalf of the Authority or a Central Government Body pursuant to or in connection with this Contract;
<b>"Permitted Maintenance"</b>	has the meaning given to it in Schedule 3 (Service Levels and Performance);
<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>"Products"</b>	means the hardware and software listed at Annex 3 and Annex 4 of Schedule 2 (Charges and Invoicing);

<p><b>"Prohibited Act"</b></p>	<p>means any of the following:</p> <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 and/or the Authority or other Contracting Body 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 Contract;</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)</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>
<p><b>"Project Specific IPR"</b></p>	<p>means:</p> <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> <p>but shall not include the Supplier Background IPR or the Specially Written Software;</p>
<p><b>"Quality Plans"</b></p>	<p>shall have the meaning given in Clause 7.2 (Standards and Quality);</p>
<p><b>"Recipient"</b></p>	<p>has the meaning given to it in Clause 22.3.1 (Confidentiality);</p>
<p><b>"Rectification Plan"</b></p>	<p>means the rectification plan pursuant to the Rectification Plan Process;</p>
<p><b>"Rectification Plan Process"</b></p>	<p>means the process set out in Clause 26.2 (Rectification Plan Process);</p>

<b>"Registers"</b>	has the meaning given to in Schedule 8 (Exit Management) where used;
<b>"Regulations"</b>	means the Public Contracts Regulations 2015 as amended from time to time;
<b>"Regulator Correspondence"</b>	any correspondence from the Information Commissioner's Office, or any successor body, in relation to the Processing of Personal Data under this Contract;
<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 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 Transfer"</b>	means a transfer of employment to which the Employment Regulations applies;
<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 27.2.2 (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 22.6.4 (Protection of Personal Data);

<b>"Milestone Achievement Certificate"</b>	means the certificate materially in the form of the document contained in Annex 1 to Schedule 9 (Implementation and Testing) granted by the Authority when the Supplier has Achieved a Milestone or a Test;
<b>"Schedule"</b>	means a schedule to this Contract;
<b>"Security Management Plan"</b>	means the Supplier's security management plan prepared pursuant to paragraph 4 of Schedule 16 (Security) where used, a draft of which has been provided by the Supplier to the Authority in accordance with paragraph 4 of Schedule 16 (Security) where used and as updated from time to time;
<b>"Security Policy"</b>	means the Authority's security policy (if any) in force as at the Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
<b>"Security Policy Framework"</b>	the HMG Security Policy Framework <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255910/HMG_Security_Policy_Framework_V11.0.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255910/HMG_Security_Policy_Framework_V11.0.pdf</a> ;
<b>"Service Bedding In Period"</b>	means the period as described in Schedule 3 at paragraph 2;
<b>"Service Charges"</b>	means those elements of the Contract Charges as set out at paragraph 3 of Schedule 2 (Charges and Invoicing);
<b>"Service Credits"</b>	means any service credits specified in Schedule 3 (Service Levels and Performance) in respect of any failure by the Supplier to meet one or more Service Levels;
<b>"Service Credit Failure Threshold"</b>	means 36% of the Fixed Service Charges;
<b>"Service Credit Application Threshold"</b>	means the level of service level performance in respect of Combined Incident Resolution service level, below which Service Credits apply, being 90%.
<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 Band"</b>	means the banding that a Service Level achieved by the Supplier falls within, as more particularly set out at Table 2 of Schedule 3 in respect of the Combined Incident Resolution Service Level and at table 2c of Schedule 3 in respect of the Availability Service Levels;
<b>"Service Level Failure"</b>	means a failure to meet the Service Level Target for a Service Level as more particularly described in Annex 1 of Schedule 3 (Service Levels and Performance);
<b>"Service Level Performance Criteria"</b>	has the meaning given to it in paragraph 3.2 of Part A of Schedule 3 (Service Levels and Performance);

<b>"Service Level Target"</b>	means the target level of performance for a Service Level as described as such and as more particularly detailed in Annex 1 of Schedule 3 (Service Levels and Performance);
<b>"Service Level Threshold"</b>	shall be as set out against the relevant Service Level in Schedule 3 (Service Levels and Performance) and described as such;
<b>"Service Levels"</b>	means any service levels applicable to the provision of the Services under this Contract specified in Schedule 3 (Service Levels and Performance);
<b>"Service Period"</b>	has the meaning given to in paragraph 4.1 of Schedule 3 (Service Levels and Performance);
<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 specified in Schedule 1 (Service Requirements) and as may be set out in this Contract (including, without limitation, services in relation to Business Continuity and Disaster Recovery, Implementation, Testing, Migration, Transition and Exit);
<b>"Sites"</b>	means: <ul style="list-style-type: none"> <li>a) any premises (including the Authority Premises, the Supplier's premises or third party premises): <ul style="list-style-type: none"> <li>i) from, to or at which: <ul style="list-style-type: none"> <li>(1) the Services are (or are to be) provided; or</li> <li>(2) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or</li> </ul> </li> <li>ii) where any part of the Supplier System is situated; or</li> </ul> </li> <li>b) any physical interface with the Authority System takes place;</li> </ul>
<b>"Software"</b>	means Specially Written Software, Supplier Software, Open Source Software and Third Party Software;
<b>"Software Supporting Materials"</b>	has the meaning given to it in Clause 21.2.1(b);
<b>"Source Code"</b>	means computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction,

	maintenance, modification and enhancement of such software;
<b>"Specially Written Software"</b>	means any software (including database software, linking instructions, test scripts, configuration data, profiles, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Contract;
<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>"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) standards detailed in the specification in Schedule 1 (Service Requirements) and Schedule 3 (Service Levels and Performance);</li> <li>c) standards detailed by the Authority in Schedule 13 (Standards);</li> <li>d) any relevant Government codes of practice and guidance applicable from time to time as the Supplier would reasonably and ordinarily be expected to comply with</li> </ul>
<b>"Strategic Steering Group"</b>	means the body described in paragraph 2.4 of Schedule 10 (Governance);
<b>"Sub-Contract"</b>	means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide: <ul style="list-style-type: none"> <li>(a) the Services or any part thereof; or</li> <li>(b) facilities and/or, services necessary for the provision of the Services or any part thereof; or</li> <li>(c) is responsible for the management, direction or control of the provision of the Services or any part thereof;</li> </ul>
<b>"Sub-Contractor"</b>	means any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;

<b>"Supplier"</b>	means the supplier providing the Services as identified at the start of 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>	<p>means</p> <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> <p>but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;</p>
<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 27.1 (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 Representative"</b>	means the representative appointed by the Supplier in Clause 43 (Notices);
<b>"Supplier Software"</b>	means any software which is proprietary to the Supplier (or an Affiliate of the Supplier) and identified as such in Schedule 17 together with all other such software which is not identified in Schedule 17 but which is or will be used by the Supplier or any Sub-Contractor for the purposes of providing the Services or is embedded in and in respect of such other software as required to be licensed in order for the Authority to receive the benefit of and/or make use of the Services;
<b>"Supplier System"</b>	means the information and communications technology system used by the Supplier in supplying the Services, including the Supplier Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);

<p><b>"Supplier's Confidential Information"</b></p>	<p>means</p> <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> <li>c) information derived from any of the above.</li> </ul>
<p><b>"Tender"</b></p>	<p>means the tender submitted by the Supplier to the Authority in response to the Procurement and annexed to or referred to in Schedule 4 (Supplier Solution);</p>
<p><b>"Term"</b></p>	<p>means the term of this Contract from the Commencement Date until the Expiry Date;</p>
<p><b>"Termination Notice"</b></p>	<p>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;</p>
<p><b>"Third Party IPR"</b></p>	<p>means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;</p>
<p><b>"Third Party Software"</b></p>	<p>means any software identified as such in Schedule 17, together with all other software which is not listed in the Schedule 17 which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which is or will be used by the Supplier for the purposes of providing the Services);</p>
<p><b>"Transferring Supplier Employees"</b></p>	<p>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.</p>
<p><b>"Transparency Reports"</b></p>	<p>means the information relating to the Services and performance of this Contract which the Supplier is required to provide to the Authority in accordance with the reporting requirements in Schedule 11;</p>
<p><b>"Undelivered Goods"</b></p>	<p>has the meaning give to it in Schedule 19 (Goods);</p>
<p><b>"Undelivered Services"</b></p>	<p>has the meaning given to it in Clause 6.4.1 (Supply of Services);</p>
<p><b>"Undisputed Sums Time Period"</b></p>	<p>has the meaning given to it Clause 30.1.1 (Termination of Authority Cause for Failure to Pay);</p>

<b>"Update"</b>	means in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
<b>"Upgrade"</b>	means any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term;
<b>"Valid Invoice"</b>	means an invoice issued by the Supplier to the Authority that complies with the invoicing procedure in Schedule 2 (Charges and Invoicing);
<b>"Variation"</b>	has the meaning given to it in Clause 15.1 (Variation Procedure);
<b>"Change Control Note"</b>	means the form set out in Schedule 5 (Change Control Note);
<b>"Variation Procedure"</b>	means the procedure set out in Clause 15.1 (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 0712 – Tax Arrangements of Public Appointees <a href="https://www.gov.uk/government/publications/procurement-policy-note-07-12-tax-arrangements-of-public-appointees">https://www.gov.uk/government/publications/procurement-policy-note-07-12-tax-arrangements-of-public-appointees</a> applies in respect of the Services; and
<b>"Working Day"</b>	means any Day other than a Saturday or Sunday or public holiday in England and Wales.