

DATED]08/03/2017

THE SECRETARY OF STATE FOR HEALTH

and

ERNST & YOUNG LLP

ICC TRANSFORMATION SERVICES CONTRACT

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This agreement is made on 8 March 2017

BETWEEN:

- (1) THE SECRETARY OF STATE FOR HEALTH of Richmond House, 79 Whitehall, London, SW1A 2NS, acting as part of the Crown (the "**Authority**");
- (2) Ernst & Young LLP which is a company registered in **England and Wales** under company number OC300001 and whose registered office is at **1 More London Place, London SE1 2AF** (the "**Supplier**").

RECITALS:

- A The Authority placed a contract notice **OJEU Reference 2016-151411** on **24 November 2016** (the "**OJEU Notice**") in the Official Journal of the European Union seeking **tenders** from potential providers of the Services interested in entering into a contract for the supply of such Services to the Authority.
- B On **25 November 2016** the Authority issued an invitation to tender (the "**Invitation to Tender**") for the provision of the Services.
- C In response to the Invitation to Tender, the Supplier submitted the Tender to the Authority on **9th January 2017** through which it represented to the Authority that it is capable of delivering the Services in accordance with the Authority's requirements as set out in the Invitation to Tender; in particular, the Supplier made representations to the Authority in the Tender in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.
- D On the basis of the Tender, the Authority selected the Supplier to enter into an agreement to provide the Services to the Authority from time to time in accordance with this Contract.

A. PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

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

annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear; and

1.2.9 the headings in this Contract are for ease of reference only and shall not affect the interpretation or construction of this Contract.

1.3 In the event of and only to the extent of any conflict between the Clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

1.3.1 the Clauses;

1.3.2 the Schedules.

2. DUE DILIGENCE

2.1 The Supplier acknowledges that:

2.1.1 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Contract;

2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;

2.1.3 it has raised all relevant due diligence questions with the Authority before the Commencement Date; and

2.1.4 it has undertaken all necessary due diligence and has entered into this Contract in reliance on its own due diligence alone.

2.2 The Supplier shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:

2.2.1 any misinterpretation of the requirements of the Authority in this Contract;

2.2.2 any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or

2.2.3 failure by the Supplier to undertake its own due diligence.

3. NOT USED

4. REPRESENTATIONS AND WARRANTIES

4.1 Each Party represents and warrants that:

4.1.1 it has full capacity and authority to enter into and to perform this Contract;

4.1.2 this Contract is executed by its duly authorised representative;

4.1.3 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

4.1.4 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).

4.2 The Supplier represents and warrants that:

4.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;

- 4.2.2 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;
 - 4.2.3 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;
 - 4.2.4 as at the Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, its Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract;
 - 4.2.5 if the Contract Charges payable under this Contract exceed or are likely to exceed five (5) million pounds, as at the Commencement Date it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
 - 4.2.6 it has and shall continue to have all necessary rights in and to the Third Party IPR, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Contract including the receipt of the Services by the Authority;
 - 4.2.7 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;
 - 4.2.8 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;
 - 4.2.9 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
 - 4.2.10 for the Contract Period and for a period of twelve (12) months after the termination or expiry of this Contract, the Supplier shall not employ or offer employment to any staff of the Authority which have been associated with the provision of the Services without Approval or the prior written consent of the Authority, which shall not be unreasonably withheld.
- 4.3 Each of the representations and warranties set out in Clauses 4.1 and 4.2 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.
- 4.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 4.1 and 4.2 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.
- 4.5 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. DURATION OF CONTRACT

5. CONTRACT PERIOD

- 5.1 This Contract shall take effect on the Commencement Date and shall expire, unless it is terminated earlier in accordance with the terms of this Contract or otherwise by operation of Law, either:
- 5.1.1 at the end of the Initial Period; or

- 5.1.2 where the Authority elects to extend the duration of this Contract beyond the expiry of the Initial Period in accordance with Clause 5.2 below, at the end of the Extension Period.
- 5.2 The Authority may elect to extend the duration of this Contract by one or more consecutive periods, each for a duration of two months or longer, (cumulatively the “**Extension Period**”) by giving the Supplier no less than:
- 5.2.1 three (3) Months’ written notice prior to the expiry of the Initial Period; or
- 5.2.2 after the expiry of the Initial Period, one (1) Month’s written notice prior to the expiry of the then current Extension Period,
- provided that the total Contract Period shall not exceed forty-eight (48) Months in total.
- 5.3 Notwithstanding Clause 18 (Key Personnel) and without prejudice to Clause 19 (Supplier Personnel) and the Supplier’s obligation to provide the Services, during any Extension Period the Supplier shall not be obliged to fulfil the Key Roles with the Key Personnel or utilise the Key Personnel in the provision of the Services, unless requested to do so by the Authority (acting reasonably).
- 5.4 In advance of any extension pursuant to Clause 5.2, the Parties shall agree:
- 5.4.1 any alterations to the size and composition of the Core Team (including the Supplier Leadership Team); and
- 5.4.2 any Milestones that shall apply during the Extension Period and any consequential amendments required to the Milestone payment mechanism,
- and any such changes shall be implemented in accordance with Variation Procedure, provided always that where the Parties are unable to agree any amendments, the terms of this Contract shall continue during the Extension Period.

C. CONTRACT PERFORMANCE

6. MOBILISATION PLAN AND KEY MILESTONE PLAN

6.1 Compliance with the Mobilisation Plan

- 6.1.1 During the Mobilisation Period, the Supplier shall comply with the Mobilisation Plan set out in Part A of Schedule 4 (Mobilisation Plan and Key Personnel).
- 6.1.2 The Supplier shall perform each of the Deliverables identified in the Mobilisation Plan by the applicable date assigned to that Deliverable in the Mobilisation Plan.
- 6.1.3 The Supplier shall monitor its performance against the requirements of the Authority as set out in this Contract and report to the Authority on such performance.
- 6.1.4 Changes to the Mobilisation Plan shall only be made in accordance with the Variation Procedure.

6.2 Compliance with the Key Milestone Plan

- 6.2.1 The Supplier shall perform each of the Deliverables identified in the Key Milestone Plan so as to ensure that each Milestone identified in the Key Milestone Plan is achieved on or before the Target Date (or, in the case of Type 1 Milestone and Type 2 Milestones, is achieved to the level of the Performance Target on the relevant Measurement Date).
- 6.2.2 The Supplier shall monitor its performance against the Key Milestone Plan and any other requirements of the Authority as set out in this Contract and report to the Authority on such performance.
- 6.2.3 Changes to the Key Milestone Plan shall only be made in accordance with the Variation Procedure. The Supplier shall not attempt to postpone any of the Milestones using the Variation Procedure or otherwise (except in the event of an Authority Cause which affects the Supplier's ability to achieve a Milestone by the relevant date).

7. SERVICES

7.1 Provision of the Services

- 7.1.1 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.
- 7.1.2 The Supplier shall ensure that the Services:
- (a) comply in all respects with the Authority's description of the Services in Schedule 2 (Services) or elsewhere in this Contract; and
 - (b) are supplied in accordance with the provisions of this Contract.
- 7.1.3 The Supplier shall perform its obligations under this Contract in accordance with:
- (a) all applicable Law;
 - (b) Good Industry Practice;
 - (c) the Standards;
 - (d) the Security Policy; and
 - (e) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 7.1.3(a) to (d) or any other term of this Contract.
- 7.1.4 The Supplier shall:
- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Contract;
 - (b) subject to Clause 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 any services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Deliverables and/or Services shall enable the Deliverables and/or Services to meet the requirements of the Authority;
 - (d) ensure that the Supplier Assets will be free of all encumbrances (except as agreed in writing with the Authority);
 - (e) ensure that the Services are fully compatible with any Authority Property or Authority Assets used by the Supplier in connection with this Contract;
 - (f) minimise any disruption to the Authority's operations when providing the Services;
 - (g) ensure that any Documentation and training provided by the Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
 - (h) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier and, on the Expiry Date for any reason, to enable the timely transition of the supply of the Services (or any of them) to the Authority and/or to any Replacement Supplier;
 - (i) assign to the Authority, or if it is unable to do so, shall (to the extent it is legally able to do so) hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of any Deliverables and/or the Services. Where any such warranties are held on trust, the Supplier shall enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
 - (j) provide the Authority with such assistance as the Authority may reasonably require during the Contract Period in respect of the supply of the Services;
 - (k) deliver the Services in a proportionate and efficient manner;

(l) ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Supplier's obligations under this Contract; and

(m) gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Contract.

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

7.2 Time of Delivery of the Services

7.2.1 The Supplier shall provide the Services on the date(s) and times specified in this Contract, including the provision of the Type 3 Milestones on the relevant Target Dates.

7.3 Location and Manner of Delivery of the Services

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

7.4 Material Default

7.4.1 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 7.1 (Provision of the Services), 7.2 (Time of Delivery of the Services) and 7.3 (Location and Manner of Delivery of the Services) and/or to meet any associated Target Date to be a material Default.

7.5 Obligation to Remedy Default in the Supply of the Services

7.5.1 Subject to Clauses 25.9.2 and 25.9.3 (IPR Indemnity) and without prejudice to any other rights and remedies of the Authority howsoever arising (including under Clause 30 (Authority Remedies for Default)), the Supplier shall:

(a) remedy any breach of its obligations in Clauses 7.1 and 7.2 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.

7.6 Continuing Obligation to Provide the Services

7.6.1 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, unless the Supplier is entitled to terminate this Contract under Clause 34.1 (Termination on Authority Cause for Failure to Pay) for failure by the Authority to pay undisputed Contract Charges.

7.7 Optional Services

7.7.1 The Authority may require the Supplier to provide any of the Optional Services at any time by giving notice to the Supplier in writing in accordance with the procedure set out in clause 7.7.3.

7.7.2 The Supplier acknowledges that the Authority is not obliged to take any Optional Services from the Supplier and that nothing shall prevent the Authority from receiving services that are the same as or similar to the Optional Services from any third party.

- 7.7.3 If the Authority gives notice pursuant to clause 7.7.1 that it requires the Supplier to provide any of the Optional Services:
- (a) the Authority shall produce a work order in respect of the Optional Services;
 - (b) the Supplier shall provide any assistance as the Authority reasonably requires in producing a work order;
 - (c) the work order shall include, as a minimum, the following:
 - i. the scope of the Optional Services;
 - ii. Deliverables;
 - iii. pricing mechanism (in accordance with Schedule 3);
 - iv. the timetable for the Optional Services;
 - v. risks and mitigation strategies (if applicable); and
 - vi. performance indicators (if applicable).
- 7.7.4 The work order shall become effective upon signature by both Parties.
- 7.7.5 The Supplier shall not be entitled to refuse a request to provide Optional Services under a work order, or to refuse to sign a work order, unless the work order or its implementation would infringe any Law or require the Supplier to obtain any authorisation or consent which it cannot reasonably obtain. Any dispute between the Parties in relation to the matters referred to in this paragraph shall be referred to the Dispute Resolution Procedure.

8. STANDARDS AND QUALITY

- 8.1 The Supplier shall at all times during the Contract Period comply with the Standards and maintain, where applicable, accreditation with the relevant Standards' authorisation body.
- 8.2 Throughout the Contract Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, or the receipt by the Authority, of the Services. The adoption of any such new or emergent standard, or changes to existing Standards, shall be agreed in accordance with the Variation Procedure. Any change to an existing Standard which is included in Schedule 7 (Standards) shall, in addition, require the Approval of the Authority.
- 8.3 Where a new or emergent standard is to be developed or introduced by the Authority, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or the Authority's receipt of the Services is explained to the Authority (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.
- 8.4 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the Commencement Date, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard or Standards shall require Approval and shall be implemented within an agreed timescale.
- 8.5 Where a standard, policy or document is referred to in Schedule 7 (Standards) by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Authority shall confirm where the relevant standard, policy or document can be located. Where the Authority is unable to provide such standard, policy or document as a result of such standard, policy or document ceasing to exist, the Parties shall discuss the impact on the Supplier's provision of the Services and any replacement standards shall be agreed in accordance with Clause 8.2 (Standards and quality).

9. SERVICE LEVELS, CHARGE ADJUSTMENTS AND RETAINED CHARGE

- 9.1 The Parties shall comply with the provisions of Part A (Service Levels, Charge Adjustments and Milestones) of Schedule 6 (Performance Management).
- 9.2 The Supplier shall at all times during the Contract Period provide the Services to meet or exceed the Service Level Performance Measure for each Service Level Performance Criterion.

- 9.3 The Supplier acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of the Authority and that it shall entitle the Authority to the rights set out in Part A (Service Levels, Charge Adjustments and Milestones) of Schedule 6 (Performance Management) including the right to adjust fees by way of the Charge Adjustment and retain fees by way of the Retained Charge.
- 9.4 The Supplier acknowledges and agrees that any Charge Adjustment(s) and/or Retained Charge(s) are price adjustments to reflect the Service provided against the Service Level Performance Measures.
- 9.5 Not more than once in each Contract Year the Authority may, subject to agreement with the Supplier and upon at least one (1) Months' notice, change the weighting of the Service Level Performance Measure in respect of one or more Service Level Performance Criteria and/or introduce new Service Level Performance Criteria, and the Supplier shall not be entitled to increase the Contract Charges as a result of, such changes provided that 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.

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 continue to provide the Services in accordance with this Contract, but may seek Approval to its proposals to adjustments to be made to enable it to do so.
- 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 34.1.1 (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 an 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.
- 11.2 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

D. CONTRACT GOVERNANCE

12. PERFORMANCE MONITORING

- 12.1 The Supplier shall comply with the monitoring requirements set out in Part B (Performance Monitoring) of Schedule 6 (Performance Management).

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 notified to the Authority in writing by the Supplier within five (5) Working Days of the Commencement Date. Any change to the Supplier Representative shall be agreed in accordance with Clause 19 (Supplier Personnel).
- 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 AND AUDIT ACCESS

- 14.1 The Supplier shall keep and maintain for seven (7) years after the Expiry Date (or as long a period as may otherwise 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 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Contract Period and the period specified in Clause 14, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Contract including in order to:
 - (a) verify the accuracy of the Contract Charges and any other amounts payable by the Authority under this Contract (and proposed or actual variations to them in accordance with this Contract);
 - (b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;
 - (c) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
 - (d) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - (e) identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Sub-Contractors or their ability to perform the Services;
 - (f) obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - (g) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
 - (h) carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
 - (i) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - (j) verify the accuracy and completeness of any information delivered or required by this Contract;
 - (k) review the Supplier's quality management systems (including any quality manuals and procedures);
 - (l) review the Supplier's compliance with the Standards;

(m) inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or

(n) review the integrity, confidentiality and security of the Authority Data.

- 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 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 co-operation and assistance in the provision of:
- 14.4.1 all reasonable information requested by the Authority within the scope of the audit;
 - 14.4.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and
 - 14.4.3 access to the Supplier Personnel.
- 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.

15. CHANGE

15.1 Variation Procedure

- 15.1.1 Subject to the provisions of this Clause 15 and of Schedule 3 (Contract Charges, Payment and Invoicing), either Party may request a variation to this Contract provided that such variation does not amount to a substantial modification or 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, signing and sending the Variation Form to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred.
- 15.1.3 Where the Authority has so specified in, or on receipt from the Supplier of, a Variation Form, the Supplier shall carry out an impact assessment of the Variation on the Services (the "**Impact Assessment**"). The Impact Assessment shall be completed in good faith and shall include:
- (a) details of the impact of the proposed Variation on the Services and the Supplier's ability to meet its other obligations under this Contract;
 - (b) details of the cost of implementing the proposed Variation;
 - (c) details of the on-going costs required by the proposed Variation when implemented, including any increase or decrease in the Contract Charges (including the Day Rates), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
 - (d) a timetable for the implementation, together with any proposals for the testing of the Variation; and
 - (e) such other information as the Authority may reasonably request in (or in response to) the Variation request.
- 15.1.4 The Parties may agree to adjust the time limits specified in the Variation Form to allow for the preparation of the Impact Assessment.
- 15.1.5 The receiving Party shall respond to the request within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Authority having regard to the nature of the Services and the proposed Variation.

- 15.1.6 In the event that:
- (a) the Supplier is unable to agree to or provide the Variation; and/or
 - (b) the Parties are unable to agree a change to the Contract Charges that may be included in a request for a Variation or response to it as a consequence thereof,

the Authority may:

- (i) agree to continue this Contract without the Variation; or
 - (ii) terminate this Contract with immediate effect.
- 15.1.7 If the Parties agree the Variation in writing, 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 Day Rates as the result of a:

- (a) General Change in Law; or
- (b) Specific Change in Law which was reasonably foreseeable at the Commencement Date.

15.2.2 If a Specific Change in Law occurs or will occur during the Contract Period (other than as referred to in Clause (b)), the Supplier shall:

- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change including:
 - (i) whether any Variation is required to the provision of the Services, the Day Rates or this Contract; and
 - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to achieve a Milestone and/or to meet the Service Level Performance Measures; and
- (b) provide the Authority with evidence:
 - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (iii) demonstrating that any expenditure that has been avoided, has been taken into account in amending the Day Rates.

15.2.3 Any change in the Day Rates or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 15.2.1(b)) shall be implemented in accordance with the Variation Procedure.

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 3 (Contract Charges, Payment 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 Clauses 14 (Records and Audit Access), 26.5 (Freedom of Information) and 26.6 (Protection of Personal Data).

16.1.3 If the Authority fails to pay any undisputed Contract Charges properly invoiced under this Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

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

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 If the Authority wishes to exercise its right pursuant to Clause 16.3.1 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Authority's reasons for retaining or setting off the relevant Contract Charges.

16.3.3 The Supplier shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.

16.4 Foreign Currency

16.4.1 Any requirement of Law to account for the Services in any currency other than Sterling, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier without any additional cost or Contract Charges to the Authority.

16.4.2 The Authority shall provide all reasonable assistance to facilitate compliance with Clause 16.4.1 by the Supplier.

16.5 Income Tax and National Insurance Contributions

16.5.1 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:

(a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and

(b) indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services by the Supplier or any Supplier Personnel.

16.5.2 In the event that any one of the Supplier Personnel is a Worker who receives consideration relating to the Services, then, in addition to its obligations under Clause 16.5.1, the Supplier shall ensure that its contract with the Worker contains the following requirements:

(a) that the Authority may, at any time during the Contract Period, request that the Worker provides information which demonstrates how the Worker complies with the

requirements of Clause 16.5.1, or why those requirements do not apply to it. In such case, the Authority may specify the information which the Worker must provide and the period within which that information must be provided;

- (b) that the Worker's contract shall, if required by the Authority, be terminated if:
 - (i) the Worker fails to provide the information requested by the Authority within the time specified by the Authority under Clause 23.5.2(a); and/or
 - (ii) the Worker provides information which the Authority considers is inadequate to demonstrate how the Worker complies with Clauses 16.5.1(a) or 16.5.1(b) or confirms that the Worker is not complying with those requirements; and
- (c) that the Authority may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

17. PROMOTING TAX COMPLIANCE

- 17.1 This Clause 17 shall apply if the Contract Charges payable under this Contract exceed or are likely to exceed five (5) million pounds during the Contract Period. If, at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
 - 17.1.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
 - 17.1.2 promptly provide to the Authority:
 - (a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 17.2 In the event that the Supplier fails to comply with this Clause 17 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.

F. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS

18. KEY PERSONNEL

- 18.1 The Parties have agreed to the appointment of the Key Personnel. Part B of Schedule 4 (Mobilisation Plan and Key Personnel) lists the key roles ("**Key Roles**") and names of the persons who the Supplier shall appoint to fill those Key Roles at the Commencement Date.
- 18.2 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Contract Period.
- 18.3 The Authority may identify any further roles (including any roles associated with the provision of any Optional Services instructed by the Authority pursuant to Clause 7.7 (Optional Services)) as being Key Roles and the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 18.4 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Schedule 10 (Exit Management)) unless:
 - 18.4.1 requested to do so by the Authority;
 - 18.4.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 18.4.3 the person's employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated for material breach of contract by the employee; or
 - 18.4.4 the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

- 18.5 The Supplier shall:
- 18.5.1 notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - 18.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
 - 18.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least three (3) Months' notice;
 - 18.5.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Services; and
 - 18.5.5 ensure that any replacement for a Key Role:
 - (a) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (b) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
 - 18.5.6 not remove or replace, and shall procure that any Sub-Contractor shall not remove or replace, any Key Personnel during the Contract Period without Approval.
- 18.6 The Authority may require the Supplier to remove any Key Personnel that the Authority considers in any respect unsatisfactory. The Authority shall not be liable for the cost of replacing any Key Personnel.

19. SUPPLIER PERSONNEL

19.1 Supplier Personnel

- 19.1.1 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) obey all lawful instructions and reasonable directions of the Authority (including if so required by the Authority, the ICT Policy) and provide the Services to the reasonable satisfaction of the Authority; and
 - (iv) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements set out in Schedule 8 (Security);
 - (c) subject to Schedule 11 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;
 - (d) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
 - (e) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;

- (f) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
 - (g) procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the Expiry Date.
- 19.1.2 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:
- (a) refuse admission to the relevant person(s) to the Authority Premises; and/or
 - (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).
- 19.1.3 The decision of the Authority as to whether any person is to be refused access to the Authority Premises shall be final and conclusive.

20. STAFF TRANSFER

- 20.1 The Parties agree that there will not be a Relevant Transfer on the commencement of the provision of the Services or any part of the Services and therefore Part A of Schedule 11 (Staff Transfer) shall apply.
- 20.2 The Parties agreed that there will not be a Relevant Transfer on the expiry or termination of the Services or any part of the Services and that Part B of Schedule 11 (Staff Transfer) shall apply.
- 20.3 The Supplier shall both during and after the Contract Period indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

21. SUPPLY CHAIN RIGHTS AND PROTECTION

21.1 Appointment of Sub-Contractors

- 21.1.1 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.
- 21.1.2 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.
- 21.1.3 If requested by the Authority within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 21.1.2, the Supplier shall also provide:
- (a) a copy of the proposed Sub-Contract; and
 - (b) any further information reasonably requested by the Authority.
- 21.1.4 The Authority may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 21.1.2 (or, if later, receipt of any further information requested pursuant to Clause 21.1.3), object to the appointment of the relevant Sub-Contractor if it considers that:

- (a) the appointment of a proposed Sub-Contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority under this Contract;
- (b) the proposed Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
- (c) the proposed Sub-Contractor employs unfit persons,

in which case, the Supplier shall not proceed with the proposed appointment.

21.1.5 If:

- (a) the Authority has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:
 - (i) the Supplier's notice issued pursuant to Clause 21.1.2; and
 - (ii) any further information requested by the Authority pursuant to Clause 21.1.3; and
- (b) the proposed Sub-Contract is not a Key Sub-Contract which shall require the written consent of the Authority in accordance with Clause 21.2 (Appointment of Key Sub-Contractors)],

the Supplier may proceed with the proposed appointment.

21.2 Appointment of Key Sub-Contractors]

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

21.2.2 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 or otherwise not to be unreasonably withheld or delayed). The Authority may reasonably withhold its consent to the appointment of a Key Sub-Contractor if it considers that:

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

21.2.3 The Supplier shall provide the Authority with the following information in respect of the proposed Key Sub-Contractor:

- (a) the Key Sub-Contract price expressed as a percentage of the total projected Contract Charges over the Contract Period; and
- (b) the credit rating of the Key Sub-Contractor as provided by [Dun and Bradstreet].

21.2.4 Except where the Authority has given its prior written consent under Clause 21.2.1, 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 in Clauses 26.1 (Security Requirements), 26.2 (Protection of Authority Data) and 26.6 (Protection of Personal Data);
- (ii) FOIA requirements set out in Clause 26.5 (Freedom of Information);
- (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 7.1.4(l) (Provision of Services);
- (iv) the keeping of records in respect of the Services being provided under the Key Sub-Contract;
- (v) the conduct of audits set out in Clause 14 (Records and Audit Access);
- (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 33 (Authority Termination Rights), 35 (Termination by Either Party) and 37 (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;
- (h) a provision, where a provision in Schedule 11 (Staff Transfer) imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, requiring the Key Sub-Contractor to provide such indemnity, undertaking or warranty to the Authority, Former Supplier or the Replacement Supplier as the case may be.

21.3 Supply Chain Protection

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

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

21.3.2 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) provide a summary of its compliance with this Clause 21.3.2, such data to be certified each quarter by a director of the Supplier as being accurate and not misleading.

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

21.3.4 Notwithstanding any provision of Clauses 26.3 (Confidentiality) and 27 (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).

21.4 Termination of Sub-Contracts

21.4.1 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 33 (Authority Termination Rights) except Clause 33.5 (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.

21.5 Competitive Terms

- 21.5.1 If the Authority is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may:
 - (a) require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
 - (b) subject to Clause 21.4 (Termination of Sub-Contracts), enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.
- 21.5.2 If the Authority exercises the option pursuant to Clause 21.5.1, then the Contract Charges shall be reduced by an amount that is agreed in accordance with the Variation Procedure.
- 21.5.3 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
 - (a) the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
 - (b) any reduction in the Contract Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

21.6 Retention of Legal Obligations

- 21.6.1 Notwithstanding the Supplier's right to Sub-Contract pursuant to this Clause 21 (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

22. AUTHORITY PREMISES

22.1 Licence to occupy Authority Premises

- 22.1.1 Any Authority Premises shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Contract. The Supplier shall have the use of such Authority Premises as

licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Contract and in accordance with Schedule 10 (Exit Management).

- 22.1.2 The Supplier shall limit access to the Authority Premises to such Supplier Personnel as is necessary to enable it to perform its obligations under this Contract and the Supplier shall co-operate (and ensure that the Supplier Personnel co-operate) with such other persons working concurrently on such Authority Premises as the Authority may reasonably request.
- 22.1.3 Save in relation to such actions identified by the Supplier in accordance with Clause 2 (Due Diligence), should the Supplier require modifications to the Authority Premises, such modifications shall be subject to Approval and shall be carried out by the Authority at the Supplier's expense. The Authority shall undertake any modification work which it approves pursuant to this Clause 22.1.3 without undue delay. Ownership of such modifications shall rest with the Authority.
- 22.1.4 The Supplier shall observe and comply with such rules and regulations as may be in force at any time for the use of such Authority Premises and conduct of personnel at the Authority Premises as determined by the Authority, and the Supplier shall pay for the full cost of making good any damage caused by the Supplier Personnel other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 22.1.5 The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Supplier or the Supplier Personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the Authority retains the right at any time to use any Authority Premises in any manner it sees fit.

22.2 Security of Authority Premises

- 22.2.1 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.
- 22.2.2 The Authority shall afford the Supplier upon Approval (the decision to Approve or not will not be unreasonably withheld or delayed) an opportunity to inspect its physical security arrangements.

23. AUTHORITY PROPERTY

- 23.1 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.
- 23.2 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.
- 23.3 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.
- 23.4 The Authority Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Authority otherwise within five (5) Working Days of receipt.
- 23.5 The Supplier shall maintain the Authority Property in good order and condition (excluding fair wear and tear) and shall use the Authority Property solely in connection with this Contract and for no other purpose without Approval.
- 23.6 The Supplier shall ensure the security of all the Authority Property whilst in its possession in accordance with the Authority's Security Policy and the Authority's reasonable security requirements from time to time.

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

24. SUPPLIER EQUIPMENT

- 24.1 The Supplier shall provide all the Supplier Equipment necessary for the provision of the Services.
- 24.2 The Supplier shall not deliver any Supplier Equipment nor begin any work on the Authority Premises without obtaining Approval.
- 24.3 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.
- 24.4 The loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Contract, including the Service Level Performance Measures.
- 24.5 The Supplier shall maintain all Supplier Equipment within the Authority Premises in a safe, serviceable and clean condition.
- 24.6 The Supplier shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
- 24.6.1 remove from the Authority Premises any Supplier Equipment or any component part of Supplier Equipment which in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with this Contract; and
 - 24.6.2 replace such Supplier Equipment or component part of Supplier Equipment with a suitable substitute item of Supplier Equipment.

H. INTELLECTUAL PROPERTY AND INFORMATION

25. INTELLECTUAL PROPERTY RIGHTS

25.1 Allocation of title to IPR

- 25.1.1 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 the:
 - (i) Supplier Background IPR; and
 - (ii) Third Party IPR.
 - (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including the:
 - (i) Authority Background IPR;
 - (ii) Authority Data; and
 - (iii) Project Specific IPR.
- 25.1.2 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 25.1, 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). Without prejudice to the generality of the foregoing, the Supplier hereby assigns to the Authority absolutely with full title guarantee (including by way of present assignment of future rights) all rights, titles and other interest in and to the Project Specific IPR.
- 25.1.3 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.

25.2 Licences granted by the Authority: Project Specific IPR

- 25.2.1 The Authority hereby grants to the Supplier a perpetual, royalty-free, irrevocable, non-exclusive licence to use the Project Specific IPR including but not limited to the right to copy, adapt, publish and distribute such Project Specific IPR solely for the purposes of, and to the extent necessary for, the provision of the Services and otherwise for the purposes of the Contract, such licence to include 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 26.3 (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.

25.3 Licences granted by the Supplier: Supplier Background IPR

- 25.3.1 The Supplier hereby grants to the Authority a perpetual, royalty-free and non-exclusive licence to use the Supplier Background IPR for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or, if the Authority is a Central Government Body, any other Central Government Body's) business or function.
- 25.3.2 At any time during the Contract Period or following the Expiry Date, the Supplier may terminate a licence granted in respect of the Supplier Background IPR under Clause 25.3.1 by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if there is an Authority Cause which constitutes a material breach of the terms of Clauses 25.3.1 which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Authority written notice specifying the breach and requiring its remedy.
- 25.3.3 In the event the licence of the Supplier Background IPR is terminated pursuant to Clause 25.3.2, the Authority shall:
- (a) immediately cease all use of the Supplier Background IPR;
 - (b) at the discretion of the Supplier, return or destroy documents and other tangible materials that contain any of the Supplier Background IPR, provided that if the Supplier has not made an election within six (6) months of the termination of the licence, the Authority may destroy the documents and other tangible materials that contain any of the Supplier Background IPR; and
 - (c) ensure, so far as reasonably practicable, that any Supplier Background IPR that is held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing Supplier Background IPR.

25.4 Authority's right to sub-license

- 25.4.1 The Authority may sub-license:
- (a) the rights granted under Clause 25.3.1 (Licences granted by the Supplier: Supplier Background IPR) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
 - (i) the sub-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 25.3.1 (Licences granted by the Supplier: Supplier Background IPR) for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or, if the Authority is a Central Government Body, any other Central Government Body's) business or function; and
 - (b) the rights granted under Clause 25.3.1 (Licences granted by the Supplier: Supplier Background IPR) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Project Specific IPR provided that the sub-licence is on terms no broader than those granted to the Authority.

25.5 Authority's right to assign/novate licences

25.5.1 The Authority:

- (a) may assign, novate or otherwise transfer its rights and obligations under the licence granted pursuant to Clause 25.3.1 (Licences granted by the Supplier: Supplier Background IPR) to:
 - (i) a Central Government Body; or
 - (ii) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.
- (b) 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 25.3.1 (Licences granted by the Supplier: Supplier Background IPR). If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licence granted in Clause 25.3.1 (Licences granted by the Supplier: Supplier Background IPR).
- (c) If a licence granted in Clause 25.3.1 (Licences granted by the Supplier: Supplier Background IPR) is novated under Clause 25.5.1(a) or there is a change of the Authority's status pursuant to Clause 25.5.1(b) (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.

25.6 Third Party IPR

25.6.1 The Supplier shall procure that the owners or the authorised licensors of any Third Party IPR grant a direct licence to the Authority on terms at least equivalent to those set out in Clause 25.3.1 (Licences granted by the Supplier: Supplier Background IPR) and Clause (a) (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 25.3.1 (Licences granted by the Supplier: Supplier Background IPR) and Clause (a) (Authority's right to assign/novate licences) in respect of any such Third Party IPR, the Supplier shall:

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

25.7 Licence granted by the Authority

25.7.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Authority Background IPR and the Authority Data solely to the extent necessary for providing the Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:

- (a) any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 26.3 (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.

25.8 Termination of licenses

25.8.1 Subject to Clauses 25.3.2 and/or 25.3.3 (Licences granted by the Supplier: Supplier Background IPR), all licences granted pursuant to this Clause 25 (Intellectual Property Rights) (other than those granted pursuant to Clause 25.2.1 (Licence granted by the Authority: Project Specific IPR), Clause 25.6 (Third Party IPR) and 25.7.1 (Licence granted by the Authority)) shall survive the Expiry Date.

- 25.8.2 The Supplier shall, if requested by the Authority in accordance with Schedule 10 (Exit Management), grant (or procure the grant) to the Replacement Supplier of a licence to use any Supplier Background IPR and/or Third Party IPR on terms equivalent to those set out in Clause 25.3.1 (Licences granted by the Supplier: Supplier Background IPR) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.
- 25.8.3 The licence granted pursuant to Clause 25.2.1 (Licence granted by the Authority: Project Specific IPR), Clause 25.7.1 (Licence granted by the Authority) and any sub-licence granted by the Supplier in accordance with Clause 25.2.1 (Licence granted by the Authority: Project Specific IPR) or Clause 25.7.1 (Licence granted by the Authority) shall terminate automatically on the Expiry Date and the Supplier shall:
- (a) immediately cease all use of the Project Specific IPR, 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 Project Specific IPR, 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 Project Specific IPR, the Authority Background IPR and the Authority Data (as the case may be); and
 - (c) ensure, so far as reasonably practicable, that any Project Specific IPR, 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 Project Specific IPR, Authority Background IPR and/or Authority Data.

25.9 IPR Indemnity

- 25.9.1 The Supplier shall during and after the Contract Period, on written demand indemnify the Authority against all Losses incurred by, awarded against or agreed to be paid by the Authority (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
- 25.9.2 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:
- (a) procure for the Authority the right to continue using the relevant item which is subject to the IPR Claim; or
 - (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other Services;
 - (iii) there is no additional cost to the Authority; and
 - (iv) the terms and conditions of this Contract shall apply to the replaced or modified Services.
- 25.9.3 If the Supplier elects to procure a licence in accordance with Clause (a) or to modify or replace an item pursuant to Clause (b), but this has not avoided or resolved the IPR Claim, then:
- (i) the Authority may terminate this Contract by written notice with immediate effect; and
 - (ii) without prejudice to the indemnity set out in Clause 25.9.1, 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.

26. SECURITY AND PROTECTION OF INFORMATION

26.1 Security Requirements

- 26.1.1 The Supplier shall comply with the Security Policy and the requirements of Schedule 8 (Security) including the Security Management Plan and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- 26.1.2 The Authority shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 26.1.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Services it may propose a Variation to the Authority. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Contract Charges shall then be subject to the Variation Procedure.
- 26.1.4 Until and/or unless a change to the Contract Charges is agreed by the Authority pursuant to the Variation Procedure the Supplier shall continue to provide the Services in accordance with its existing obligations.

26.2 Protection of Authority Data

- 26.2.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 26.2.2 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.
- 26.2.3 To the extent that the Authority Data is held and/or Processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority and in the format (if any) specified by the Authority and in any event as specified by the Authority from time to time in writing.
- 26.2.4 The Supplier shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- 26.2.5 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with Clause 26.2.6 (Protection of Authority Data). 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).
- 26.2.6 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.
- 26.2.7 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.
- 26.2.8 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 as 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 as required by the Authority.

26.3 Confidentiality

- 26.3.1 For the purposes of this Clause 26.3, 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.
- 26.3.2 Except to the extent set out in this Clause 26.3 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.
- 26.3.3 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 26.5 (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.
- 26.3.4 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.
- 26.3.5 Subject to Clauses 26.3.2 and 26.3.7, 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.
- 26.3.6 Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 26.3.5, 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.

- 26.3.7 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 United Kingdom Parliament and any committees of the United Kingdom Parliament or if required by any United Kingdom 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 26.3.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
 - (e) on a confidential basis for the purpose of the exercise of its rights under this Contract; or
 - (f) to a proposed transferee, assignee or novatee of, or successor in title to the Authority, and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 26.3.
- 26.3.8 Nothing in this Clause 26.3 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.
- 26.3.9 In the event that the Supplier fails to comply with Clauses 26.3.2 to 26.3.5, the Authority reserves the right to terminate this Contract for material Default.

26.4 **Transparency**

- 26.4.1 The Parties acknowledge and agree that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract and any Transparency Reports under it is not Confidential Information and shall be made available in accordance with the procurement policy note 13/15 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/458554/Procurement_Policy_Note_13_15.pdf 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.
- 26.4.2 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.
- 26.4.3 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.

26.5 **Freedom of Information**

- 26.5.1 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.

26.5.2 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.

26.6 Protection of Personal Data

26.6.1 Where any Personal Data are Processed in connection with the exercise of the Parties' rights and obligations under this Contract, the Parties acknowledge that the Authority is the Data Controller and that the Supplier is the Data Processor.

26.6.2 The Supplier shall:

(a) Process the Personal Data only in accordance with instructions from the Authority to perform its obligations under this Contract;

(b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data, including the measures as are set out in Clauses 26.1 (Security Requirements) and 26.2 (Protection of Authority Data);

(c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under this Contract)

(d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:

(i) are aware of and comply with the Supplier's duties under this Clause 26.6.2 and Clauses 26.1 (Security Requirements), 26.2 (Protection of Authority Data) and 26.3 (Confidentiality);

(ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and

(iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);

(e) notify the Authority within five (5) Working Days if it receives:

(i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Authority's obligations under the DPA;

(ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or

(iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

- (f) provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made (as referred to at Clause 26.6.2(e)), including by promptly providing:
 - (i) the Authority with full details and copies of the complaint, communication or request;
 - (ii) where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
 - (iii) the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and
- (g) if requested by the Authority, provide a written description of the measures it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 26.6.2 and provide to the Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

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

- (a) the Supplier shall propose a Variation to the Authority which, if it is agreed by the Authority, shall be dealt with in accordance with the Variation Procedure and Clauses 26.6.3(b) to 26.6.3(d);
- (b) the Supplier shall set out in its proposal to the Authority for a Variation details of the following:
 - (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
 - (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and
 - (iii) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
- (c) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Authority’s compliance with the DPA;
- (d) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with then-current Authority, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
- (e) the Supplier shall comply with such other instructions and shall carry out such other actions as the Authority may notify in writing, including:
 - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Contract or a separate data processing agreement between the Parties; and
 - (ii) procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
 - (A) a direct data processing agreement with the Authority on such terms as may be required by the Authority; or

(B) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Authority and the Sub-Contractor relating to the relevant Personal Data transfer, and

(iii) in each case which the Supplier acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Authority deems necessary for the purpose of protecting Personal Data.

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

27. PUBLICITY AND BRANDING

27.1 The Supplier shall not:

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

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

without Approval.

27.2 Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services and Supplier Equipment) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

I. LIABILITY AND INSURANCE

28. LIABILITY

28.1 Unlimited Liability

28.1.1 Neither Party excludes or limits its liability for:

(a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);

(b) bribery or Fraud by it or its employees;

(c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

(d) any liability to the extent it cannot be excluded or limited by Law.

28.1.2 The Supplier does not exclude or limit its liability in respect of the indemnity in Clause 25.9 (IPR Indemnity) and in each case whether before or after the making of a demand pursuant to the indemnity therein.

28.2 Financial Limits

28.2.1 Subject to Clause 28.1 (Unlimited Liability), the Supplier's total aggregate liability 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 ten million pounds (£10,000,000) in each Contract Year during the Contract Period.

28.2.2 Subject to Clauses 28.1.1 (Unlimited Liability) 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 £4m, being an estimate of the anticipated Contract Charges payable in respect of the Core Services in the first Contract Year; and
- (b) in relation to any Authority Causes occurring in each subsequent Contract Year that commences during the remainder of the Contract Period, a sum equal to the Contract Charges payable to the Supplier under this Contract in the previous Contract Year.

28.3 Non-recoverable Losses

28.3.1 Subject to Clause 28.1.1 (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).

28.4 Recoverable Losses

28.4.1 Subject to Clause 28.2.1 (Financial Limits), and notwithstanding Clause 28.3.1 (Non-recoverable Losses), the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:

- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the additional cost of procuring Replacement Services for the remainder of the Contract Period and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Contract;
- (d) any compensation or interest paid to a third party by the Authority; and
- (e) any fine, penalty or costs incurred by the Authority pursuant to Law.

28.5 Miscellaneous

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

28.5.2 Subject to any rights of the Authority under this Contract (including in respect of an IPR Claim), any claims by a third party which result in an indemnity being claimed by one Party from the other Party to this Contract shall be dealt with in accordance with the provisions of Schedule 16 (Conduct of Claims).

29. INSURANCE

29.1 The Supplier shall effect and maintain insurances in relation to the performance of its obligations under this Contract, and shall procure that Sub-Contractors shall effect and maintain insurances in relation to the performance of their obligations under any Sub-Contract, in accordance with Schedule 15 (Insurance Requirements).

29.2 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities arising under this Contract.

J. REMEDIES AND RELIEF

30. AUTHORITY REMEDIES FOR DEFAULT

30.1 Remedies

- 30.1.1 Without prejudice to any other right or remedy of the Authority howsoever arising (including under Schedule 6 (Performance Management)), if the Supplier commits any Default of this Contract then the Authority may (whether or not any part of the Services have been Delivered) do any of the following:
- (a) at the Authority's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (where such Default is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of this Contract are fulfilled, in accordance with the Authority's instructions;
 - (b) carry out, at the Supplier's expense, any work necessary to make the provision of the Services comply with this Contract;
 - (c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):
 - (i) instruct the Supplier to comply with the Rectification Plan Process;
 - (ii) suspend this Contract (whereupon the relevant provisions of Clause 36 (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 36 (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;
- 30.1.2 Where the Authority exercises any of its step-in rights under Clauses 30.1.1(c)(ii) or 30.1.1(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.

30.2 Rectification Plan Process

- 30.2.1 Where the Authority has instructed the Supplier to comply with the Rectification Plan Process pursuant to Clause 30.1.1(c)(i) or where a Significant Service Level Failure has occurred:
- (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 or Significant Service Level Failure (as appropriate) that has occurred, including a root cause analysis;
 - (ii) the actual or anticipated effect of the Default or Significant Service Level Failure (as appropriate); and
 - (iii) the steps which the Supplier proposes to take to rectify the Default or Significant Service Level Failure (as appropriate) and to prevent such Default or Significant Service Level Failure (as appropriate) from recurring, including timescales for such steps and for the rectification of the Default or Significant Service Level Failure (as appropriate).

- 30.2.2 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 in accordance with Schedule 12 (Dispute Resolution Procedure).
- 30.2.3 The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- (a) is insufficiently detailed to be capable of proper evaluation;
 - (b) will take too long to complete;
 - (c) will not prevent reoccurrence of the Default or Significant Service Level Failure (as appropriate); and/or
 - (d) will rectify the Default or Significant Service Level Failure (as appropriate) but in a manner which is unacceptable to the Authority.
- 30.2.4 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.
- 30.2.5 If the Authority consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

31. SUPPLIER RELIEF DUE TO AUTHORITY CAUSE

31.1 If the Supplier has failed to:

- 31.1.1 achieve a Type 3 Milestone by the relevant Target Date;
 - 31.1.2 provide the Services in accordance with the Service Levels; or
 - 31.1.3 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 an 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 33 (Authority Termination Rights) except Clause 33.5 (Termination Without Cause);
- (c) where the Supplier Non-Performance constitutes the failure to achieve a Type 3 Milestone by the relevant Target Date:
 - (i) the Target Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause (but without impact on the retention and allocation of Retained Charge to particular Type 3 Milestones in accordance with Annex 3 (Milestones) to Part A of Schedule 6 (Performance Management)); and/or
 - (ii) if the Authority, acting reasonably, considers it appropriate, the Key Milestone Plan shall be amended to reflect any consequential revisions required to subsequent Target Dates resulting from the Authority Cause;

(d) where the Supplier Non-Performance constitutes a Service Level Failure the Supplier shall, to the extent that the Supplier can demonstrate that the Service Level Failure was caused by the Authority Cause, be entitled to invoice for the Contract Charges for the provision of the relevant Services affected by the Authority Cause on the basis that the Service period Performance Score is deemed to be 3.0, provided always that the Service Period Performance Score for the previous Service Period was 3.0 or higher.

- 31.2 In order to claim any of the rights and/or relief referred to in Clause 31.1, the Supplier shall:
- 31.2.1 comply with its obligations under Clause 11 (Notification of Authority Cause); and
 - 31.2.2 where an Authority Cause has caused, or is likely to cause, a Supplier Non-Performance, give the Authority notice (a “**Relief Notice**”) within the time period set out in Clause 11 (Notification of Authority Cause) 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.
- 31.3 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.
- 31.4 Without prejudice to Clause 7.6 (Continuing obligation to provide the Services), if a Dispute arises as to:
- 31.4.1 whether a Supplier Non-Performance would not have occurred but for a Authority Cause; and/or
 - 31.4.2 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.
- 31.5 Any Variation that is required to the Key Milestone Plan or to the Contract Charges pursuant to this Clause 31 shall be implemented in accordance with the Variation Procedure.

32. FORCE MAJEURE

- 32.1 Subject to the remainder of Clause 32, a Party may claim relief under Clause 32 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.
- 32.2 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.
- 32.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under Clause 32 to the extent that consequences of the relevant Force Majeure Event:
- 32.3.1 are capable of being mitigated but the Supplier has failed to do so; and/or
 - 32.3.2 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.
- 32.4 Subject to Clause 32.5, 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.
- 32.5 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.

- 32.6 Where, as a result of a Force Majeure Event:
- 32.6.1 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 thirty (30) 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;
- 32.6.2 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 30.1.1(b) and 30.1.1(c) (Authority Remedies for Default) as a result of such failure;
 - (ii) to award a Service Period Performance Score of under 3.0 for a Service Period to the extent that the Supplier's failure to otherwise achieve a Service Period Performance Score of 3.0 or higher has been caused by the Force Majeure Event; and
 - (b) the Supplier shall be entitled to receive payment of the Contract Charges on a time and materials basis in accordance with Part B (Contract Charges) of Schedule 3 only to the extent that the Supplier continues to provide the Services during the occurrence of the Force Majeure Event.
- 32.7 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.
- 32.8 Relief from liability for the Affected Party under this Clause 32 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 32.7.

K. TERMINATION AND EXIT MANAGEMENT

33. AUTHORITY TERMINATION RIGHTS

33.1 Termination on Material Default

- 33.1.1 The Authority may terminate this Contract for material Default by issuing a Termination Notice to the Supplier where:
- (a) the Supplier commits a Significant Service Level Failure:
 - (i) which in the opinion of the Authority is remediable but the Supplier has not remedied such Significant Service Level Failure to the satisfaction of the Authority in accordance with the Rectification Plan Process; or
 - (ii) during the three (3) month period immediately following the approval of a Rectification Plan by the Authority in accordance with clause 30.2;
 - (b) the representation and warranty given by the Supplier pursuant to Clause 4.2.5 (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 Clause 28.2.1 (Liability);

- (d) an event or breach by the Supplier has occurred in respect of which the Authority expressly reserves the right to terminate this Contract for material Default, including pursuant to any of the following Clauses: 7.4.1 (Provision of Services), , 10.4 (Disruption), 14.5 (Records and Audit Access), 17.2 (Promoting Tax Compliance), 26.3.9 (Confidentiality), 42.6.2 (Prevention of Fraud and Bribery), Paragraph 1.2.4 of the Annex to Part A and Paragraph 1.2.4 of the Annex to Part B of Schedule 11: Staff Transfer;
 - (e) the Supplier commits any material Default of this Contract which is not, in the reasonable opinion of the Authority, capable of remedy; and/or
 - (f) the Supplier commits a Default, including a material Default, which in the opinion of the Authority is remediable but has not remedied such Default to the satisfaction of the Authority in accordance with the Rectification Plan Process;
- 33.1.2 For the purpose of Clause 33.1.1, 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.
- 33.2 Termination in Relation to Financial Standing**
- 33.2.1 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.
- 33.3 Termination on Insolvency**
- 33.3.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier where an Insolvency Event affecting the Supplier occurs.
- 33.4 Termination on Change of Control**
- 33.4.1 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.
- 33.4.2 The Supplier shall ensure that any notification made pursuant to Clause 33.4.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.
- 33.4.3 The Authority may terminate this Contract under Clause 33.4 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.
- 33.5 Termination for breach of Regulations**
- 33.5.1 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).
- 33.6 Termination Without Cause**
- 33.6.1 The Authority shall have the right to terminate this Contract at any time by issuing a Termination Notice to the Supplier giving at least thirty (30) Working Days written notice.
- 33.7 Termination in Relation to Variation**

- 33.7.1 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.

34. SUPPLIER TERMINATION RIGHTS

34.1 Termination on Authority Cause for Failure to Pay

- 34.1.1 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 £700,000 and such amount remains outstanding 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,

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).

- 34.1.2 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).

35. TERMINATION BY EITHER PARTY

35.1 Termination for continuing Force Majeure Event

- 35.1.1 Either Party may, by issuing a Termination Notice to the other Party terminate this Contract in accordance with Clause 32.6.1(a) (Force Majeure).

36. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION

- 36.1 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.

- 36.2 Any suspension of this Contract under Clause 36.1 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.

- 36.3 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:

- 36.3.1 an increase in the Contract Charges in respect of the provision of the Services that have not been terminated; and/or
- 36.3.2 reject the Variation.

37. CONSEQUENCES OF EXPIRY OR TERMINATION

- 37.1 **Consequences of termination under Clauses 33.1 (Termination on Material Default), 33.2 (Termination in Relation to Financial Standing) and 33.7 (Termination in Relation to Variation)**

37.1.1 Where the Authority:

(a) terminates (in whole or in part) this Contract under Clause 33.1 (Termination on Material Default, Clause 33.2 (Termination in relation to financial standing) or Clause 33.7 (Termination in relation to variation) and

(b) then makes other arrangements for the supply of the Services,

the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period provided that Authority shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Authority to the Supplier until the Authority has established the final cost of making those other arrangements.

37.2 Consequences of termination under Clauses 33.6 (Termination without Cause) and 34.1 (Termination on Authority Cause for Failure to Pay)

37.2.1 Subject to Clause 37.2.2, where:

(a) the Authority terminates (in whole or in part) this Contract under Clause 33.6 (Termination without Cause), the Supplier may recover from the Authority any costs it reasonably and properly incurs in winding down and concluding the provision of the Services;

(b) the Supplier terminates this Contract pursuant to Clause 34.1 (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,

in each case, provided that the Supplier:

(i) takes all reasonable steps to mitigate such costs or Losses; and

(ii) submits to the Authority a fully itemised and costed list of such costs or Losses claimed, together with supporting evidence as to expenditure and quantum of such costs or Losses (including such further evidence as the Authority may require).

37.2.2 The Authority shall not be liable under Clause 37.2.1 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;

(b) would have been claimable under insurance but for the Supplier's failure to comply with its obligation to insure under Clause 29 (Insurance));

(c) 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.

37.3 Consequences of termination for other reasons

37.3.1 The costs of termination incurred by the Parties shall lie where they fall if this Contract is terminated:

(a) by either Party pursuant to Clause 35.1 (Termination for Continuing Force Majeure Event);

(b) by the Authority pursuant to:

(i) Clause 33.3 (Termination on Insolvency);

(ii) Clause 33.4 (Termination on Change of Control);

(iii) Clause 33.5 (Termination for breach of Regulations); or

(iv) Clause 33.7 (Termination in Relation to Variation).

37.4 Consequences of Termination for Any Reason

37.4.1 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 and Audit Access), 25 (Intellectual Property Rights), 26.3 (Confidentiality), 26.5 (Freedom of Information) 26.6 (Protection of Personal Data), 28 (Liability), 37 (Consequences of Expiry or Termination), 43 (Severance), 45 (Entire Agreement), 46 (Third Party Rights) 48 (Dispute Resolution) and 49 (Governing Law and Jurisdiction), and the provisions of Schedule 1 (Definitions), Schedule 3 (Contract Charges, Payment and Invoicing), Schedule 10 (Exit Management), Schedule 11 (Staff Transfer), Schedule 12 (Dispute Resolution Procedure) and, without limitation to the foregoing, any other provision of this Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Expiry Date.

37.5 Exit management

37.5.1 The Parties shall comply with the exit management provisions set out in Schedule 10 (Exit Management).

L. MISCELLANEOUS AND GOVERNING LAW

38. COMPLIANCE

38.1 Health and Safety

38.1.1 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.

38.1.2 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

38.1.3 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.

38.2 Equality and Diversity

38.2.1 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).

38.3 Official Secrets Act and Finance Act

38.3.1 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.

38.4 Environmental Requirements

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

39. ASSIGNMENT AND NOVATION

39.1 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.

39.2 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:

- 39.2.1 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority;
- 39.2.2 any body (private sector or public sector) which takes over responsibility for the operation of the Intelligent Client Co-Ordinator (as defined in Schedule 2 (Services)); or
- 39.2.3 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 39.2.

39.3 A change in the legal status of the Authority shall not, subject to Clause 39.4 affect the validity of this Contract and this Contract shall be binding on any successor body to the Authority.

39.4 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 39.2.1 (the "Transferee" in the rest of this Clause) the right of termination of the Authority in Clause 33.3 (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 33.3 (Termination on Insolvency) and in the definition of Insolvency Event were references to the Transferee.

40. WAIVER AND CUMULATIVE REMEDIES

40.1 The rights and remedies under this Contract may be waived only by notice in accordance with Clause 47 (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.

40.2 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.

41. RELATIONSHIP OF THE PARTIES

41.1 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.

42. PREVENTION OF FRAUD AND BRIBERY

- 42.1 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:
- 42.1.1 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
 - 42.1.2 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.
- 42.2 The Supplier shall not during the Contract Period:
- 42.2.1 commit a Prohibited Act; and/or
 - 42.2.2 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.
- 42.3 The Supplier shall during the Contract Period:
- 42.3.1 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;
 - 42.3.2 keep appropriate records of its compliance with its obligations under Clause 42.3.1 and make such records available to the Authority on request;
 - 42.3.3 if so required by the Authority, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing that the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with this Contract are compliant with the Relevant Requirements. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request; and
 - 42.3.4 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.
- 42.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 42.1, or has reason to believe that it has or any of the Supplier Personnel have:
- 42.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 42.4.2 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
 - 42.4.3 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.
- 42.5 If the Supplier makes a notification to the Authority pursuant to Clause 42.4, 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 and Audit Access).
- 42.6 If the Supplier breaches Clause 42.3, the Authority may by notice:
- 42.6.1 require the Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
 - 42.6.2 immediately terminate this Contract for material Default.
- 42.7 Any notice served by the Authority under Clause 42.4 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).

43. SEVERANCE

- 43.1 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.
- 43.2 In the event that any deemed deletion under Clause 43.1 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.
- 43.3 If the Parties are unable to resolve the Dispute arising under Clause 43 within twenty (20) Working Days of the date of the notice given pursuant to Clause 43.2, this Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Contract is terminated pursuant to Clause 43.

44. FURTHER ASSURANCES

- 44.1 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.

45. ENTIRE AGREEMENT

- 45.1 This Contract and the documents referred to in it constitute the entire agreement between the Parties in respect of the matter and supersede and extinguish all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 45.2 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.
- 45.3 Nothing in this Clause 45 shall exclude any liability in respect of misrepresentations made fraudulently.

46. THIRD PARTY RIGHTS

- 46.1 A person who is not a Party to this Contract has no right under the CTRPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

47. NOTICES

- 47.1 Except as otherwise expressly provided within this Contract, any notices sent under this Contract must be in writing. For the purpose of Clause 47, an e-mail is accepted as being "in writing".
- 47.2 Subject to Clause 47.3, 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 47.3 and 47.4)	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.	Properly addressed and delivered as evidenced by signature of a delivery receipt

	Otherwise, delivery will occur at 9.00am on the next Working Day	
Royal Mail Signed For™ 1 st 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

47.3 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™ 1st Class or other prepaid in the manner set out in the table in Clause 47.2:

47.3.1 any Termination Notice (Clause 33 (Authority Termination Rights)),

47.3.2 any notice in respect of:

(a) partial termination, suspension or partial suspension (Clause 36 (Partial Termination, Suspension and Partial Suspension)),

(b) waiver (Clause 40 (Waiver and Cumulative Remedies))

(c) Default or Authority Cause; and

47.3.3 any Dispute Notice.

47.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 47.3 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™ 1st Class delivery (as set out in the table in Clause 47.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

47.5 Clause 47 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).

47.6 For the purposes of this Clause 47, the address and email address of each Party shall be

47.6.1 For the Authority:

Address: Department of Health, 79 Whitehall, SW1A 2NS

For the attention of: The NHS Supply Chain Project Director

47.6.2 For the Supplier:

Ernst & Young LLP

Address: 1 More London Place, London SE1 2AF

For the attention of: **REDACTED**.

48. DISPUTE RESOLUTION

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

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

49. GOVERNING LAW AND JURISDICTION

- 49.1 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.
- 49.2 Subject to Clause 48 (Dispute Resolution) and Schedule 12 (Dispute Resolution Procedure) (including the Authority's right to refer the Dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

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

Signed duly authorised for and on behalf of the SUPPLIER

Signature: ...REDACTED.
Name: ...REDACTED.
Position: ...Partner.....
Date ...5 April 2017.....

Signed for and on behalf of the AUTHORITY

Signature: REDACTED..
Name: REDACTED..
Position: Finance Director.....
Date 6 April 2017.....

SCHEDULE 1: DEFINITIONS

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

"Acquired Rights Directive"	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;
"Affected Party"	means the party seeking to claim relief in respect of a Force Majeure;
"Affiliates"	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;
"Approval"	means the prior written consent of the Authority and "Approve" and "Approved" shall be construed accordingly;
"Approved Sub-Licensee"	means any of the following: <ul style="list-style-type: none">a) a Central Government Body;b) any third party providing goods and/or services to a Central Government Body; and/orc) 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;
"Auditor"	means: <ul style="list-style-type: none">a) the Authority's internal and external auditors;b) the Authority's statutory or regulatory auditors;c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;d) HM Treasury or the Cabinet Office;e) any party formally appointed by the Authority to carry out audit or similar review functions; andf) successors or assigns of any of the above;
"Authority Assets"	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;
"Authority Background IPR"	means: <ul style="list-style-type: none">a) IPRs owned by the Authority before the Commencement Date, including IPRs contained in any of the Authority's Know-How, documentation, processes, software and procedures;b) IPRs created by the Authority independently of this Contract; and/or Crown Copyright which is not available to the Supplier otherwise than under this Contract;
"Authority Cause"	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;
"Authority Data"	<p>means:</p> <ul style="list-style-type: none"> 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"> i) are supplied to the Supplier by or on behalf of the Authority; or ii) the Supplier is required to generate, process, store or transmit pursuant to this Contract; or b) any Personal Data for which the Authority is the Data Controller;
"Authority Functional Head"	means each and any of the seven functional heads appointed by the Authority in relation to the ICC;
"Authority Premises"	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);
"Authority Property"	means the property, other than real property and IPR, including any equipment issued or made available to the Supplier by the Authority in connection with this Contract;
"Authority Representative"	means the representative appointed by the Authority from time to time in relation to this Contract;
"Authority's Confidential Information"	<p>means:</p> <ul style="list-style-type: none"> 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); 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 <p>information derived from any of the above;</p>
"Average SPPS"	has the meaning given to it in Annex 2 (Significant Service Level Failure) to Part A of Schedule 6 (Performance Management);
"Base Contract Charges"	means the Gross Contract Charges for a Service period less the amount of the Fees-at-Risk for that Service Period;
"Baseline Measure"	the baseline measure of the cash releasing savings and market share as at the Commencement Date, as set out in the Key Milestone Plan;
"Central Government Body"	<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"> a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency;

"Change in Law"	means any change in Law which impacts on the supply of the Services and performance of the Contract which comes into force after the Commencement Date;
"Change of Control"	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
"Charge Adjustment"	means the adjustment to the Gross Contract Charges accrued in a Service Period, as calculated in accordance with Annex 1 (Service Levels and Charge Adjustments) to Part A of Schedule 6 (Performance Management);
"Charges"	means the charges raised under or in connection with this Contract from time to time;
"Commencement Date"	means ;8 March 2017
"Commercially Sensitive Information"	means the Confidential information listed in Schedule 14 (Commercially Sensitive Information) comprising 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;
"Comparable Supply"	means the supply of Services to another customer of the Supplier that are the same or similar to the Services;
"Confidential Information"	means the Authority's Confidential Information and/or the Supplier's Confidential Information, as the context specifies;
"Contract"	means this agreement between the Authority and the Supplier;
"Contract Charges"	means the prices (as adjusted for any applicable Charge Adjustment(s) and exclusive of any Retained Charge and of any applicable VAT), payable to the Supplier by the Authority under this Contract, as set out in Schedule 3 (Contract Charges, Payment and Invoicing), for the full and proper performance by the Supplier of its obligations under this Contract;
"Contract Period"	means the term of this Contract from the Commencement Date until the Expiry Date;
"Contract Year"	means a consecutive period of twelve (12) Months commencing on the Commencement Date or each anniversary thereof;
"Control"	means control as defined in section 1124 and 450 Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly;
"Core Services"	means those services set out in Part B to Schedule 2 (Services);
"Core Services Day Rates"	has the meaning given to it in Part B (Contract Charges) of Schedule 3 (Contract Charges, Payment and Invoicing);
"Crown"	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;
"Crown Body"	means any department, office or executive agency of the Crown;
"CRTPA"	means the Contracts (Rights of Third Parties) Act 1999;
"Data Controller"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Processor"	has the meaning given to it in the Data Protection Act 1998, as amended

	from time to time;
"Data Protection Legislation" or "DPA"	means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
"Data Subject"	has the meaning given to it in the Data Protection Act 1998, as amended from time to time;
"Data Subject Access Request"	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;
"Day Rates"	means the Core Services Day Rates and the Optional Services Day Rates;
"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), 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;
"Delay"	means: <ul style="list-style-type: none"> a) a delay in the achievement of a Milestone by the relevant date in the Key Milestone Plan; b) a delay in the achievement of any additional milestone agreed between the Parties by the agreed date; or c) a delay in the delivery of a Deliverable by the date such Deliverable is due under this Contract or such other date as Approved by the Authority;
"Deliverable"	means an item or feature in the supply of the Services delivered or to be delivered by the Supplier as a part of the provision of the Services;
"Delivery"	means delivery in accordance with the terms of this Contract confirmed, in the case of Type 3 Milestones, by the issue by the Authority of a Satisfaction Certificate, or otherwise in accordance with this Contract and accepted by the Authority and "Deliver" and "Delivered" shall be construed accordingly;
"Disclosing Party"	has the meaning given to it in Clause 26.3.1 (Confidentiality);
"Dispute"	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;
"Disputed Amount"	means an amount disputed by the Parties in connection with the Supplier's assessment and calculation of the Service Level Performance Charges following the provision of a Performance Monitoring Report;
"Dispute Notice"	means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in Schedule 12 (Dispute Resolution Procedure);
"Documentation"	means all documentation as: <ul style="list-style-type: none"> a) is required to be supplied by the Supplier to the Authority under this Contract;

- 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;
- c) is required by the Supplier in order to provide the Services; and/or
- d) has been or shall be generated for the purpose of providing the Services;

"DOTAS"

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;

"Due Diligence Information"

means any information supplied to the Supplier by or on behalf of the Authority prior to the Commencement Date;

"Employee Liabilities"

means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- b) unfair, wrongful or constructive dismissal compensation;
- c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- d) compensation for less favourable treatment of part-time workers or fixed term employees;
- e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Authority or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;
- f) claims whether in tort, contract or statute or otherwise;
- g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

"Employment Regulations"

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;

"Environmental Policy"

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;
"Environmental Information Regulations or EIRs"	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;
"Exit Plan"	means the exit plan described in paragraph 5 of Schedule 10 (Exit Management);
"Expedited Dispute Timetable"	means the timetable set out in paragraph 5 of Schedule 12 (Dispute Resolution Procedure);
"Expiry Date"	means the earlier of: <ul style="list-style-type: none"> a) the end date of the Initial Period or, where this Contract has been extended pursuant to Clause 5.2 (Contract Period), the end date of any Extension Period; and b) the earlier date of termination of this Contract in accordance with its terms;
"Extension Period"	shall have the meaning set out in Clause 5.2 (Contract Period);
"Fees-at-Risk"	shall have the meaning set out in paragraph 5 of Part A (Service Levels, Charge Adjustment and Milestones) of Schedule 6 (Performance Management);
"FOIA"	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;
"Force Majeure Event"	means any event, occurrence, circumstance, matter or cause which prevents or materially delays the performance by either the Authority or the Supplier of its respective obligations under this Contract and which is beyond the reasonable control of the Affected Party, including: <ul style="list-style-type: none"> a) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare; b) fire, flood or any disaster; and c) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding: <ul style="list-style-type: none"> 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 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 iii) any failure of delay caused by a lack of funds;
"Force Majeure Notice"	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;
"Former Supplier"	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);
"Fraud"	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;
"Functional Head Criterion Score"	has the meaning given in Annex 1 (Service Levels and Charge Adjustment) to Part A of Schedule 6 (Performance Management);
"General Anti-Abuse Rule"	means: <ul style="list-style-type: none"> <i>a)</i> the legislation in Part 5 of the Finance Act 2013 and; and <i>b)</i> any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
"General Change in Law"	means a Change in Law where the change is of a general legislative nature (including taxation (except for changes in the rate of VAT) or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"Good Industry Practice"	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;
"Government"	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;
"Greater London Urban Area"	shall have the meaning as defined from time to time by the Office for National Statistics;
"Gross Contract Charges"	means the prices accrued by the Authority under this Contract, as set out in Part B (Contract Charges) of Schedule 3, for the full and proper performance by the Supplier of its obligations under this Contract before any Charge Adjustment has been applied;
"Halifax Abuse Principle"	means the principle explained in the CJEU Case C-255/02 Halifax and others;
"HMRC"	means Her Majesty's Revenue and Customs;
"Holding Company"	has the meaning given to it in section 1159 of the Companies Act 2006;
"ICT Policy"	means the Authority's policy in respect of information and communications technology, which is in force as at the Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;
"Impact Assessment"	has the meaning given to it in Clause 15.1.3 (Variation Procedure);
"Information"	has the meaning given to it under section 84 of the Freedom of Information Act 2000;
"Initial Period"	means the period from the Commencement Date until the date immediately preceding the second anniversary of the Commencement Date;
"Insolvency Event"	means, in respect of the Supplier: <ul style="list-style-type: none"> <i>a)</i> 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 <i>b)</i> 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

- 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
- d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- 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
- f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- h) where the Supplier is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or
- i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;

"Insurances"

shall have the meaning given to it in Paragraph 1.1 of Schedule 15 (Insurances);

"Intellectual Property Rights" or "IPR"

means

- 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;
- b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- c) all other rights having equivalent or similar effect in any country or jurisdiction;

"Invitation to Tender"

has the meaning given to it in the Recitals to this Contract;

"IPR Claim"

means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, belonging to any third party by any IPR used by the Supplier to provide the Services or as otherwise provided, assigned and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority (other than Authority Background IPR or Authority Data used by the Supplier in accordance with the terms of this Contract) in the fulfilment of its obligations under this Contract;

"Key Milestone Plan"

has the meaning given to it in paragraph 6.2 of Part A (Service Levels, Charge Adjustments and Milestones) of Schedule 6 (Performance Management);

"Key Personnel"

means the individuals identified as such in Part B of Schedule 4 (Mobilisation Plan and Key Personnel);

"Key Role(s)"	has the meaning given to it in Clause 18.1 (Key Personnel);
"Key Sub-Contract"	means each Sub-Contract with a Key Sub-Contractor;
"Key Sub-Contractor"	means any Sub-Contractor: <ul style="list-style-type: none"> a) listed in Schedule 17 (Key Sub-Contractors); 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 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;
"Know-How"	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;
"Law"	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;
"Losses"	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;
"Measurement Date"	mean the date of measurement of a Type 1 Milestone or a Type 2 Milestone, as set out in the Key Milestone Plan;
"Milestone"	means a Type 1 Milestone, a Type 2 Milestone or a Type 3 Milestone, as set out in the Key Milestone Plan;
"Milestone Payment"	means a payment to be made following, in the case of Type 1 Milestones and Type 2 Milestones, a Measurement Date, or, in the case of Type 3 Milestones, the issue of a Satisfaction Certificate, as calculated in accordance with Annex 3 (Milestones) of Part A of Schedule 6 (Performance Management);
"Milestone Progress Report"	has the meaning given to it in paragraph 2.2 of Part B (Performance Monitoring) of Schedule 6 (Performance Management);
"Mobilisation Period"	means the period commencing on the Commencement Date and ending on the issue of a Satisfaction Certificate in respect of the first Type 3 Milestone;
"Mobilisation Plan"	means the plan set out in Part A of Schedule 4 (Mobilisation Plan and Key Personnel)
"Milestone Type"	means the Type 1 Milestones, the Type 2 Milestones or the Type 3 Milestones;
"Month"	means a calendar month and "Monthly" shall be interpreted accordingly;
"Occasion of Tax Non-Compliance"	means: <ul style="list-style-type: none"> 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"> 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; 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
	<ul style="list-style-type: none"> b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion;
"OJEU Notice"	has the meaning given to it in the Recitals to this Contract;
"Operationally Ready"	means, in relation to the relevant tranche of Category Towers, that the ICC is operationally ready to manage the performance of the Category Towers , which includes the following: <ul style="list-style-type: none"> a) all new staff are appointed and trained; b) all staff transferring to the ICC have been identified; c) agreed processes have been put in place; d) tests have been successfully completed;
"Optional Services"	means those services set out in Part C to Schedule 2;
"Optional Services Day Rates"	has the meaning given to it in Annex 1 (Contract Charges) to Schedule 3 (Contract Charges, Payment and Invoicing);
"Other Supplier"	means any supplier to the Authority (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
"Parent Company"	means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;
"Party"	means the Authority or the Supplier and "Parties" shall mean both of them;
"Performance Monitoring System"	has the meaning given to it in paragraph 1.1.4 in Part B (Performance Monitoring) of Schedule 6 (Performance Management);
"Performance Monitoring Report"	has the meaning given to it in paragraph 3.1 of Part B (Performance Monitoring) of Schedule 6 (Performance Management);
"Performance Target"	means: <ul style="list-style-type: none"> a) in relation to Service Period Performance Score, exactly 3.0; and b) in relation to any Milestone, the target level or deliverable for such Milestone, as set out in the Key Milestone Plan;
"Personal Data"	has the meaning given to it in the Data Protection Act 1998;
"Processing"	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 "Process" and "Processed" shall be interpreted

	accordingly;
"Prohibited Act"	means any of the following: <ul style="list-style-type: none"> a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority or any other public body a financial or other advantage to: <ul style="list-style-type: none"> i) induce that person to perform improperly a relevant function or activity; or ii) reward that person for improper performance of a relevant function or activity; 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; c) committing any offence: <ul style="list-style-type: none"> i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or ii) under legislation or common law concerning fraudulent acts; or iii) defrauding, attempting to defraud or conspiring to defraud the Authority; or 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;
"Project Specific IPR"	means: <ul style="list-style-type: none"> 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 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; but shall not include the Supplier Background IPR;
"Recipient"	has the meaning given to it in Clause 26.3.1 (Confidentiality);
"Rectification Plan"	means the rectification plan pursuant to the Rectification Plan Process;
"Rectification Plan Process"	means the process set out in Clause 30.2 (Rectification Plan Process);
"Registers"	has the meaning given to in Schedule 10 (Exit Management);
"Regulations"	means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;
"Reimbursable Expenses"	has the meaning given to it in Schedule 3 (Contract Charges, Payment and Invoicing);
"Related Supplier"	means any person who provides goods and/or services to the Authority which are related to the Services from time to time;
"Relevant Requirements"	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;

"Relevant Tax Authority"	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
"Relevant Transfer"	means a transfer of employment to which the Employment Regulations applies;
"Relevant Transfer Date"	means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
"Relief Notice"	has the meaning given to it in Clause 31.2.2 (Supplier Relief Due to Authority Cause);
"Replacement Services"	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;
"Replacement Sub-Contractor"	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);
"Replacement Supplier"	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;
"Request for Information"	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;
"Restricted Countries"	has the meaning given to it in Clause 26.6.3 (Protection of Personal Data);
"Retained Charge"	has the meaning given to it in paragraph 1.1 of Annex 3 (Milestones) to Part A of Schedule 6 (Performance Management);
"Satisfaction Certificate"	has the meaning given to it in Annex 3 (Milestones) to Part A of Schedule 6 (Performance Management);
"Schedule"	means a schedule to this Contract;
"Security Management Plan"	means the Supplier's security management plan prepared pursuant to paragraph 4 of Schedule 8 (Security), as updated from time to time;
"Security Policy"	means the Authority's security policy in force as at the Commencement Date (the current policy being available at https://www.gov.uk/government/publications/security-policy-framework) as updated from time to time and notified to the Supplier;
"Services"	means the services to be provided by the Supplier under this Contract, as set out in Schedule 2 (Services);
"Service Failure"	means an unplanned failure and/or 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;
"Service Levels"	means any service levels applicable to the provision of the Services under this Contract specified in Annex 1 (Service Levels and Charge Adjustment) to Part A of Schedule 6 (Performance Management);
"Service Level Failure"	means a failure to meet the Service Level Performance Measure in respect of a Service Level Performance Criterion;
"Service Level Performance Charges"	means the aggregate of: <ul style="list-style-type: none"> a) the amount of the SLPC Fees-at-Risk in respect of the relevant Service Period, as adjusted by the Charge Adjustment; and b) any amount due to the Supplier in relation to the measurement or

	achievement of Milestones in the relevant Service period, each as calculated in accordance with Part A (Service Levels, Charge Adjustment and Milestones) of Schedule 6 (Performance Management);
"Service Level Performance Criteria"	has the meaning given to it in paragraph 5.2 of Part A (Service Levels and Charge Adjustment) of Schedule 6 (Performance Management);
"Service Level Performance Measure"	means the measure set out against the relevant Service Level Performance Criterion in Annex 1 (Service Levels and Charge Adjustment) of Part A of Schedule 6 (Performance Management);
"Service Level Performance Criterion"	means each of the Service Level Performance Criteria;
"Service Period"	has the meaning given to in paragraph 5.6 of Schedule 6 (Performance Management);
"Service Period Performance Score" or "SPPS"	has the meaning given in Annex 1 (Service Levels and Charge Adjustment) to Part A of Schedule 6 (Performance Management);
"Service Transfer"	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;
"Service Transfer Date"	means the date of a Service Transfer;
"Services"	means the services to be provided by the Supplier to the Authority as further described in Schedule 2 (Services);
"Significant Service Level Failure"	has the meaning given to it in Annex 2 (Significant Service Level Failure) to Part A of Schedule 6 (Performance Management);
"Specific Change in Law"	means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
"Staffing Information"	has the meaning given to it in Schedule 11 (Staff Transfer);
"Standards"	means: <ul style="list-style-type: none"> 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; b) any Standards detailed by the Authority in Schedule 7 (Standards) or agreed between the Parties from time to time; and c) relevant Government codes of practice and guidance applicable from time to time.
"Sub-Contract"	means any contract or agreement (or proposed contract or agreement), other than this Contract, pursuant to which a third party: <ul style="list-style-type: none"> a) provides the Services (or any part of them); b) provides facilities or services necessary for the provision of the Services (or any part of them); and/or c) is responsible for the management, direction or control of the provision of the Services (or any part of them);
"Sub-Contractor"	means any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
"Supplier Assets"	means all assets and rights used by the Supplier to provide the Services in

	accordance with this Contract but excluding the Authority Assets;
"Supplier Background IPR"	means <ul style="list-style-type: none"> 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 b) Intellectual Property Rights created by the Supplier independently of this Contract;
"Supplier Equipment"	means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Authority) in the performance of its obligations under this Contract;
"Supplier Non-Performance"	has the meaning given to it in Clause 31.1 (Supplier Relief Due to Authority Cause);
"Supplier Personnel"	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;
"Supplier Representative"	means the representative appointed by the Supplier and notified to the Authority in accordance with Clause 13;
"Supplier's Confidential Information"	means <ul style="list-style-type: none"> 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; 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; c) information derived from any of the above.
"Target Date"	means a target date for the achievement of a Type 3 Milestone, as set out in the Key Milestone Plan;
"Tender"	means the tender submitted by the Supplier to the Authority on [<i>INSERT DATE</i>];
"Termination Notice"	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;
"Third Party IPR"	means Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Services;
"Tranche 1 Category Towers"	means the contracts to be entered into by the Authority for the procurement of medical goods (including ward based consumables, sterile intervention equipment and associated consumables, infection control and wound care, orthopaedics, trauma and spine and ophthalmology, rehabilitation, disable services, women's health and associated consumables, cardio-vascular, radiology and audiology and pain management);
"Tranche 2 Category Towers"	means the contracts to be entered into by the Authority for the

	procurement of capital and non-medical goods and services (including large diagnostic capital devices including mobile and consumables, diagnostic equipment and associated consumables, food and NHS hotel services);
"Transferring Authority Employees"	those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;
"Transferring Former Supplier Employees"	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date;
"Transferring Supplier Employees"	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.
"Transparency Principles"	means the principles which set out the requirement for the proactive release of information under the Government's transparency commitment to publish contract information, which are available at https://www.gov.uk/government/publications/transparency-of-suppliers-and-government-to-the-public ;
"Transparency Reports"	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 20 (Transparency Reports);
"Type 1 Milestones"	means the milestones designated as such in the Key Milestone Plan;
"Type 2 Milestones"	means the milestones designated as such in the Key Milestone Plan;
"Type 3 Milestones"	means the milestones designated as such in the Key Milestone Plan;
"Undisputed Sums Time Period"	has the meaning given to it Clause 34.1.1 (Termination of Authority Cause for Failure to Pay);
"Valid Invoice"	means an invoice issued by the Supplier to the Authority that complies with the invoicing procedure in paragraph 7 (Invoicing Procedure) of Part A (Payment and Invoicing) of Schedule 3;
"Variation"	has the meaning given to it in Clause 15.1 (Variation Procedure);
"Variation Form"	means the form set out in Schedule 13 (Variation Form);
"Variation Procedure"	means the procedure set out in Clause 15.1 (Variation Procedure);
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Worker"	means any one of the Supplier Personnel which the Authority, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 – Tax Arrangements of Public Appointees https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees applies in respect of the Services;
"Working Day"	means any day other than a Saturday or Sunday or public holiday in England and Wales.

SCHEDULE 2: SERVICES

PART A: INTRODUCTION

1. PREAMBLE

1.1 The Supplier shall provide:

- a) the Core Services, as set out in Part B (The Core Services) of this Schedule 2 (Services); and
- b) any Optional Services as set out in Part C (The Optional Services) of this Schedule 2 (Services), which shall be provided in accordance with Clause 7.7 (Optional Services) of this Contract.

1.2 Terms used in this Schedule 2 (Services) but not defined elsewhere in this Contract will have the meanings set out in Annex 1 (Service Definitions) to this Schedule 2 (Services).

2. OVERVIEW

Background

2.1 The Authority is in the early stages of the Programme, having developed a high level FOM, organisational design and key Programme milestones to deliver supply chain services to the NHS. A critical component of the FOM is the ICC. Information on the Programme, FOM and ICC is presented in Annex 3 (FOM) and 4 (ICC Functions) to this Schedule 2 (Services).

2.2 The Authority has mobilised its leadership team for the new ICC organisation, and has started the transformation activities relating to the ICC as one of the key work streams under the Programme. It is intended that the Supplier will provide support to the Programme, including leadership, constructive challenge, capability and capacity enhancement, under the overall leadership of the Authority.

Objectives

2.3 In supplying its Services under this Contract, the Supplier shall:

2.3.1 provide the leadership, resourcing, capacity and expertise required to deliver and establish the ICC as a fully-functioning and resourced unit within the Authority (or such other third party body as shall be determined by the Authority); and

2.3.2 support other areas of the Programme as required by the Authority,

(together the “**Objectives**”).

2.4 The Supplier acknowledges that achieving the Objectives will require the Supplier not only to review, challenge and develop the plans and models for the ICC and wider Programme already prepared by the Authority but, more importantly, to use the Supplier’s expertise, resources and leadership skills effectively to implement and deliver the ICC and the wider Programme (subject to the Authority’s overall authority and leadership).

Tasks

2.5 In supplying the Services to achieve the Objectives, the Supplier will carry out tasks to include those under the following headings:

1. ICC Transformation Services	2. Programme Support Services
a) Business case and funding	a) FOM finance
b) Organisation: form, structure and build	b) Current provider transition & exit management
c) Transition plan	c) Category tower management set-up
d) Operating procedures, corporate and financial governance	d) Supporting technology infrastructure set-up
e) Office locations	e) Transactional systems management set-up
	f) Logistics supplier management set-up
	g) Communications & stakeholder engagement

2.6 Details of the specific tasks to be performed by the Supplier shall be provided by the Authority on an on-going basis during the performance of the Services.

2.7 The Services shall be provided by way of a team of Supplier consultants as described more fully in paragraph 3 below.

3. **SUPPLIER TEAM**

The Supplier shall provide a team of consultants as specified below from the Commencement Date in accordance with the Mobilisation Plan.

3.1 **Core Team Organisation**

The Supplier shall, subject to paragraph 3.2 below, provide a core team comprising a total of fifteen (15) consultants (the "Core Team"). All members of the Core Team shall be considered Key Personnel and dedicated to the Services.

The Core Team shall comprise two groups as below:

3.1.1 Supplier Leadership Team

The SLT shall comprise seven (7) senior consultants to fulfil the seven (7) functional roles set out in Table 3.3 below. The SLT shall provide expert advice, delivery and leadership to the ALT in all matters as required.

3.1.2 Extended Team

The balance of eight (8) consultants shall provide further breadth and capacity for delivery of the Services under the direction of the SLT. Subject to Clause 18 (Key Personnel), the composition of the Extended Team shall be maintained throughout the Contract Period and, as a consequence, the eight consultants forming the Extended Team must have the capability to work in several functions.

3.2 **Mobilisation and Demobilisation**

3.2.1 Notwithstanding the requirement for the Supplier to provide the Core Team from the Commencement Date and throughout the Contract Period:

3.2.1.1 the Authority acknowledges that the consultants may be mobilised on a phased basis but only to the extent that this is clearly stated in, and in accordance with, the Mobilisation Plan; and

3.2.1.2 the Supplier acknowledges that:

(a) in the Authority's sole discretion, the Authority may require the Supplier to start to de-mobilise consultants from the date that is six (6) months before the Expiry Date, any such de-mobilisation to be set out in a plan to be agreed between the Parties; and

(b) the Supplier shall not be entitled to increase the Day Rates for the remaining consultants as a result of any demobilisation agreed under this paragraph.

3.3 **SLT Functional Roles**

3.3.1 The functional roles of the SLT and the key responsibilities of each functional role are set out in Table 3.3.

3.3.2 The Supplier shall ensure that each member of the SLT is designated one of the functional roles set out in Table 3.3. In addition, the Supplier shall nominate one member of the SLT as the Supplier Representative.

Table 3.3 SLT Functional Roles

Functional Role	Specific Responsibilities
1. ICC Functional Areas	
1.1 Performance Management	<ul style="list-style-type: none"> - Procurement and contract management of multiple service providers across the FOM with inter-dependencies across the full range of supply chain activities and DH internal business functions. - Design, build and manage a commercial procurement function that performs procurement, re-procurement, and contract management including variations, change notices and disputes. - Design, build and manage the new supply chain model using multiple service providers. - Recruit, develop and lead a team of professional procurement and performance management staff. - Develop and deliver performance improvement and recovery plans for poor performing service providers. - Deliver and track continuous improvement plans that result in improved performance through quantifiable outcomes, e.g. KPI improvements, YOY savings, increased customer satisfaction through the Contract lifetime.
1.2 Customer and Business Development	<ul style="list-style-type: none"> - Deliver growth across a diverse FOM customer base in the UK. - Build customer development and sales organisation to provide full lifecycle functionality: relationship and lead development, sales, account management, commercial management and customer service. - Build and manage a marketing function. - Develop and implement product switching and range management strategies. - Develop and implement business development plans, customer value propositions, sales strategies and plans. - Introduce and deliver best practice sales methodologies, incentive models, processes and operations. - Develop and deliver sales team targets.
1.3 HR	<ul style="list-style-type: none"> - Develop relevant HR processes and execution of staff recruitment or transfer for the ICC and FOM. - Successful TUPE implementation in connection with the ICC and FOM, including consultation, transfer / redeployment / redundancy, legal engagement and commercial terms, including pension transfers. - Learning and organisational development, including defining people and role requirements. - HR strategy development in alignment with business requirements. - Implementation of HR policies, processes and operating procedures to support all areas of HR operations, including personnel development, retention, succession, performance, disciplinary, disputes, employment terms and conditions, payroll. - Recruitment of appropriately experienced staff for the ICC utilising different channels to market. - Lead collective agreement negotiations with unions.
1.4 Finance	<ul style="list-style-type: none"> - Creation and operation of ICC finance function, taking into account Government accounting and financial governance requirements. - Financial system implementation and integration across the ICC and the FOM. - Implement and lead an audit function, including supplier open book and other forms of financial records. - Implement policies, systems, processes and operating procedures to support all areas of Finance operations, including budgeting, reporting, management accounts, investment modelling and approval, financial modelling, general ledger, payments, cash collection, inventory management.
1.5 IT	<ul style="list-style-type: none"> - Create and operate a strategic information technology function for the ICC. - Implement a broad range of system design and delivery models including agile and waterfall as appropriate. - Implement policies, systems, standards, processes and operating procedures to support all areas of IT operations, including systems, applications,

Functional Role	Specific Responsibilities
	<p>networks, security, business continuity, desktop, mobility.</p> <ul style="list-style-type: none"> - Drive and support customer uptake through enhanced user interfaces and excellent user experience within an e-tailing, multi-platform and omni-channel environment. - Create and execute 10 year IT strategy including detailed product and service roadmaps. - Manage outsourced IT service providers. - Deliver IT transformation across landscapes including the replacement of legacy technologies.
2. Programme Areas	
2.1 FOM Delivery	<ul style="list-style-type: none"> - Develop and lead procurement activity for the Programme including consideration of and advice on different options available under European Union and UK procurement regulations. - Ensuring timely production of Deliverables and resolution of issues to maintain milestones through expedition of activities, robust program management, remedial planning and execution.
2.2 Transition	<ul style="list-style-type: none"> - Develop and implement transition risk management and mitigation methodologies, models and processes for the Programme. - Build co-operative and effective multi-disciplinary and multi-level relationships with service provider organisations to ensure smooth and efficient transition. - Programme and project management for the Programme. - Business-wide and external communications and stakeholder management.

4. **ENGAGEMENT MODEL**

The Supplier's overriding obligation is to provide the Services so as to achieve the Objectives. As it is impossible at the Commencement Date to define individual tasks for the whole of the Contract Period, this Engagement Model sets out the way in which the Supplier and the Authority will collaborate to plan, review and manage the progress of the Services.

4.1 **Services Steering Board**

- 4.1.1 The Authority and the Supplier shall each appoint three (3) representatives, who shall together form the Services Steering Board. The parties shall each nominate their representatives and jointly agree the appointment of such representatives within thirty (30) days of the Commencement Date.
- 4.1.2 The Services Steering Board will meet on a monthly basis (or as otherwise agreed) and the Authority shall be responsible for circulating agendas before each meeting and circulating minutes and actions points after each meeting.
- 4.1.3 The Services Steering Board is a forum for collaboration and discussions between the SLT and the ALT focused on achieving progress and driving delivery of the Services. The Services Steering Board will (amongst other things):
 - 4.1.3.1 define priorities and recommend a way forward to ensure their implementation;
 - 4.1.3.2 review progress of the Services and Deliverables against the Objectives, Mobilisation Plan, Key Milestone Plan and any project plan as may be agreed between the Parties from time to time;
 - 4.1.3.3 recommend alternative approaches or other solutions if progress is unsatisfactory and/or delivery is inadequate;
 - 4.1.3.4 consult on, and review proposals for, the provision of Additional Resources, including defining any Deliverables or milestones proposed for those Additional Resources;
 - 4.1.3.5 consider proposed activities for the next month and likely resource requirements in the next three months; and
 - 4.1.3.6 be the first stage of the Dispute Resolution Procedure (as set out in Schedule 12 (Dispute Resolution Procedure)) should a dispute arise between the Parties.
- 4.1.4 Notwithstanding the collaborative nature of the Services Steering Board, the Supplier shall be solely responsible for the performance of the Services, the achievement of the Milestones and delivery of the Deliverables in accordance with the terms of this Contract.

4.2 **Work Categories**

Performance of the Services can be categorised under main areas of work as described in this paragraph 4.2.

4.2.1 **Leadership**

- 4.2.1.1 The supplier has been appointed for its experience and expertise in programmes similar to the Programme and shall provide leadership support and advice to the ALT and any third parties providing Additional Resources as required in relation to the Services, including in relation to:
 - a) delivery across all phases of the Programme as required by the ALT; and

- b) provision of industry best practice and insight across the supply chain and ICC functional areas to drive the design, build and operate activities.

4.2.2 **Management**

The Supplier shall:

- 4.2.2.1 be solely responsible for the performance of the Core Team, and any additional Supplier Personnel providing Optional Services and their performance against the Service Level Performance Criteria set out in Schedule 6 (Performance Management);
- 4.2.2.2 be accountable to the Authority for the quality of their outputs in all aspects of the Core Services and any Optional Services;
- 4.2.2.3 be accountable for delivery of all Milestones in accordance with the Key Milestone Plan or as agreed in a work order in relation to Optional Services.

4.2.3 **Delivery**

The Supplier shall be responsible for the production and delivery of all Deliverables as required by the Authority.

PART B: THE CORE SERVICES

The Core Services fall into two main areas:

- establishing and delivering the ICC function, as described in paragraph 1 (ICC Transformation Services) below; and
- support of the broader Programme, including Programme delivery and transition phases as required across all aspects of the FOM, as described in paragraph 2 (Programme Support Services) below.

1. ICC TRANSFORMATION SERVICES

1.1 Introduction

- 1.1.1 The overall requirement of the ICC Transformation Services is to establish the location, organisation, relevant processes, capability and operation of the ICC.
- 1.1.2 The Authority has developed an initial plan and commenced work within the areas of the ICC Transformation Services listed in the table set out at paragraph 2.5 of Part A (Introduction) of this Schedule 2 (the “**Initial Work**”).
- 1.1.3 As a starting point the Supplier shall review and further develop the Initial Work as necessary under instruction from the Authority to meet the requirements of the Design Services.
- 1.1.4 The performance of the Design Services as described under paragraph 1.2 below shall be completed with the delivery of a transformation design report approved by the Authority, and which shall include:
- 1.1.4.1 the design and supporting rationale for all aspects of the ICC; and
 - 1.1.4.2 a detailed plan for the delivery of the Build and Operational services, to include scope, resourcing, timeline, dependencies and risks.

1.2 Design Services

The Supplier shall:

- 1.2.1 make recommendations for change to the draft organisation structure produced by the Authority to create an organisational structure that can operate at the scale defined in the FOM and deliver the performance to meet the long term targets of the Programme;
- 1.2.2 provide outline descriptions for each of the functions in the organisational that are fit for purpose, optimise efficiency and cost, and take full consideration of the Employment Regulations;
- 1.2.3 make recommendations on the job specifications required for a senior leadership team of the ICC, being the first members of the ICC to be appointed;
- 1.2.4 advise the ALT on any Additional Resource required to develop the performance management and customer development functions within the ICC, establish whether these can be sourced from the Supplier as Optional Services, or whether an external competition will be required to source an alternative provider in accordance with Clause 7.7 (Optional Services); and
- 1.2.5 review the ICC facility and infrastructure requirements, including all information and communications technology, security and other facility management services;

- 1.2.6 review the facilities and infrastructure outputs to date and make recommendations for a solution that is cost effective in terms of presenting an appropriate balance between quality and cost, in accordance with the FOM, the Milestones, Programme schedule and as otherwise agreed during the Contract Period;
- 1.2.7 advise on how functional roles should best be filled from the options available, including transfers from the Current Provider (and any of its sub-contractors who provide the services described in the Current Contract);
- 1.2.8 develop a corresponding resource plan, to include the sources of capability, which shall take into consideration the incremental on-boarding of the individual Category Towers under the Programme and applicable lead times for recruitment, induction, training and knowledge transfer;
- 1.2.9 review each ICC function identified in the FOM organisational structure, as set out in Annex 3 (FOM) to this Schedule 2 (Services) and develop plans to deliver and resource the Build and Operation phases of the programme in terms of:
 - 1.2.9.1 how that function will operate;
 - 1.2.9.2 what its outputs will be;
 - 1.2.9.3 what capabilities it will require;
 - 1.2.9.4 what capacity it will need;
 - 1.2.9.5 how transitions will take place; and
 - 1.2.9.6 the timeline and resourcing plans for the build and operate phases;
- 1.2.10 perform a final review of the overall ICC build timeline that accounts for the above outputs and make appropriate recommendations for changes if required.
- 1.2.11 develop a knowledge transfer plan to ensure the skills and knowledge developed by the Supplier during the Services is passed to the Authority prior to the end of the Initial Period as required by the resourcing plan. The knowledge transfer plan shall include:
 - 1.2.11.1 training of ICC existing staff and new starters; and
 - 1.2.11.2 policy, processes and working conditions for staff transferring into the ICC.

1.3 **Build Services**

The Supplier shall:

- 1.3.1 develop or provide assistance as required in the production of job specifications required for all roles in the ICC that are capable of being given to recruitment specialists to source from external and internal labour markets;
- 1.3.2 develop appropriate recruitment strategies for each of the ICC functions;
- 1.3.3 develop best practice policies, processes and tools to support and govern all aspects of the ICC business and operations;
- 1.3.4 identify and assess potential locations for the ICC, with due consideration of all relevant factors including labour markets, existing available government office facilities and transport links; and
- 1.3.5 manage the procurement of all relevant third party goods and services required to establish and operate the facility and associated infrastructure of the ICC.

1.4 Operational Services

The Supplier shall support the Authority following transition through the initial FOM operational phase by way of the following:

- 1.4.1 providing backfill support across the ICC organisation pending recruitment of a full complement of ICC staff;
- 1.4.2 ongoing knowledge transfer, training and handover to ICC personnel in accordance with the knowledge transfer plan as per paragraph 1.2.11 above; and
- 1.4.3 implementation of a robust continuous improvement process of revisions and improvements based on operational feedback.

The Operational Services shall be performed until no longer required by the Authority.

2. PROGRAMME SUPPORT SERVICES

2.1 FOM Delivery

2.1.1 Background

The FOM delivery involves multiple procurement processes designed to contract for each of the service elements that make up the new ICC organisation. The services being procured are:

- a single logistics provider;
- up to eleven (11) Category Tower providers;
- a single transactional process provider; and
- a single information and communications technology provider.

The FOM and the ICC are described in more detail in Annex 3 (FOM) and Annex 4 (ICC Functions) to this Schedule 2 (Services).

Many of these procurements will occur in parallel. Once contracted, the service providers of each of these services will be required to co-ordinate their transition plans under the management of the Authority and Supplier personnel responsible for the Transition Services.

Once these procured services have been incorporated into the FOM, planning must be put in place for the re-procurement and potential exit and transition of each of the service elements as the initial contracts expire.

2.1.2 FOM Delivery Support Services

The Supplier shall, in accordance with the requirements of the ALT, support the FOM delivery as required. Such support may include expertise in the following areas:

- business case development;
- procurement of external service providers;
- contract and change management; and
- programme and project management.

The Core Team shall assist the ALT in all phases of the ICC development to deliver the FOM until a Satisfaction Certificate has been issued to confirm achievement of each of the Type 3 Milestones (as set out in the Key Milestone Plan).

2.2 Transition

2.2.1 Background

The smooth transition from business as usual under the Current Contract to the new ICC organisation becoming Operationally Ready will be a critical success factor for the Programme. This will require diligent planning and a rigorous risk management approach.

Maintaining, protecting the integrity, and enhancing the reputation of the supply chain services during transition is essential to the success of the Programme.

Therefore, the transition will need to be carefully planned and implemented for the transfer of each service provided under the Current Contract. It will be imperative that the Supplier understands and accounts for the interdependencies between services and organisations. The Supplier will be required to plan and deliver excellent communications and stakeholder management.

2.2.2 Transition Services

The Supplier shall, in line with the ALT's requirements, review and develop the transition strategy, and make appropriate recommendations if required.

Transition comprises two main work-streams:

1. the transfer of the services currently provided under the Current Contract to the FOM; and
2. the launch of the ICC organisation and business functions.

These work-streams include all aspects relating to the systems, operations, facilities, people and data of such services.

The Supplier shall, amongst other things:

- a) engage in communications and stakeholder management;
- b) review and develop the existing transition plan with the Current Provider and each new supplier;
- c) develop and execute interim processes to cover business functions and operations;
- d) provide staffing, training and knowledge transfer;
- e) provide interim operational support whilst Authority ICC staff are recruited;
- f) protect the integrity of the supply chain service before, during and after transition for a period to be agreed with Authority; and
- g) support the Authority's negotiations to change the Current Provider's financial targets during exit.

3. ADDITIONAL RESOURCE

- 3.1 As part of the Core Services, the Supplier shall support the Authority, as required, in the identification, sourcing and/or provision of additional resources and services to support the Programme ("**Additional Resource**").

PART C: THE OPTIONAL SERVICES

1. BACKGROUND

- 1.1 During the Contract Period, the Supplier acknowledges that the Additional Resource may, at the Authority's discretion, be:
 - 1.1.1 sourced from the Supplier as Optional Services in accordance with Clause 7.7 (Optional Services); or
 - 1.1.2 procured on a competitive basis from third party suppliers.
- 1.2 The support required from the Supplier as part of the Core Services includes the development of sufficiently detailed specifications for the Additional Resource to enable a fair and effective procurement process in accordance with paragraph 1.1.2 above.

2. OPTIONAL SERVICES

- 2.1 The Optional Services shall comprise the supply of additional resourcing where the requirements of the Services necessitate the provision of resource in excess of the Core Team, as agreed with the Authority.
- 2.2 If the Authority agrees that Additional Resource is required, the Authority shall be entitled, at its discretion, to source this from the Supplier as part of the Optional Services (under a work order) or from a third party, and the Supplier shall provide support for this process in accordance with paragraph 3 of Part B (Core Services) of this Schedule 2 (Services).

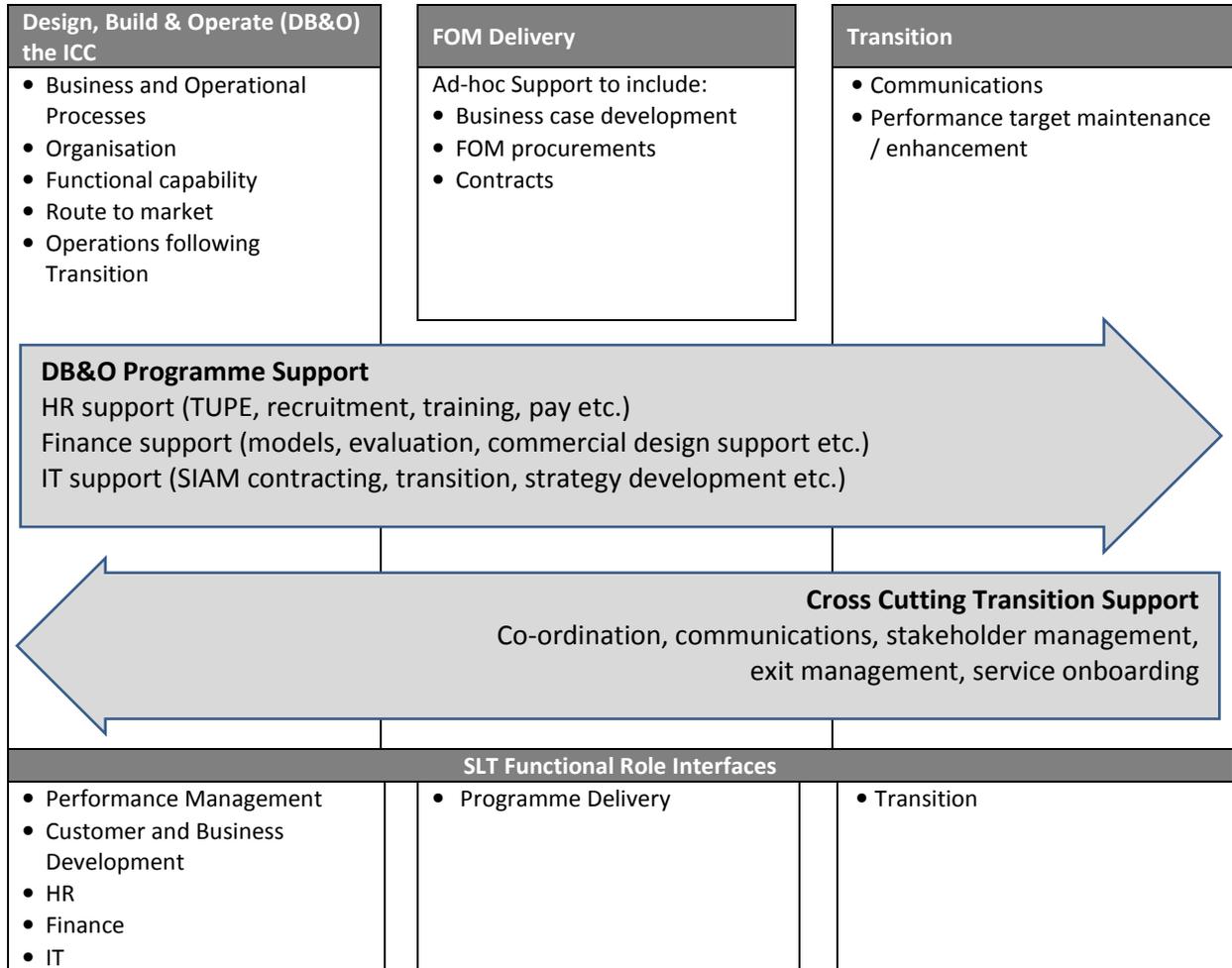
ANNEX 1: SERVICE DEFINITIONS

Defined terms used within this Schedule 2 shall have the following meanings:

“Additional Resource”	has the meaning given in paragraph 3 of Part B (Core Services) of this Schedule 2 (Services);
“Authority Leadership Team ” or “ALT”	means the Authority’s senior representatives (as shall be notified to the Supplier by the Authority from time to time) who shall work jointly with the SLT, and have overall responsibility for the direction of the Supplier and delivery of the Programme;
“Core Team”	has the meaning given in paragraph 3.1 of Part A (Introduction) of this Schedule 2 (Services);
“Current Contract”	means the master services agreement dated 4 September 2006 and as amended on 20 August 2015 between NHS Business Services Authority (1) and the Current Provider (2);
“Current Provider”	means DHL Supply Chain Limited;
“Future Operating Model ” or “FOM”	means the future operating model for the NHS Supply Chain as described in more detail in Annex 3 (FOM) to this Schedule 2 (Services);
“Intelligent Client Co-ordinator” or “ICC”	means the body so described in Annex 4 (ICC Functions) to this Schedule 2 (Services);
“NHS Supply Chain”	means the brand name of the current service provided by the Current Provider;
“Operational Services”	means those services set out in paragraph 1.2 of Part B (Core Services) of this Schedule 2 (Services);
“Programme”	means the overall Authority procurement transformation programme that includes the design, build and operation of the ICC, the transition to the new organisation, and the delivery and operation of the FOM;
“Services Steering Board”	means the team of Supplier and Authority representatives established pursuant to paragraph 4.1;
“Supplier Leadership Team” or “SLT”	means the team described in paragraph 3.1.1 of Part A (Introduction) to this Schedule 2 (Services);
“System Integration and Asset Management” or “SIAM”	means the management of multiple suppliers of services (both business services and information technology services) and the integration of them to provide a single business-facing IT organisation;
“Transition Services”	shall mean those services set out in paragraph 2.2 of Part B (Core Services) of this Schedule 2 (Services).

ANNEX 2: TRANSFORMATION SERVICES MAP

The Services required in the delivery of the FOM are presented at a high level by programme phase as below.



ANNEX 3: FOM

Purpose

The transformation of the NHS Supply Chain has two key aims:

- a) Greater uptake in its services from the NHS; and
- b) Increased annualised savings.

These two key aims are reflected in the Key Milestone Plan set out in Schedule 6 (Performance Management).

1. Overview

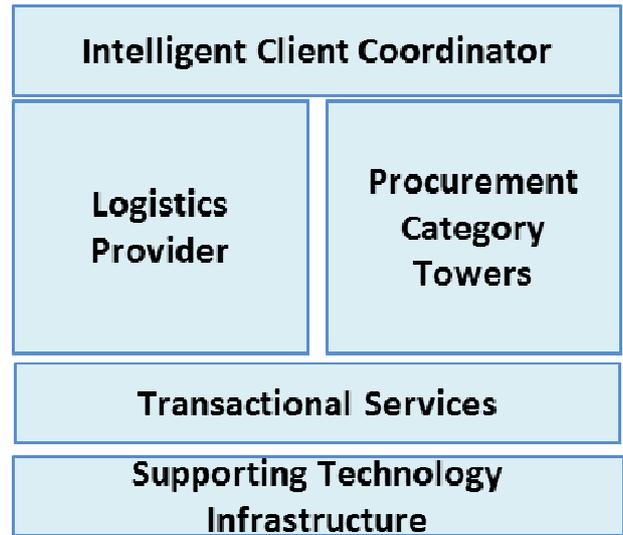
The FOM disaggregates the current integrated model delivered by a single service provider, with a thin NHS-run relationship management client, into five separate components as below. Under the FOM, the ICC provides an overall management function with greater responsibility, scope and depth than the current model.

As a result the ICC will operate with approximately 160 more personnel than the NHS BSA relationship management client (approximately 40 personnel).

a) Current Model



b) FOM



The FOM is an evolutionary change, not a revolutionary one. The transformation programme will consist of stepwise changes that require strong programme management and excellent communications to all stakeholders.

ANNEX 4: ICC FUNCTIONS

General

The ICC is a multiple service provider model and the centre for service delivery management. It is NHS driven but nationally co-ordinated, acting on behalf of the Authority with feedback from NHS Trusts.

This ICC functions shall be delivered by an 'in-house' public sector provider that can act on departmental policy and has access to the NHS provider network.

1. Key Functions

The ICC shall comprise eight major functions as described below.

1.1 Service Provider Contract Management

Multi-service provider model requiring close co-ordination

The FOM includes up to fourteen (14) separate service agreements, as described below, and many will be procured on Open Book Contract Management principles.

Contract management and future re-procurement as incumbent service provider contracts expire.

Service	No of Providers
Logistics	1
Procurement Category Towers	Min 4 – Max 11
Transactional Services	1
Supporting Technology Infrastructure	1

1.2 Strategic Inventory Management

Co-ordination of category strategies that affect logistics operations that may be delivered from different category towers to achieve optimised stock levels.

The Logistics Services provider will be responsible for stock replenishment and maintaining inventory between agreed levels across the entire warehouse network. There are a small number of strategic stock level considerations, such as minimum levels for resilience and macro availability of storage for one-off purchases, which will remain with the ICC for network optimisation.

1.3 Strategic Supplier Management

Co-ordinate supplier management for suppliers to multiple category towers.

The Category Towers have been designed to largely contain a unique set of suppliers. There will however be some cross over of suppliers into other category towers. Where this occurs, the supplier management obligations of each category tower will be supplemented with a co-ordination, support and management function delivered through the ICC.

1.4 Category Range Management

Governance layer for new products, product switching and product range consolidation strategies.

The Category Towers have been established based on current known categories. As time progresses, new products will be introduced and new products removed. Additionally there may be movements in the supply market that would require resetting the scope of a Category Tower. The decisions on product range will be strategic and ratified by the ICC who will provide clinical oversight.

1.5 Policy & Strategy

Interpret the Authority's policy requirements and manage change.

Future changes to health policy and strategy may require an alteration to category strategies, product specifications or demand forecasts. The ICC will update suppliers on these changes.

1.6 **Strategic Information Management**

Set the IS requirements to provide comparative information.

Key to the success of the FOM will be transformation of data into valuable information that supports the objectives of the new supply chain model. Information requirements in this respect must be set and co-ordinated by a single function within the ICC.

1.7 **Customer Development**

Support product rationalisation and uptake.

There are approximately 250 NHS Trust organisations within the scope of the FOM. On average 40% of all NHS product purchases are transacted through the NHS Supply Chain, but that usage is neither consistent nor stable when viewed either by product or organisation level.

Each NHS Trust is an autonomous business unit and is free to choose whether it transacts its business through the NHS Supply Chain or not. The whole of the NHS therefore behaves in a similar way to an industry sector where the business-to-business relationships must be developed, maintained and grown through a deep understanding of the individual businesses and expert customer servicing skills.

Achieving the switch to the new model requires greater and improved levels of customer services and relationship management. This requires the building of trust and confidence with the customer, resulting in a willingness to do business with the NHS. Use of the Supply Chain is not mandatory, and so a compelling proposition and communication programme is required.

Having a public sector body lead the ICC function is expected to alleviate the current mistrust around motives.

1.8 **PMO & Communications**

Effect stepwise change through good programme management and excellent communications.

SCHEDULE 3: CONTRACT CHARGES, PAYMENT AND INVOICING

PART A: PAYMENT AND INVOICING

1. DEFINITIONS

1.1 The following terms used in this Schedule 3 shall have the following meaning:

"Base CPI Month"	means the month falling fourteen (14) months prior to the month in which the Calculation Date falls;
"Calculation Date"	means the date on which an amount is Indexed;
"CPI"	means the Consumer Price Index;
"Indexed"	means that the relevant amount is multiplied by the value of the CPI for the month two (2) months before the month in which the Calculation Date falls , then dividing the product by the value of the CPI for the Base CPI Month;
"Reimbursable Expenses"	means the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Authority's expenses policy current from time to time, but not including: travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, within the Greater London Urban Area, or to and from the premises at which the Services are principally to be performed, unless the Authority otherwise agrees in advance in writing; and subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;
"Supporting Documentation"	means sufficient information in writing to enable the Authority to reasonably to assess whether the Reimbursable Expenses claimed by the Supplier under this Contract are properly payable.

2. GENERAL PROVISIONS

2.1 This Schedule 3 details:

- 2.1.1 the Day Rates for the Services and Reimbursable Expenses payable under this Contract; and
- 2.1.2 the payment terms/profile for the Contract Charges;
- 2.1.3 the invoicing procedure; and
- 2.1.4 the procedure applicable to any adjustments of the Day Rates.

3. CONTRACT CHARGES

- 3.1 The Day Rates which are applicable to this Contract are set out in Part B (Contract Charges) of this Schedule 3.
- 3.2 The Supplier acknowledges and agrees that, subject to paragraph 8 (Adjustment of Day Rates) of this Part A (Payment and Invoicing) of Schedule 3, the Day Rates cannot be increased during the Contract Period.

4. COSTS AND EXPENSES

- 4.1 Except as expressly set out in paragraph 5 (Reimbursable Expenses) of this Part A (Payment and Invoicing) of Schedule 3, the Day Rates include all costs and expenses relating to the Services and/or the Supplier's performance of its obligations under this Contract and no further amounts shall be payable by the Authority to the Supplier in respect of such performance, including in respect of matters such as:
- 4.1.1 any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges; or
 - 4.1.2 any amount for any services provided or costs incurred by the Supplier prior to the Commencement Date.

5. REIMBURSEABLE EXPENSES

- 5.1 The Supplier shall be entitled to be reimbursed by the Authority for Reimbursable Expenses (in addition to being paid the relevant Day Rates), provided that such Reimbursable Expenses:
- 5.1.1 are supported by Supporting Documentation; and
 - 5.1.2 are validly recoverable under the Authority's then current expenses policy.
- 5.2 The Authority shall provide a copy of its current expenses policy to the Supplier upon request.

6. NOT USED

7. INVOICING PROCEDURE

- 7.1 The Authority shall pay all sums properly due and payable to the Supplier in cleared funds within thirty (30) days of receipt of a Valid Invoice, submitted to the address specified by the Authority in paragraph 7.6 of this Part A (Payment and Invoicing) of Schedule 3 and in accordance with the provisions of this Contract.
- 7.2 The Supplier shall, following the end of each Service Period, submit the following invoices:
- 7.2.1 a Valid Invoice in the form set out in Annex 1 to this Part A (Payment and Invoicing) of Schedule 3 in respect of the Base Contract Charges for such Service Period; and
 - 7.2.2 an Valid Invoice in the form set out in Annex 2 to this Part A (Payment and Invoicing) of Schedule 3 in respect of the Service Level Performance Charges for the previous Service Period.
- 7.3 The Supplier shall ensure that each invoice (whether submitted electronically through a purchase-to-pay (P2P) system (or similar) or in a paper form, as the Authority may specify (but in respect of paper form, subject to paragraph 7.3 below)):
- 7.3.1 contains:
 - (a) all appropriate references, including the unique order reference number to be provided post contract signing; and
 - (b) the information set out in the forms of invoice in Annex 1 and Annex 2 (as appropriate) to this Part A (Payment and Invoicing) of Schedule 3 and any additional information relating to the Contract Charges and/or the Supplier's performance of the Contract Services as may reasonably be requested by the Authority;
 - 7.3.2 shows the VAT added to the due and payable Contract Charges in accordance with Clause 16.2.1 (VAT) and the tax point date relating to the rate of VAT shown; and
 - 7.3.3 is supported by any other documentation reasonably required by the Authority to substantiate that the invoice is a Valid Invoice.

- 7.4 If the Authority is a Central Government Body, the Authority's right to request paper form invoicing shall be subject to procurement policy note 11/15 (available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437471/PPN_e-invoicing.pdf), which sets out the policy in respect of unstructured electronic invoices submitted by the Supplier to the Authority (as may be amended from time to time).
- 7.5 All payments due by one Party to the other shall be made within thirty (30) days of receipt of a Valid Invoice unless otherwise specified in this Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.
- 7.6 The Supplier shall submit invoices directly to:
- FAO Accounts Payable via email: mb-paymentqueries@dh.gsi.gov.uk
The Department of Health
79 Whitehall
London
SW1A 2NS

8. ADJUSTMENT OF DAY RATES

- 8.1 The Day Rates shall only be varied:
- 8.1.1 in accordance with Part B (Contract Charges) of this Schedule 3;
- 8.1.2 due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or some of the Day Rates in accordance with Clause 15.2.2 (Legislative Change), that has been implemented in accordance with the Variation Procedure; and/or
- 8.1.3 where all or some of the Day Rates are reviewed and reduced in accordance with paragraph 9 (Supplier Periodic Assessment of Day Rates) of this Part A (Payment and Invoicing) of Schedule 3.
- 8.2 Subject to paragraphs 8.1.1 to 8.1.3 of this Part A (Payment and Invoicing) of Schedule 3, the Day Rates will remain fixed for the Contract Period.

9. SUPPLIER PERIODIC ASSESSMENT OF DAY RATES

- 9.1 Every six (6) Months during the Contract Period, the Supplier shall assess the level of the Day Rates to consider whether it is able to reduce them.
- 9.2 Such assessments by the Supplier under paragraph 9.1 above shall be carried out on 1 May and 1 December in each Contract Year (or in the event that such dates do not, in any Contract Year, fall on a Working Day, on the next Working Day following such dates). To the extent that the Supplier is able to decrease all or part of the Day Rates it shall promptly notify the Authority in writing and such reduction shall be implemented in accordance with paragraph 10.1.2 of this Part A (Payment and invoicing) of Schedule 3.

10. IMPLEMENTATION OF ADJUSTED DAY RATES

- 10.1 Variations in accordance with the provisions of this Schedule 3 to all or some of the Day Rates (as the case may be) shall be made by the Authority to take effect:
- 10.1.1 in accordance with Clause 15.2 (Legislative Change) where an adjustment to the Day Rates is made in accordance with paragraph 8.1.2 of this Part A (Payment and Invoicing) of Schedule 3;
- 10.1.2 on 1 June for assessments made on 1 May and on 1 January for assessments made on 1 December where an adjustment to the Day Rates is made in accordance with paragraph 8.1.3 of this Part A (Payment and Invoicing) of Schedule 3,
- and the Parties shall amend the Day Rates shown in Part B (Contract Charges) of this Schedule 3 to reflect such variations.

11. INDEXATION

- 11.1 The Day Rates shall be Indexed in accordance with paragraph 1.6 of Part B (Contract Charges) and paragraph 2.5 of Part C (Contract Charges for the Optional Services).
- 11.2 Where the CPI figure is stated to be a provisional figure or is subsequently amended, that figure shall apply as ultimately confirmed or amended unless the Authority and the Supplier agree otherwise.
- 11.3 If the CPI is no longer published, the Authority and the Supplier shall agree a fair and reasonable adjustment to that index or, if appropriate, shall agree a revised formula that in either event will have substantially the same effect as that in the definition of "Indexed".
- 11.4 Except as set out in this Schedule 3, neither the Contract Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier of the performance of its obligations under this Contract.

ANNEX 2 TO PART A: FORM OF INVOICE FOR SERVICE LEVEL PERFORMANCE CHARGES

Performance Monitoring Report

Fees-at-Risk Payment Summary

This proforma and break down for Fees-at-Risk apply to the Core Services only. Based upon Schedule 3, Part B, Table A.

For Optional Services, the layout of the table below shall be used updated with the appropriate Roles and Fees-at-Risk breakdown as agreed.

Service Period Number []

Dates of Service Period []

1. Milestones

Milestone (<i>example</i>)		Date	Retained Charge (£)	Milestone Achievement Factor	Amount Due (£)
1A	Cash releasing savings achieved	31 Dec 16	a	b	c = a x b

Total **C**

Where

a = Retained Charge for the relevant Milestone Type. Schedule 6, Annex 3 to Part A refers (paragraph 2 in this example for Type 1 Milestones)

2. Service Levels

Service Level Performance Criterion		SLPC Fees-at-Risk	SPPS	Charge Adjustment	Amount Due
1	Quality	d	e	f	g = d + f
2	Leadership and management skills	<i>etc.</i>			
3	Professionalism and behavioural				

Total **G**

Where

d = SLPC Fees-at-Risk breakdown from the relevant Service Period.

f = Charge Adjustment, being a function of the SLPC and SPPS. Schedule 6, Annex 1 to Part A refers.

Total Payment Due = C + G

PART B: CONTRACT CHARGES

1. CONTRACT CHARGES FOR THE CORE SERVICES

- 1.1 The Gross Contract Charges in respect of the Core Services shall be calculated in accordance with this paragraph 1.
- 1.2 The Gross Contract Charges in respect of the Core Services shall be on a time and materials basis.
- 1.3 Subject to paragraphs 1.5 and 1.6, the Gross Contract Charges for the Core Services will be based on the Gross Day Rates set out in the Table A below (the “**Core Services Day Rates**”).
- 1.4 The Contract Charges for the Core Services will be the Gross Contract Charges as adjusted by any Charge Adjustment(s).
- 1.5 The Core Services Day Rates are the daily rates for each individual in respect of the Core Services and shall be calculated in accordance with the following terms:
 - 1.5.1 the Core Services Day Rates are for an eight (8) hour working day and the Supplier shall not be entitled to claim any additional payment over and above the relevant daily rate should Supplier Personnel work in excess of eight (8) hours in a working day;
 - 1.5.2 the Authority will not pay for more than forty (40) hours (based on five (5) working days of eight (8) hours per day) of work per member of Supplier Personnel in any single week (or pro rata for any part time Supplier Personnel);
 - 1.5.3 the staff grades and associated rates attributed to each member of Supplier Personnel engaged in the Core Services set out in Table A shall apply throughout the Contract Period notwithstanding any promotion, or other change in staff grade, which may be made by the Supplier in relation to such Supplier Personnel during the Contract Period; and
 - 1.5.4 without prejudice to Clause 18 (Key Personnel) and/or Clause 19 (Supplier Personnel), where a member of Supplier Personnel is replaced, the daily rate of the replacement member of Supplier Personnel shall be no higher than the daily rate of the member of Supplier Personnel being replaced as set out in Table A below.
- 1.6 The Core Services Day Rates shall not be subject to indexation during the Initial Period. Where the duration of this Contract is extended pursuant to Clause 5.2 (Contract Period), the Core Services Day Rates shall be Indexed on the first day of the Extension Period.

TABLE A: CORE SERVICE DAY RATES

Role	Member of Supplier Personnel	Staff Grade (based on the grades set out in Annex 1)	Net Day Rate (£) (Gross Rate – Fees at Risk)	Gross Day Rate (£)
Supplier Leadership Team				
Performance Management	REDACTED	REDACTED	REDACTED	REDACTED
Customer and Business Development	REDACTED	REDACTED	REDACTED	REDACTED
HR	REDACTED	REDACTED	REDACTED	REDACTED
Finance	REDACTED	REDACTED	REDACTED	REDACTED
Finance	REDACTED	REDACTED	REDACTED	REDACTED
IT	REDACTED	REDACTED	REDACTED	REDACTED
Programme Delivery	REDACTED	REDACTED	REDACTED	REDACTED
Transition	REDACTED	REDACTED	REDACTED	REDACTED
Extended Team				
Staff #1	REDACTED	REDACTED	REDACTED	REDACTED
Staff #2	REDACTED	REDACTED	REDACTED	REDACTED
Staff #3	REDACTED	REDACTED	REDACTED	REDACTED
Staff #4	REDACTED	REDACTED	REDACTED	REDACTED
Staff #5	REDACTED	REDACTED	REDACTED	REDACTED
Staff #6	REDACTED	REDACTED	REDACTED	REDACTED

Staff #7	REDACTED	REDACTED	REDACTED	REDACTED
Staff #8	REDACTED	REDACTED	REDACTED	REDACTED

2. CONTRACT CHARGES FOR THE OPTIONAL SERVICES

- 2.1 The Gross Contract Charges for any Optional Services performed under this Contract will be agreed in accordance with the procedure set out in Clause 7.7 of this Contract and on the basis of the pricing principles set out in this paragraph 2.
- 2.2 The pricing format to be used for any Optional Services shall be determined by the Authority at its discretion and may include fixed price, time and materials or other formats as deemed appropriate by the Authority.
- 2.3 Where the Gross Contract Charges associated with any Optional Services are to be on a time and materials basis:
- 2.3.1 subject to paragraphs 2.4 and 2.5, the Gross Contract Charges for the Optional Services will be based on the maximum gross daily rates set out in Table B below (the “**Optional Services Day Rates**”); and
 - 2.3.2 such Contract Charges will be the Gross Contract Charges as adjusted by any Charge Adjustment(s).
- 2.4 The Optional Services Day Rates are the maximum daily rates for each staff grade in respect of the Optional Services and shall be calculated in accordance with the following terms:
- 2.4.1 the Optional Services Day Rates are the maximum the Supplier is entitled to charge in respect of work carried out on Optional Services and the Supplier shall, when preparing a work order pursuant to Clause 7.7 (Optional Services) consider and advise the Authority of the daily rates at which it is able to provide the relevant Optional Services (up to such maximum rates);
 - 2.4.2 the Optional Services Day Rates are for an 8-hour working day and the Supplier shall not be entitled to claim any additional payment over and above the relevant daily rate should Supplier Personnel work in excess of 8 hours in a working day; and
 - 2.4.3 the Authority will not pay for more than 40 hours (based on 5 working days of 8 hours per day) of work per member of Supplier Personnel in any single week (or pro rata for any part time Supplier Personnel).
- 2.5 The Optional Services Day Rates shall not be subject to indexation during the Initial Period. Where the duration of this Contract is extended pursuant to Clause 5.2 (Contract Period), the Optional Services Day Rates shall be Indexed on the first day of the Extension Period.

TABLE B – Maximum Optional Services Day Rates (where such services are to be charged on a time and materials basis)

Staff Grade (based on the grades set out in Annex 1)	Maximum Net Day Rate (£) (Gross Rate – Fees at Risk)	Maximum Gross Day Rate (£)
Junior Consultant / Analyst	REDACTED	REDACTED
Consultant	REDACTED	REDACTED
Senior Consultant	REDACTED	REDACTED
Managing Consultant	REDACTED	REDACTED
Director / Partner	REDACTED	REDACTED

ANNEX 1 TO PART B: STAFF GRADE DESCRIPTIONS

Level	Generic Title	Generic Description / Indicative Characteristics
1	Junior Consultant / Analyst	Demonstrate experience of a wide range of projects in their specialist field. Evidence of client facing experience and support services to wider consultancy projects. Typically the Authority would expect a person within this category to have had relevant experience.
2	Consultant	Notable experience and in-depth knowledge of their specialist field. Evidence of a wide range of consultancy projects and client facing experience. Support work in process and organisational design and leading workshops and events. Typically the Authority would expect a person within this category to have relevant experience.
3	Senior Consultant	Substantial experience in their specialist field and in a consultancy/training role. Previous experience in project management and working in a wide range of high quality and relevant projects. Familiarity with the issues/problems facing public sector organisations. Typically the Authority would expect a person within this category to have proven experience.
4	Managing Consultant	Substantial experience in their specialist field and in a consultancy role. In depth knowledge of the public sector and of current policy and political issues affecting it. Previous experience in project management on at least five major projects, preferably in the public sector and using the PRINCE2 or equivalent method. Typically the Authority would expect a person within this category to have significant, proven, industry recognised experience
5	Director / Partner	Extensive experience in their specialist field, in which they are nationally or internationally renowned as an expert. Extensive experience of leading or directing major, complex and business-critical projects, bringing genuine strategic insight. In depth knowledge of the public sector and of current policy and political issues affecting it. Typically the Authority would expect a person within this category to have significant, proven industry recognised experience

SCHEDULE 4: MOBILISATION PLAN AND KEY PERSONNEL

PART A: MOBILISATION PLAN

The Supplier shall provide the Services during the Mobilisation Period in accordance with the Mobilisation Plan set out below. ExE Transition	Due By	Notes	Owner
Contract Completion			
Finalise contract signature	9/3/17	Ensure final contract is signed by both parties	REDACTED
Finance / Invoicing			
Hold invoicing meeting	16/3/17	Meeting to agree format of invoicing / process for managing at risk / retained fees	REDACTED
Prepare invoicing template	22/3/17	Share template that will be used to submit invoices and finance data	REDACTED
Set up and communicate PO for invoicing	22/3/17	DH PO details to be shared with EY finance team	REDACTED
Staff Induction / Mobilisation			
EY Mobilisation day	7/3/17	EY Internal mobilisation day to bring people up to shared knowledge base	REDACTED
Set up 1:1's between key leads and DH leads	7/3/17	Initial kick offs to meet key leads	REDACTED
Set up Jin / SHIEM session to meet team	8/3/17		
Create profile pack / introductions	8/3/17	Pack to share with PTP programme introducing EY Team	REDACTED
PTP Programme Induction	10/3/17	PMO Processes / Document Management	REDACTED
PTP Programme Overview	14/3/17	Introduction and overview of the programme	REDACTED
Site Orientation / Seating	10/3/17	Site induction to SKH and seating plans	REDACTED
IT / Equipment			
Set up DH accounts for all EY staff	8/3/17		
Secure DH laptops for all EY Staff	8/3/17		
Secure lockers for EY Staff	15/3/17		
Secure Remote Access tokens for all EY Staff	15/3/17		
Security Plan			
Draft Holding guidance and communicate to EY Staff	8/3/17		
Create first draft of Security Management Plan	17/3/17	Draft to be shared with DH for assessment and comment	REDACTED
Complete Review and comments on Plan	24/3/17		
Final Draft of Security Plan submitted	31/3/17		
Performance Management Process			
Draft Milestone Progress Report Template	10/3/17	Draft to be shared with DH for review	
Review and agree MPR Template	15/3/17		REDACTED
Guidance briefing on Performance Process	14/3/17	Guidance session for EY leads to understand approach and context of performance assessment process	REDACTED
Establish Performance Review Meetings	15/3/17	Diarise meetings for formal review 1 week post end of period	
Establish 1:1 performance discussions	15/3/17	Leads to agree approach with	REDACTED

		counterparts and diarise	
Establish Service Steering Board	15/3/17	Diarise meetings for SSB	REDACTED
Design Phase Planning			
Initial Design Phase Plans	15/3/17	Initial Drafts of design phase plans shared with clients	REDACTED
Final Design Phase Plans	31/3/17	Design Phase plans agreed in full with client inputs	
Staff Site Visits			
EY Staff Visit to NHS Trust(s)	24/3/17	Opportunity for non Health staff to understand client environment, particularly procurement operation	
EY Staff Visit to BSA (Mansfield)	24/3/17	Arrange onsite visits to understand BSA operation / meet staff	REDACTED
EY Staff Visit to NHS Supply Chain Site	24/3/17	Arrange site visit to at least one NHSSC operational site	
Mobilisation Phase Completion			
All staff on site and operational	31/3/17		
Collate mobilisation phase deliverables	31/3/17	Collate all deliverables from this phase for submission / review	REDACTED
Draft milestone performance report	7/4/17		
Draft first period consolidated time sheets	7/4/17		
Performance review scorings submitted	7/4/17	client to collate performance scores from client leads	REDACTED
Performance scores shared with EY	14/4/17	client to share initial performance scores with EY	
Submit MPR & Invoice to client	17/4/17		
Mobilisation Phase sign off	10/4/17	Performance Review Meetings & Milestone Payment sign off	REDACTED
Mobilisation Phase Outcome List			
All staff on site and mobilised			
Security Management Plan Agreed			
All staff inducted and operational			
Performance review processes established			
Finance processes established			
Reporting processes established			
Design Phase plans agreed			

PART B: KEY PERSONNEL

The Key Roles are set out below together with the Key Personnel fulfilling those Key Roles at the Commencement Date:Role	Member of Supplier Personnel	Staff Grade (based on the grades set out in Annex 1)
Supplier Leadership Team		
Performance Management	REDACTED	REDACTED
Customer and Business Development	REDACTED	REDACTED
HR	REDACTED	REDACTED
Finance	REDACTED	REDACTED
IT	REDACTED	REDACTED
Programme Delivery	REDACTED	REDACTED
Transition	REDACTED	REDACTED
Extended Team		
Staff #1	REDACTED	REDACTED
Staff #2	REDACTED	REDACTED
Staff #3	REDACTED	REDACTED
Staff #4	REDACTED	REDACTED
Staff #5	REDACTED	REDACTED
Staff #6	REDACTED	REDACTED
Staff #7	REDACTED	REDACTED
Staff #8	REDACTED	REDACTED

SCHEDULE 5:NOT USED

SCHEDULE 6: PERFORMANCE MANAGEMENT

1. SCOPE

1.1 This Schedule 6 (Performance Management) sets out the Service Levels which the Supplier is required to achieve when providing the Services, the mechanism by which Service Level Failures and Significant Service Level Failures will be managed, the mechanism by which delivery of Milestones will be managed and the method by which the Supplier's performance in the provision by it of the Services will be monitored.

1.2 This Schedule 6 comprises:

1.2.1 Part A: Service Levels, Charge Adjustment and Milestones;

(a) Annex 1 to Part A - Service Levels and Charge Adjustment;

(b) Annex 2 to Part A – Significant Service Level Failure;

(c) Annex 3 to Part A – Milestones;

1.2.2 Part B: Performance Monitoring.

PART A: SERVICE LEVELS, CHARGE ADJUSTMENT AND MILESTONES

1. GENERAL PROVISIONS

- 1.1 The Supplier shall provide a proactive contract management function in support of the Contract Services to ensure that all Service Levels in this Contract are achieved to the highest standard throughout the Contract Period, as well as ensuring adherence to the terms of this Contract.
- 1.2 As part of this contract management function, the Supplier shall be responsible for such matters including:
- 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 provision of accurate and timely invoices with the appropriate supporting documentation.

2. PRINCIPAL POINTS

- 2.1 The objectives of the Service Levels, the Charge Adjustment and the Retained Charge are to:
- 2.1.1 ensure that the Services are of a consistently high quality and meet the requirements of the Authority;
 - 2.1.2 provide a mechanism whereby the Authority can attain meaningful recognition of inconvenience and/or loss resulting from the Supplier's failure to deliver the level of service which it has contracted to deliver;
 - 2.1.3 provide a mechanism whereby the Supplier can be rewarded for exceeding the level of service expected by the Authority;
 - 2.1.4 incentivise the Supplier to achieve the Milestones as set out in the Key Milestone Plan on time, on budget and to the Authority's satisfaction; and
 - 2.1.5 incentivise the Supplier to comply with and to expeditiously remedy any failure to comply with the Service Levels.

3. OVERVIEW

- 3.1 In each Service Period, the Fees-at-Risk shall be subject to adjustment to reflect the Supplier's performance against each Service Level Performance Criterion during such Service Period.
- 3.2 The results of the Supplier's performance against each Service Level Performance Criterion will be evaluated under either the Retained Charge mechanism or the Charge Adjustment mechanism.
- 3.3 For Core Services, the table below sets out the proportion of the Fees-at-Risk to which each Service Level Performance Criterion applies and the relevant performance mechanism under which the Supplier's performance against such Service Level Performance Criterion will be evaluated.

Service Level Performance Criterion	Proportion of Fees-at-Risk	Performance mechanism
Deliverables	15%	Retained Charge / Milestone Payment
Quality	30%	Charge Adjustment
Leadership and management skills	25%	Charge Adjustment
Professionalism and	30%	Charge Adjustment

behavioural		
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4. FEES-AT-RISK

4.1 In respect of Gross Contract Charges payable in respect of Core Services, the amount of the Gross Contract Charges that are subject to adjustment in accordance with this Part A (Service Levels, Charge Adjustment and Milestones) of Schedule 6 (Performance Management) shall be an amount equal to:

Gross Contract Charges for Core Services for the relevant Service Period x **REDACTED%** (the “**Fees-at-Risk**”).

4.2 Of the Fees-at-Risk:

4.2.1 a total of 85% shall be subject to adjustment in accordance with the Charge Adjustment mechanism in Annex 1 (Service Levels and Charge Adjustment) to this Part A of Schedule 6 (Performance Management), broken down as follows:

- (a) 30% attributable to the quality Service Level Performance Criterion;
- (b) 25% attributable to the leadership and management skills Service Level Performance Criterion; and
- (c) 30% attributable to the professionalism and behavioural Service Level Performance Criterion;

(the relevant amount of such Fees-at-Risk being the “**SLPC Fees-at-Risk**” for that Service Level Performance Criterion);

4.2.2 15% shall be subject to retention and adjustment in accordance with the Retained Charge and Milestone Payment mechanism in Annex 3 (Milestones) to this Part A of Schedule 6 (Performance Management) (the “**Deliverables Fees-at-Risk**”).

5. SERVICE LEVELS AND CHARGE ADJUSTMENT

5.1 Annex 1 (Service Levels and Charge Adjustment) to this Part A of Schedule 6 (Performance Management) sets out the Service Levels the performance of which the Parties have agreed to measure.

5.2 The Authority shall monitor the Supplier’s performance of this Contract by reference to the relevant performance criteria for achieving the Service Levels shown in Annex 1 (Service Levels and Charge Adjustment) to this Part A of this Schedule 6 (Performance Management) (the “**Service Level Performance Criteria**”) and shall send the Supplier a Performance Monitoring Report detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Schedule 6 (Performance Management).

5.3 The Supplier shall, at all times, provide the Services in such a manner that the Service Levels Performance Measures are achieved.

5.4 If the level of performance of the Supplier of any element of the provision by it of the Services during the Contract Period:

5.4.1 is likely to cause or causes a Service Level Failure to occur; or

5.4.2 is likely to cause or causes a Significant Service Level 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 9 (Services Levels, Charge Adjustment and Milestones), 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 Significant Service Level Failure from taking place or recurring; and
- (b) if a Service Level Failure has occurred, adjust the Gross Contract Charges payable by the Authority to the Supplier in respect of that Service Period in accordance with the

calculation formula set out in Annex 1 (Service Levels and Charge Adjustment) of this Part A of Schedule 6 (Performance Management); and/or

(c) if a Significant Service Level Failure has occurred, require the Supplier to follow the Rectification Plan Process.

- 5.5 Approval and implementation by the Authority of any Rectification Plan shall not relieve the Supplier of any continuing responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppels or waiver shall arise from any such Approval and/or implementation by the Authority.
- 5.6 Annex 1 (Service Levels and Charge Adjustment) to this Part A of Schedule 6 (Performance Management) sets out the formula used to calculate the Charge Adjustment to the Gross Contract Charges payable to the Supplier as a result of the Service Period Performance Score in a given service period which, for the purpose of this Schedule 6 (Performance Management), shall be a recurrent period of one Month during the Contract Period (each a “**Service Period**”).
- 5.7 The Authority shall use the Performance Monitoring Reports produced by the Authority Representative under Part B (Performance Monitoring) of this Schedule 6 (Performance Management) to verify the calculation of the Charge Adjustment, if any, applicable to each Service Period.
- 5.8 The Supplier shall deduct or add (as appropriate) an amount equal to the value of any Charge Adjustment(s) from the Gross Contract Charges forming the SLPC Fees-at-Risk in order and reflect such amount in the calculation of the Service Level Performance Charges in the next invoice that the Supplier raises, in accordance with paragraph 7 of Part A of Schedule 3 (Contract Charges, Payment and Invoicing).
- 5.9 Charge Adjustments are a variation of amounts payable in respect of the Services and do not include VAT.

6. MILESTONE DELIVERY PLAN, RETAINED CHARGE AND MILESTONE PAYMENTS

- 6.1 The performance mechanism set out in Annex 3 (Milestones) to this Part A of Schedule 6 (Performance Management) shall apply to the Supplier’s performance against the Deliverables Service Level Performance Criterion.
- 6.2 The evaluation of the Supplier’s performance against the Deliverables Service Level Performance Criterion will be based on its achievement of the Milestones set out in Table A below (the “**Key Milestone Plan**”).

Table A – Key Milestone Plan

Milestone	Target Date	Performance Target	Performance Target relative to Baseline
Type 1: Cash Releasing Savings Achieved			
Baseline	Commencement Date	£216,800,000	N/A
1.A	31 December 2017	£252,500,000	+£35,700,000
1.B	30 September 2018	£300,000,000	+£83,200,000
1.C	Second anniversary of the Commencement Date	£340,000,000	+£123,200,000

Milestone	Target Date	Performance Target	Performance Target relative to Baseline
Type 2: Market Share Achieved			
Baseline	Commencement Date	37.7%*	N/A
2.A	30 September 2017	42.7%	+5.0%
2.B	31 March 2018	47.7%	+10.0%
2.C	30 September 2018	50.2%	+12.5%
2.D	Second anniversary of the Commencement Date	52.7%	+15.0%

* includes Direct and Transacted sales

Milestone	Target Date	Performance Target
Type 3: Programme Milestones		
3.A: Mobilisation	One (1) calendar month following the Commencement Date	Mobilisation of Core Team complete
3.B: Design	Three (3) calendar months following the Commencement Date	Organisation design complete (as further described in paragraph 1.2 of Part B to Schedule 2 (Services)).
3.C: Operational Readiness	1 October 2017	Operationally Ready for cut over and go live of CCS Category Tower
3.D: Operational Readiness	1 February 2018	Operationally Ready for cut over go live of Tranche 1 Category Towers
3.E: Fully Go Live	1 June 2018	Operationally Ready for cut over and go live of Tranche 2 Category Towers
3.F: Operational Services Complete	Second anniversary of the Commencement Date	Completion of the Knowledge Transfer activities as set out in paragraph 1.4 of Part B of Schedule 2 (Services)

- 6.3 Without prejudice to the Supplier's obligation to provide the Milestone Progress report pursuant to paragraph 2.2 of Part B (Performance Monitoring) of this Schedule 6 (Performance Management), the Supplier shall, as soon as reasonably practicable, provide the Authority with any additional information requested by the Authority to enable it to monitor the Supplier's progress towards the achievement of each Milestone and the Authority shall include its evaluation of the Supplier's progress in the Performance Monitoring Report in accordance with paragraph 3 of Part B (Performance Monitoring) of this Schedule 6 (Performance Management).
- 6.4 The Supplier shall, at all times, provide the Services in such a manner as to enable it to satisfy the Performance Target for each Milestone on the relevant Measurement Date set out in the Key Milestone Plan.
- 6.5 Approval and implementation by the Authority of any Rectification Plan shall not relieve the Supplier of any continuing obligation to satisfy the Milestones in accordance with the Key Milestone Plan, or remedy any failure to make sufficient progress towards satisfaction of such Milestones, and no estoppels or waiver shall arise from any such Approval and/or implementation by the Authority.
- 6.6 Annex 3 (Milestones) to this Part A of Schedule 6 (Performance Management) sets out the formula used to calculate the Retained Charge in respect of each Milestone and the amount of the Milestone Payment (if any) to be paid to the Supplier on, in respect of Type 1 Milestones and Type 2 Milestones, the relevant Measurement Date, and, in respect of Type 3 Milestones, satisfaction of such Milestone.

- 6.7 The Authority shall use the Performance Monitoring Reports produced by the Authority Representative under Part B (Performance Monitoring) of this Schedule 6 (Performance Management) to verify and confirm the Supplier's performance against the Performance Targets for Type 1 Milestones and Type 2 Milestones and its progress towards satisfaction of Type 3 Milestones in order to verify the calculation and accuracy of the Retained Charge and any Milestone Payments.
- 6.8 Milestone Payments will be calculated in accordance with Annex 3 (Milestones) to this Part A of Schedule 6 (Performance Management) and shall be accounted for in the calculation of the Service Level Performance Charges in the next invoice raised by the Supplier.
- 6.9 The Retained Charge in respect of each Milestone is a deferred amount of the payment due to the Supplier in respect of the Services, which may become a permanent price adjustment in accordance with Annex 3 (Milestones) to this Part A of Schedule 6 (Performance Management), and does not include VAT.

7. NATURE OF CHARGE ADJUSTMENTS AND MILESTONE PAYMENTS

- 7.1 The Supplier confirms that it has modelled both the Charge Adjustment and the Milestone Payments and has taken them into account in setting the level of Gross Contract Charges. Both Parties agree that the Charge Adjustment mechanism and the Milestone Payment mechanism are both reasonable methods of price adjustment to reflect actual performance.

8. OPTIONAL SERVICES

- 8.1 Subject to paragraphs 8.2 and 8.3 below, the terms of this Schedule 6 (Performance Management) shall also apply to the Gross Contract Charges for Optional Services, with the term "Core Services" being read as referring to "Optional Services".
- 8.2 The amount of the fees-at-risk in respect of the Gross Contract Charges for Optional Services and the proportion of those fees-at-risk allocated to each Service Level Performance Criterion will be set out in the relevant work order that is agreed in accordance with Clause 7.7 (Optional Services) of this Contract.
- 8.3 In relation to Optional Services, where additional milestones have been agreed by the Parties in relation to the provision of such Optional Services, achievement of these milestones shall be included in the evaluation of the Deliverables Service Level Performance Criterion as set out in the relevant work order.

ANNEX 1 TO PART A: SERVICE LEVELS AND CHARGE ADJUSTMENT

1. SERVICE LEVELS

Service Level Performance Criterion	Service Level Performance Measure
Quality	Quality and effectiveness of outcomes
Leadership and management skills	Linkage to the strategy of the Authority, insight, ability to participate and adapt to changes, driving innovation and results. Programme control: budget, resources, plans, deliverables, processes, people, communication.
Professionalism and behavioural	Skills (technical, functional, business), attention to value for money, methodical approach, sense of responsibility and ethics. Cross-team, cross-department co-operation. Cross-organisation integration. Focus on overall programme objective. Responsiveness and adaptability. High-quality relationships with client. Knowledge transfer.

2. SCORING OF THE SERVICE LEVEL CRITERIA

- 2.1 For each Service Period, the Supplier's performance of the Services against each Service Level Performance Criterion above shall be scored between 0 and 5 by each Authority Functional Head (each such score being a "**Functional Head Criterion Score**") according to the following criteria:

Score	Meaning	Explanation
5	Excellent	All expectations are exceeded by a significant margin, all demonstrate best practice.
4	Very good	All expectations met, some exceeded, significant examples of best practice.
3	Good	All expectations met, overall satisfactory with some clear strengths.
2	Need to improve	Some expectations not met, overall unsatisfactory with some visible weaknesses, unsustainable performance.
1	Major weakness	Few expectations met, unacceptable performance.
0	Totally unsatisfactory	No/very few expectations met, unacceptable performance.

- 2.2 Subject to paragraph 2.3, the overall score attributed to a Service Level Performance Criteria (the “**Service Period Performance Score**”) shall be the average of the Functional Head Criterion Scores for such Service Level Performance Criteria.
- 2.3 Where one or more Functional Head Criterion Scores in relation to a Service Level Performance Criterion is 2.0 or less, the Service Period Performance Score for such Service Level Performance Criterion shall not exceed 3.0, notwithstanding that the average of the Functional Head Criterion Scores may be higher.
- 2.4 Where a Service Period Performance Score is not a whole number, it shall be rounded to the third decimal.

3. CHARGE ADJUSTMENT CALCULATION

- 3.1 The Service Period Performance Score for a Service Level Performance Criterion shall determine the Charge Adjustment for that Service Level Performance Criterion, based on the calculations in the table below:

Service Period Performance Score	Charge Adjustment
Over 3.0	The Charge Adjustment shall be an amount equal to: $(\text{SLPC Fees-at-Risk} \times (\text{SPPS} - 3.0)) \times 10\%$
Exactly 3.0	The Charge Adjustment shall be 0.
Under 3.0	The Charge Adjustment shall be an amount equal to the highest figure calculated by each of the following equations (for the avoidance of doubt, being the lesser of the two potential reductions): (a) $\text{SLPC Fees-at-Risk} \times (-1)$; (b) $(\text{SLPC Fees-at-Risk} \times (\text{SPPS} - 3.0)) \times 70\%$

4. ILLUSTRATIVE EXAMPLES

- 4.1 The examples below illustrate the calculation of the Charge Adjustment for a Service Level Performance Criterion. The examples are for information only and the remaining provisions of this Annex 1 (Service Levels and Charge Adjustments) to Part A of Schedule 6 (Performance Management) shall take precedence in the event of any conflict.
- 4.2 Each example is based on the Quality Service Level Performance Criterion in respect of the provision of Core Services and assumes the Fees-at-Risk for the relevant Service Period are £100 and the SLPC Fees-at-Risk are therefore £30.

Score	Example 1 (above Performance Target)	Example 2 (SPPS capped)	Example 3 (below Performance Target)
Authority Functional Head – performance management	3	2	2
Authority Functional Head – customer and business development	3	3	2
Authority Functional Head – HR	3	3	2

Authority Functional Head – finance	4	3	3
Authority Functional Head – IT	4	3	3
Authority Functional Head – programme delivery	4	4	4
Authority Functional Head – transition	4	4	4
Service Period Performance Score	3.571	3	2.857
Charge Adjustment	£1.71	£0.00	-£3.00
Service Level Performance Charges (for Quality Service Level Performance Criterion)	£31.71	£30.00	£27.00

Example 1

- The average of the Functional Head Criterion Scores is 3.571. All Functional Head Criterion Scores exceed 2, therefore the SPPS is 3.571.
- Charge Adjustment =
 $(\text{SLPC Fees-at-Risk} \times (\text{SPPS} - 3.0)) \times 10\%$
 $(£30 \times (3.571 - 3.0)) \times 10\%$
= £1.71

Example 2

- The average of the Functional Head Criterion Scores is 3.143. One of the Functional Head Criterion Scores is 2, therefore the SPPS is capped at 3.
- Charge Adjustment = £0

Example 3

- The average of the Functional Head Criterion Scores is 2.857.
- Charge Adjustment =
 $(\text{SLPC Fees-at-Risk} \times (\text{SPPS} - 3.0)) \times 70\%$
 $(£30 \times (2.857 - 3.0)) \times 70\%$
= -£3.00

ANNEX 2 TO PART A: SIGNIFICANT SERVICE LEVEL FAILURE

1. AVERAGE SPPS

1.1 The average of the SPPS for the three Service Level Performance Criteria to which the Charge Adjustment applies shall be calculated on the basis of the weighting in the table below to produce an overall SPPS for the relevant Service Period (the “Average SPPS”).

Service Level Performance Criteria	Weight attribute to relevant SPPS
Quality	35.3%
Leadership and management skills	29.4%
Professionalism and behavioural	35.3%

2. SIGNIFICANT SERVICE LEVEL FAILURE

2.1 A Significant Service Level Failure will have occurred if:

- 2.1.1 the Average SPPS is 2.5 or below in two consecutive Service Periods; or
- 2.1.2 the Average SPPS is 1.5 or below in any Service Period.

3. NOTIFICATION REQUIREMENTS

3.1 The Supplier must, as soon as reasonably practicable, inform the Authority if it reasonably believes that a Significant Service Level Failure has occurred or is about to occur.

3.2 The Authority must, as soon as reasonably practicable, inform the Supplier if it has grounds to believe that a Significant Service Level Failure has occurred or is about to occur. If a Significant Service Level Failure has occurred in a Service Period, the Authority will inform the Supplier as soon as reasonably practicable following calculation of the Service Period Performance Scores for that Service Period.

4. ILLUSTRATIVE EXAMPLE

4.1 The examples below in Table 4.1 illustrate the calculation of the Average SPPS. The examples are for information only and the remaining provisions of this Annex 2 (Significant Service Level Failure) to Part A of Schedule 6 (Performance Management) shall take precedence in the event of any conflict.

Table 4.1: Illustration of the calculation of the Average SSPS

Service Level performance Criterion	% of Fees-at-Risk	Weighting	Example 1 (consecutive Service Periods)		Example 2 (any single Service Period)
			Service Period 1	Service Period 2	
Quality	30%	35.3%	2.100	2.400	1.100
Leadership and management skills	25%	29.4%	2.900	3.000	2.100
Professionalism and behavioural	30%	35.3%	2.200	2.100	1.300
Average SPPS	-	-	2.371	2.471	1.465
Significant Service Failure?	-	-	No	Yes (with previous Service Period)	Yes

ANNEX 3 TO PART A: MILESTONES

1. RETAINED CHARGE MECHANISM

- 1.1 Subject to Paragraph 1.2, from each payment due to the Supplier from the Authority, the Authority shall retain an amount equal to the Deliverables Fees-at-Risk as a retention in respect of the Milestones that have not reached their Measurement Date or, in relation to Type 3 Milestones, been achieved at the date of the relevant invoice (the “**Retained Charge**”).
- 1.2 The proportion of the Fees-at-Risk attributable to each Milestone Type is as set out in the table below. If all the Milestones within a Milestone Type have reached their Measurement Date or, in relation to Type 3 Milestones, been achieved, the amount of the Deliverables Fees-at-Risk shall be reduced by the amount set out in the table below for that Milestone Type.

Milestone Type	Retained Charge as a % of Fees-at-Risk
Type 1 Milestones – Cash releasing savings	5%
Type 2 Milestones -Market share	5%
Type 3 Milestones – Programme milestones	5%

- 1.3 Any amount of the Retained Charge for a Milestone which is not paid to the Supplier as a Milestone Payment in accordance with this Annex 3 (Milestones) to Part A of Schedule 6 (Performance Management) pursuant to the calculation carried out on the Measurement Date or, in relation to a Type 3 Milestone, the date on which the Milestone is achieved, shall be permanently retained by the Authority as a price adjustment and shall not be included in the calculation of the Milestone Payment for the subsequent Milestone of that type.

2. TYPE 1 MILESTONES – CASH RELEASING SAVINGS

- 2.1 At each Measurement Date set out in the Key Milestone Plan, the Authority will calculate the Milestone Payments for the relevant Type 1 Milestone in accordance with this paragraph 2.
- 2.2 The Milestone Payment for a Type 1 Milestone will be an amount equal to:

Type 1 Milestone Retained Charge to Date x Milestone Achievement Factor

Where:

Actual Measure = the level of cash releasing savings measured by the Authority (using the BSA standard methodology) at the Measurement Date;

Net Actual Measure = the Actual Measure less the Baseline Measure for Type 1 Milestones;

Milestone Achievement Factor =

(a) where the Net Actual Measure is less than or equal to zero, 0;

(b) where the Net Actual Measure is more than zero, the lower of:

(i) 1.2; and

(ii) Net Actual Measure / Net Target,

and where the result is not a whole number, it shall be rounded to the third decimal;

Net Target = the Performance Target for the relevant Type 1 Milestone on the relevant Measurement Date less the Baseline Measure for Type 1 Milestones;

Type 1 Milestone Retained Charge to Date = the cumulative Retained Charge retained by the Authority in respect of Type 1 Milestones since the previous Measurement Date (or, where there has been no previous Measurement Date for Type 1 Milestones, the Commencement Date).

- 2.3 As soon as reasonably practicable following the Measurement Date, the Authority will inform the Supplier of the Milestone Payment for the relevant Type 1 Milestone, including details of the calculation. If there is no

dispute in relation this this calculation, the Supplier will be entitled to add the Milestone Payment to the next invoice issued to the Authority under this Contract.

3. TYPE 2 MILESTONES – MARKET SHARE

3.1 At each Measurement Date set out in the Key Milestone Plan, the Authority will calculate the Milestone Payments for the relevant Type 2 Milestone in accordance with this paragraph 3.

3.2 The Milestone Payment for a Type 2 Milestone will be an amount equal to:

Type 2 Milestone Retained Charge to Date x Milestone Achievement Factor

Where:

Actual Measure = the market share at the Measurement Date as measured by the Authority (using the BSA standard methodology);

Net Actual Measure = the Actual Measure less the Baseline Measure for Type 2 Milestones;

Milestone Achievement Factor =

(a) where the Net Actual Measure is less than or equal to zero, 0;

(b) where the Net Actual Measure is more than zero, the lower of:

(i) 1.2; and

(ii) Net Actual Measure / Net Target,

and where the result is not a whole number, it shall be rounded to the third decimal;

Net Target = the Performance Target for the relevant Type 2 Milestone on the relevant Measurement Date less the Baseline Measure for Type 2 Milestones;

Type 2 Milestone Retained Charge to Date = the cumulative Retained Charge retained by the Authority in respect of Type 2 Milestones since the previous Measurement Date (or, where there has been no previous Measurement Date for Type 2 Milestones, the Commencement Date).

3.3 As soon as reasonably practical following the Measurement Date, the Authority will inform the Supplier of the Milestone Payment for the relevant Type 2 Milestone, including details of the calculation. If there is no dispute in relation this this calculation, the Supplier will be entitled to add the Milestone Payment to the next invoice issued to the Authority under this Contract.

4. TYPE 3 MILESTONES – PROGRAMME MILESTONES

4.1 If the Supplier believes that it has achieved a Type 3 Milestone, it will inform the Authority and provide supporting evidence.

4.2 Where the Authority agrees that the Type 3 Milestone has been achieved, it will issue a certificate (a “**Satisfaction Certificate**”) to the Supplier with the next Performance Monitoring Report , which shall include the Authority’s calculation of the Milestone Payment due to the Supplier, as calculated in accordance with this paragraph 4.

4.3 The Milestone Payment for a Type 3 Milestone will be an amount equal to:

Type 3 Milestone Retained Charge to Target Date x Milestone Achievement Factor

Where:

Milestone Achievement Factor = the factor determined by the Authority to apply to the relevant Type 3 Milestone based on the timing of delivery, as set out in the table below:

Measure of performance	Milestone Achievement Factor
Milestone delivered to expected quality standard on or before Target Date	1.00

Milestone delivered to expected quality standard within 15 days after the Target Date	0.75
Milestone delivered to expected quality standard between 16 and 30 (inclusive) days after the Target Date	0.50
Milestone delivered to expected quality standard between 31 and 45 (inclusive) days after the Target Date	0.25
Milestone delivered to expected quality standard more than 45 days after the Target Date	0

Type 3 Milestone Retained Charge to Target Date = the cumulative Retained Charge retained by the Authority in respect of Type 3 Milestones in the period from (and including) the previous Target Date (or, where there has been no previous Target Date for Type 3 Milestones, the Commencement Date) up to (but not including) the Target Date for the relevant Type 3 Milestone.

4.4 If there is no dispute in relation to the calculation of the Milestone Payment provided by the Authority in the Satisfaction Certificate, the Supplier will be entitled to add the Milestone Payment to the next invoice issued to the Authority under this Contract.

5. ILLUSTRATIVE EXAMPLES

5.1 The examples below illustrate the calculation of the Milestone Payments. The examples are for information only and the remaining provisions of this Annex 3 (Milestones) shall take precedence in the event of any conflict.

The examples assume that since the Commencement Date (or the previous Measurement Date):

- (1) the Fees-at-Risk have been £100 per Service Period, and
- (2) there have been six Service Periods;
- (3) the Retained Charge for Type 1 Milestones of 5% of the Fees-at-Risk has been retained in each Service Period, producing a cumulative Retained Charge of £30.

5.2 Type 1 Milestones Cash Releasing Savings (using Milestone 1.A)

(£m)	Example 1 (above Performance Target)	Example 2 (Milestone Achievement Factor capped)	Example 3 (below Performance Target)	Example 4 (below Baseline)
Baseline	£152	£152	£152	£152
Performance Target	£178.50	£178.50	£178.50	£178.50
Net Target	£26.50	£26.50	£26.50	£26.50
Actual Measure	£181	£185	£177	£150
Net Actual Measure	£29	£33	£25	-£2
Milestone Achievement	1.094	1.2	0.943	0

Factor				
Milestone Payment	£32.82	£36	£28.29	£0

Example 1

- The Supplier has exceeded the Net Target at the Measurement Date resulting in a Net Actual Measure of £29.
- Milestone Achievement Factor = Net Actual Measure / Net Target = 1.094
- Milestone Payment = 1.094 x £30 = £32.82

Example 2

- The Supplier has exceeded the Net Target at the Measurement Date resulting in a Net Actual Measure of £33.
- Milestone Achievement Factor is capped at 1.2.
- Milestone Payment = 1.2 x £30 = £36

Example 3

- The Supplier has failed to reach the Net Target at the Measurement Date, resulting in a Net Actual Measure of £25.
- Milestone Achievement Factor = Net Actual Measure / Net Target = 0.943
- Milestone Payment = 0.943 x £30 = £28.29

Example 4

- The Supplier has failed to reach the Net Target at the Measure Date and the savings measured have fallen below the Baseline, resulting in a Net Actual Measure of -£2.
- Milestone Achievement Factor is 0
- Milestone Payment = 0 x £30 = £0

5.3 Type 2 Milestones – Market Share (using Milestone 2.A)

(£m)	Example 1 (above Performance Target)	Example 2 (Milestone Achievement Factor capped)	Example 3 (below Performance Target)	Example 4 (below Baseline)
Baseline	41%	41%	41%	41%
Performance Target	46%	46%	46%	46%
Net Target	5%	5%	5%	5%
Actual Measure	46.5%	47.5%	45.0%	40.0%
Net Actual Measure	5.5%	6.5%	4.0%	-1.0%
Milestone Achievement Factor	1.1	1.2	0.8	0
Milestone Payment	£33	£36	£24	£0

Example 1

- The Supplier has exceeded the Net Target at the Measurement Date resulting in a Net Actual Measure of 5.5%.
- Milestone Achievement Factor = Net Actual Measure / Net Target = 1.10
- Milestone Payment = 1.10 x £30 = £33

Example 2

- The Supplier has exceeded the Net Target at the Measurement Date resulting in a Net Actual Measure of 6.5%.
- Milestone Achievement Factor is capped at 1.2.
- Milestone Payment = 1.2 x £30 = £36

Example 3

- The Supplier has failed to reach the Net Target at the Measurement Date, resulting in a Net Actual Measure of 4%.
- Milestone Achievement Factor = Net Actual Measure / Net Target = 0.80
- Milestone Payment = 0.80 x £30 = £24

Example 4

- The Supplier has failed to reach the Net Target at the Measurement Date and the savings measured have fallen below the Baseline, resulting in a Net Actual Measure of -1%.
- Milestone Achievement Factor is 0
- Milestone Payment = 0 x £30 = £0

5.4 Type 3 Milestones – Programme Milestones

Example 1

- The Supplier has notified the Authority that it has achieved the Milestone on or before the relevant Target Date set out in the Key Milestone Plan. The Authority conducted a review and concluded that it was satisfied with the quality of the deliverable.
- Milestone Achievement Factor = 100%
- Milestone Payment = £30 x 100% = £30

Example 2

- The Supplier has notified the Authority that it has achieved the Milestone on or before the relevant Target Date set out in the Key Milestone Plan. The Authority conducted a review and concluded that the quality of the deliverable was unsatisfactory.
- The Supplier engaged further work towards satisfaction of the Milestone and submitted a revised deliverable 10 days after the relevant Target Date. The Authority conducted a review and concluded that it was satisfied with the quality of the deliverable.
- Milestone Achievement Factor = 75%
- Milestone Payment = £30 x 75% = £22.50

Example 3

- The Supplier was unable to achieve the Milestone by the Target Date. The Supplier notified the Authority that it had achieved the Milestone 61 days after the relevant Target Date. The Authority conducted a review and concluded that it was satisfied with the quality of the deliverable.
- Milestone Achievement Factor = 0%
- Milestone Payment = 0% x £30 = £0

PART B: PERFORMANCE MONITORING

1. PRINCIPAL POINTS

1.1 This Part B (Performance Monitoring) to Schedule 6 (Performance Management) provides the methodology and process for monitoring the provision of the Services:

- 1.1.1 to ensure that the Supplier is complying with the Service Levels;
- 1.1.2 to support the Charge Adjustments to the Gross Contract Charges;
- 1.1.3 to establish when and the extent to which Milestones have been achieved in order to establish whether the Supplier is entitled to a Milestone Payment (and the quantum of this Milestone Payment) in accordance with Annex 3 (Milestones) to Part A of Schedule 6 (Performance Management); and
- 1.1.4 to identify any failures to achieve Service Levels in the performance of the Supplier and/or provision of the Services,

(the "Performance Monitoring System").

1.2 The Supplier acknowledges that the Performance Monitoring System is a reasonable method to establish the actual Service Levels performed in the provision of the Services.

2. REPORTING OF SERVICE FAILURES AND MILESTONE PROGRESS

2.1 The Supplier shall report all Service Failures or risks of Service Failures to the Authority as soon as reasonably practicable.

2.2 Within five (5) Working Days of the end of each Service Period, the Supplier shall provide the Authority with a progress report on the Milestones (a "**Milestone Progress Report**"). The Milestone Progress Report shall contain, as a minimum, a summary of the progress towards the Performance Target for each Milestone.

2.3 Without prejudice to paragraph 7.2, if the Supplier wishes to inform the Authority of the achievement of a Milestone before the end of a Service Period, the Supplier may issue to the Authority an ad-hoc Milestone Progress Report to enable the Authority to review the achievement of this Milestone. The content of the ad hoc ad-hoc Milestone Progress Report will supplement and be included in the Authority's review and feedback in the Performance Monitoring Report issued pursuant to paragraph 8.1 below.

3. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

3.1 Within ten (10) Working Days of the submission of a Milestone Progress Report to the Authority, the Authority shall provide the Supplier with a performance monitoring report (the "**Performance Monitoring Report**") which shall contain, as a minimum, the following information in respect of the Service Period just ended:

- 3.1.1 the Functional Head Criterion Scores and the Service Period Performance Score for each Service Level Performance Criterion, calculated in accordance with Annex 1 (Service Levels and Charge Adjustment) to Part A of Schedule 6 (Performance Management);
- 3.1.2 for each Service Level Performance Criterion, a summary of the satisfaction of the Service Level Performance Measure achieved during that Service Period;
- 3.1.3 any actual, or risk of, Service Level Failure or Significant Service Level Failure and details in relation thereto;
- 3.1.4 the Charge Adjustment to be applied to each Service Level Performance Criterion in respect of the relevant Service Period; and
- 3.1.5 the Authority's response to the Supplier's Milestone Progress Report for the relevant Service Period, including:
 - (a) where a Measurement Date has occurred in such Service Period, the Authority's calculation of the Milestone Payments (if any) due to the Supplier in respect of the relevant Milestone;

- (b) where the Supplier has notified the Authority that it believes a Performance Target has been satisfied in relation to a Type 3 Milestone during such Service Period (pursuant to paragraph 4 of Annex 3 (Milestones) to Part A of this Schedule 6 (Performance Management)), either:
 - (i) a Satisfaction Certificate including the Authority's calculation of the Milestone Payment (if any) due to the Supplier in respect of the relevant Milestone; or
 - (ii) an explanation of why the Authority disputes that the relevant Performance Target has been satisfied; and
- (c) the cumulative amount of the Retained Charge held by the Authority in respect of each Milestone.

3.2 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**"). The Performance Review Meetings will be the forum for the review by the Supplier and the Authority of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):

- 3.2.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Authority;
- 3.2.2 take place at such location and time (within normal business hours) as the Authority shall reasonably require unless otherwise agreed in advance;
- 3.2.3 be attended by the Supplier's Representative and the Authority's Representative;
- 3.2.4 be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Authority's Representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Authority's Representative at each meeting; and
- 3.2.5 be used as an opportunity for the Parties to discuss any dispute on the actual performance of the Service Levels and on the achievement/measurement of a Milestone in the relevant Service Period.

3.3 On completion of a Performance Review Meeting, one or more of the following will occur:

- 3.3.1 where the Parties accept the Performance Monitoring Report without amendment, the Service Period Performance Scores will form the basis of the calculation of the Contract Charges for the relevant Service Period;
- 3.3.2 where the Parties agree to amend one or more Service Period Performance Scores and/or the achievement of Milestones, the amended Performance Monitoring Report will form the basis of the calculation of the Contract Charges for the relevant Service Period (including any applicable Charge Adjustments and/or Milestone Payment);
- 3.3.3 where the Parties are unable to agree on the content of the Progress Monitoring Report, then:
 - (a) if the dispute relates to a Service Period Performance Score, any undisputed component of the SLPC Fees-at-Risk in that Service Period shall be paid in accordance with Part A (Payment and invoicing) of Schedule 3 and the amount in dispute shall be a Disputed Amount; and/or
 - (b) if the dispute relates to a Milestone being achieved, no Milestone Payment shall be made in relation to that Milestone and the amount in dispute shall be a Disputed Amount.
- 3.3.4 Where there is a Disputed Amount, the Authority may (in its discretion) require the Supplier to provide additional information to support its claim in relation to the Disputed Amount in a further Performance Monitoring Report, to be re-issued in advance of the next Performance Review Meeting (or earlier if agreed between the Parties).
- 3.3.5 Where paragraph 3.3.4 does not apply or where the Authority does not agree with the content of the Performance Monitoring Report re-issued pursuant to paragraph 3.3.4:

- (a) the dispute over the Disputed Amount will be referred to Authority's senior responsible officer appointed in connection with the NHS supply chain project (the "SRO") and a senior representative of the Supplier (not being a member of the Core Team) (the "Supplier's Senior Representative"), each of whom shall act reasonably and in good faith in using their respective reasonable endeavours to reach agreement on the Disputed Amount; and
- (b) where the Parties are not able to resolve the dispute in accordance with paragraph 3.3.5(a) within thirty (30) days of the date on which the SRO and the Supplier's Senior Representative first met to discuss the Disputed Amount (or such alternative time period as may be agreed between the Parties), the SRO shall determine the extent of the Disputed Amount that is payable to the Supplier and notify the Supplier of the reasons for this determination.

3.4 The Authority shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels or achieve Milestones.

3.5 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 Charge Adjustments or Milestone Payment for any specified Service Period.

SCHEDULE 7: STANDARDS

ISO9001, or such other equivalent standard as is Approved by the Authority.

SCHEDULE 8: SECURITY

1. DEFINITIONS

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

- "Breach of Security"** means the occurrence of:
- a) any unauthorised access to or use of the Services and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Authority Data) used by the Authority and/or the Supplier in connection with this Contract; and/or
 - b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including any copies of such information or data, used by the Authority and/or the Supplier in connection with this Contract,
- in either case as more particularly set out in the Security Policy;

2. INTRODUCTION

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

2.2 This Schedule 8 covers:

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

3. PRINCIPLES OF SECURITY

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

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

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

3.3 Subject to Clause 26 (Security and Protection of Information), the references to standards, guidance and policies contained or set out in paragraph 3.2 of this Schedule 8 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.

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

4. SECURITY MANAGEMENT PLAN

4.1 Introduction

- 4.1.1 The Supplier shall develop and maintain a Security Management Plan in accordance with this Schedule 8. The Supplier shall thereafter comply with its obligations set out in the Security Management Plan.

4.2 Content of the Security Management Plan

- 4.2.1 The Security Management Plan shall:
- (a) comply with the principles of security set out in paragraph 3 of this Schedule 8 and any other provisions of this Contract relevant to security;
 - (b) identify the necessary delegated organisational roles defined for those responsible for ensuring it is complied with by the Supplier;
 - (c) 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 provision of the Services, the Authority Premises and any ICT, Information and data (including the Authority's Confidential Information and the Authority Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Services;
 - (d) unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the provision of the Services, including the Authority Premises 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 or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Services;
 - (e) 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 provision of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Contract;
 - (f) set out the plans for transitioning all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in this Contract and the Security Policy; and
 - (g) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Authority engaged in the provision of the Services and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule 8.

4.3 Development of the Security Management Plan

- 4.3.1 Within twenty (20) Working Days after the Commencement Date (or such other period agreed by the Parties in writing) and in accordance with paragraph 4.4 (Amendment and Revision), the Supplier shall prepare and deliver to the Authority for Approval a fully complete and up to date Security Management Plan.
- 4.3.2 If the Security Management Plan submitted to the Authority in accordance with paragraph 4.3.1, or any subsequent revision to it in accordance with paragraph 4.4 (Amendment and Revision), is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in accordance with this Schedule 8. If the Security Management Plan is not Approved, the Supplier shall amend it within ten (10) Working Days or such other period as the Parties may agree in writing of a notice of non-approval from the Authority and re-submit to the Authority for Approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Management Plan following its

resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure.

- 4.3.3 The Authority shall not unreasonably withhold or delay its decision to Approve or not the Security Management Plan pursuant to paragraph 4.3.2. However a refusal by the Authority to Approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 4.2 shall be deemed to be reasonable.
- 4.3.4 Approval by the Authority of the Security Management Plan pursuant to paragraph 4.3.2 of this Schedule 8 or of any change to the Security Management Plan in accordance with paragraph 4.4 shall not relieve the Supplier of its obligations under this Schedule 8.

4.4 Amendment and Revision of the Security Management Plan

- 4.4.1 The Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:
 - (a) emerging changes in Good Industry Practice;
 - (b) any change or proposed change to the Services and/or associated processes;
 - (c) any change to the Security Policy;
 - (d) any new perceived or changed security threats; and
 - (e) any reasonable change in requirements requested by the Authority.
- 4.4.2 The Supplier shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amendment of the Security Management Plan at no additional cost to the Authority. The results of the review shall include, without limitation:
 - (a) suggested improvements to the effectiveness of the Security Management Plan;
 - (b) updates to the risk assessments; and
 - (c) suggested improvements in measuring the effectiveness of controls.
- 4.4.3 Subject to paragraph 4.4.4, any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out in accordance with paragraph 4.4.1, a request by the Authority or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved by the Authority.
- 4.4.4 The Authority may, where it is reasonable to do so, Approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Contract.

5. BREACH OF SECURITY

- 5.1 Either Party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan if one exists) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 5.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 5.1, the Supplier shall:
 - 5.2.1 immediately take all reasonable steps(which shall include any action or changes reasonably required by the Authority) necessary to:
 - (a) minimise the extent of actual or potential harm caused by any Breach of Security;
 - (b) remedy such Breach of Security to the extent possible and protect the integrity of the Authority and the provision of the Services to the extent within its control against any such Breach of Security or attempted Breach of Security;

- (c) prevent an equivalent breach in the future exploiting the same root cause failure; and
- (d) as soon as reasonably practicable provide to the Authority, where the Authority so requests, full details (using the reporting mechanism defined by the Security Management Plan if one exists) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.

5.3 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 Security Management Plan with the Security Policy or the requirements of this Schedule, then any required change to the Security Management Plan shall be at no cost to the Authority.

SCHEDULE 9: NOT USED

SCHEDULE 10: EXIT MANAGEMENT

1. DEFINITIONS

1.1 In this Schedule 10, the following definitions shall apply:

"Exit Information"	has the meaning given to it in paragraph 4.1 of this Schedule 10;
"Exit Manager"	means the person appointed by each Party pursuant to paragraph 3.4 of this Schedule 10 for managing the Parties' respective obligations under this Schedule 10;
"Registers"	means the register and configuration database referred to in paragraphs 3.1.1 and 3.1.2 of this Schedule 10;
"Transferable Contracts"	means the Sub-Contracts, licences for Supplier's Background IPR, Project Specific IPR, licences for Third Party IPR or other agreements which are necessary to enable the Authority or any Replacement Supplier to provide the Services or the Replacement Services, including in relation to licences all relevant Documentation;
"Transferring Contracts"	has the meaning given to it in paragraph 6.2 of this Schedule 10.

2. INTRODUCTION

2.1 This Schedule 10 describes 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 CONTRACT PERIOD TO FACILITATE EXIT

3.1 During the Contract Period, the Supplier shall:

- 3.1.1 create and maintain a Register of all 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; and
- 3.1.3 at all times keep the Registers up to date, in particular in the event that Sub-Contracts or other relevant agreements are added to or removed from the Services.

3.2 The Supplier shall (unless otherwise agreed by the Authority in writing) procure that all licences for Third Party IPR supplied by third parties 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 of this Schedule 10 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 goods and/or 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 10 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 10. 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 10. 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 10 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 Contract Period, 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; and
- 4.1.6 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 10 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).

4.6 At least 60 (sixty) Working Days prior to the Expiry Date or, where a Party has served a Termination Notice on the other, within 10 (ten) Working Days of the date on which such Termination Notice is served, the Supplier shall deliver up to date Registers to the Authority.

5. TERMINATION OBLIGATIONS

5.1 On the Expiry Date, or earlier if this does not adversely affect the Supplier's performance of the Services and its compliance with the other provisions of this Schedule 10, the Supplier shall:

- 5.1.1 cease to use the Authority Data;
- 5.1.2 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);
- 5.1.3 erase from any computers, storage devices and storage media that are to be retained by the Supplier all Authority Data and promptly certify to the Authority that it has completed such deletion;
- 5.1.4 return to the Authority such of the following as is in the Supplier's possession or control:
 - (a) all copies of any 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 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 23 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 the Services not Delivered by the Expiry Date;
- 5.1.5 vacate any Authority Premises;
- 5.1.6 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Authority Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Authority Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier and/or any Supplier Personnel;
- 5.1.7 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.

5.2 On the Expiry Date, or earlier if this does not adversely affect the Supplier's performance of the Services and its compliance with the other provisions of this Schedule 10), 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 for statutory compliance purposes.

5.3 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 Expiry Date.

6. ASSETS AND SUB-CONTRACTS

6.1 Following the service of a Termination Notice, the Supplier shall not, without the Authority's prior written consent:

6.1.1 terminate, enter into or vary any Sub-Contract;

6.1.2 terminate, enter into or vary any licence for software in connection with the provision of the Services.

6.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to paragraph 4.6 of this Schedule 10, the Authority shall provide written notice to the Supplier setting out which, if any, of the 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 Date. 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 Contracts the Authority and/or its Replacement Supplier requires to provide the Services or the Replacement Services.

6.3 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.

6.4 The Authority shall:

6.4.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and

6.4.2 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.

6.5 The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.

6.6 The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to paragraph 6.3 of this Schedule 10 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.

7. SUPPLIER PERSONNEL

7.1 The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Part B of Schedule 11 (Staff Transfer) shall apply.

7.2 The Supplier shall, and shall procure that each Sub-Contractor shall, perform and discharge, all its obligations in respect of all the Supplier Personnel arising in respect of the period up to (and including) the termination date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the termination date).

8. CHARGES

8.1 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 10 including any activities mutually agreed between the Parties to carry on after the Expiry Date.

9. APPORTIONMENTS

9.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:

9.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;

9.1.2 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

9.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

9.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under paragraph 9.1 of this Schedule 10 as soon as reasonably practicable.

SCHEDULE 11: STAFF TRANSFER

1. DEFINITIONS

1.1 In this Schedule 11, the following definitions shall apply:

“Admission Agreement”	The agreement to be entered into by which the Supplier agrees to participate in the Schemes as amended from time to time;
“Eligible Employee”	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
“Fair Deal Employees”	those Transferring Authority Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;
“Former Supplier”	a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
“New Fair Deal”	the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013;
“Notified Sub-Contractor”	a Sub-Contractor identified in the Annex to this Schedule 11 to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
“Replacement Sub-Contractor”	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
“Schemes”	the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Supplier by the Minister for the Cabinet Office);
“Service Transfer”	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;
“Service Transfer Date”	the date of a Service Transfer;
“Staffing Information”	in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be,

such information as the Authority may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

"Supplier's Final Supplier Personnel List" list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;

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

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

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

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

2. INTERPRETATION

- 2.1 Where a provision in this Schedule 11 imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Supplier or Replacement Sub-Contractor, as the case may be.

PART A: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1. PROCEDURE IN THE EVENT OF TRANSFER

- 1.1 The Authority and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.
- 1.2 If any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 1.2.1 the Supplier shall, and shall procure that the relevant Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier; and
 - 1.2.2 the Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier or the Sub-Contractor (as appropriate) or take such other reasonable steps as the Authority or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the fifteen (15) Working Day period specified in Paragraph 1.2.2:
- 1.4.1 no such offer of employment has been made;
 - 1.4.2 such offer has been made but not accepted; or
 - 1.4.3 the situation has not otherwise been resolved,
- the Supplier and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2. INDEMNITIES

- 2.1 Subject to the Supplier and/or the relevant Sub-Contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Authority shall:
- 2.1.1 indemnify the Supplier and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
 - 2.1.2 subject to paragraph 3, procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-Contractor within the fifteen (15) Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-Contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Supplier and/or any Sub-Contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall indemnify the Authority and any Former Supplier, and shall

procure that the Sub-Contractor shall indemnify the Authority and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-Contractor.

2.4 The indemnities in Paragraph 2.1:

2.4.1 shall not apply to:

(a) any claim for:

(i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

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

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

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

2.4.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-Contractor to the Authority and, if applicable, Former Supplier within 6 months of the Commencement Date.

3. PROCUREMENT OBLIGATIONS

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

PART B: EMPLOYMENT EXIT PROVISIONS

1. EXIT PROVISIONS

1.1 The Authority and Supplier acknowledge that the Services are a single specific event under regulation 3(3) of the Employment Regulations and on completion of the Services there will not be a Relevant Transfer. In this situation Section 2 of this Part B shall apply.

1.2 The Authority and Supplier agree that: Section 3 of this Part D shall apply:

1.2.1 if this Contract is terminated early for whatever reason and the Services are provided by a Replacement Provider; or

1.2.2 if any employee of the Supplier claims a court or employment tribunal determine that on completion of the Services regulation 3(3) of the Employment Regulations does not apply to the extent that there is a Relevant Transfer

2. PROCEDURE IN THE EVENT OF NO RELEVANT TRANSFER

2.1 On completion of the Services, the Authority may, at its own election, make an offer of employment to any Supplier Personnel. If such offer is accepted by the Supplier Personnel the employment would be deemed a new employment with no previous continuity of service.

2.2 The Supplier shall indemnify the Authority or any Replacement Supplier in relation to all Employee Liabilities in relation to such employee which arise before the termination of the contract (including the termination date).

3. PROCEDURE IN THE EVENT OF A RELEVANT TRANSFER

3.1 If any employee of the Supplier claims, or a court or employment tribunal determine in relation to any employee of the Supplier, that his/her contract of employment has been transferred from Supplier to the Authority or any Replacement Supplier pursuant to the Employment Regulations or the Acquired Rights Directive then:

3.1.1 the Authority shall, and shall procure that any Replacement Supplier shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and

3.1.2 the Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Authority or any Replacement Supplier (as appropriate) or take such other reasonable steps as the Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

3.1.3 If an offer referred to in Paragraph 3.1.2 is accepted (or if the situation has otherwise been resolved by the Supplier), the Authority shall, or shall procure that the Replacement Supplier shall, immediately release the person from his/her employment or alleged employment.

3.2 If by the end of the fifteen (15) Working Day period specified in Paragraph 3.1.2:

3.2.1 no such offer of employment has been made;

3.2.2 such offer has been made but not accepted; or

3.2.3 the situation has not otherwise been resolved,

the Authority or any Replacement Supplier may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

3.3 If any such person as is described in Paragraph 3.1 is neither re employed by the Supplier as appropriate nor dismissed by the Authority or any Replacement Supplier within the fifteen (15) Working Day period referred to in Paragraph 3.2 such person shall be treated as having transferred to the Authority or any Replacement Supplier (as appropriate) and the Authority shall, or shall procure that any Replacement Supplier shall, comply with such obligations as may be imposed upon it under Law.

3.4 Where any person remains employed by the Authority or any Replacement Supplier pursuant to Paragraph 3.3, the Supplier shall indemnify the Authority or any Replacement Supplier in relation to all Employee Liabilities in relation to such employee which arise before the termination of the contract (including the termination date) and any act or omission of the Supplier or any Sub-Contractor whether occurring before, on or after the termination date.

ANNEX TO SCHEDULE 11: LIST OF NOTIFIED SUB-CONTRACTORS

SCHEDULE 12: DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

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

“CEDR”	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
“Director General”	has the meaning given to it in paragraph 3.1.2 of this Schedule 12;
“Expert”	the person appointed by the Parties in accordance with paragraph 5.2 of this Schedule 12; and
“Mediation Notice”	has the meaning given to it in paragraph 3.2 of this Schedule 12;
“Mediator”	the independent third party appointed in accordance with paragraph 4.2 of this Schedule 12;
“Supplier’s Managing Director”	has the meaning given to it in paragraph 3.1.2 of this Schedule 12.

2. INTRODUCTION

2.1 If a Dispute arises then:

- 2.1.1 the representative of the Authority and the Supplier Representative shall attempt in good faith to resolve the Dispute (which may be by way of discussion at the next meeting of the Service Steering Board); 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; and
- 2.2.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen.

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

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

- 2.4.1 first by commercial negotiation (as prescribed in paragraph 3 of this Schedule 12);
- 2.4.2 then by mediation (as prescribed in paragraph 4 of this Schedule 12); and
- 2.4.3 lastly by recourse to litigation (in accordance with Clause 49 of this Contract (Governing Law and Jurisdiction)).

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

2.6 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

3. COMMERCIAL NEGOTIATIONS

3.1 Following the service of a Dispute Notice, the Authority and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Authority Representative and the Supplier Representative.

- 3.1.1 firstly, between the Authority’s senior responsible officer appointed in connection with NHS supply chain and the Supplier’s lead partner or director (as appropriate) in the provision of

the Services at the next meeting of the Services Steering Board scheduled in accordance with paragraph 4.1 of Part A (Introduction) of Schedule 2 or, where the Parties agree the Dispute requires urgent resolution, at an extraordinary meeting of the Services Steering Board called to discuss such Dispute; and

- 3.1.2 secondly, where the Parties were not able to resolve the Dispute at the meeting of the Services Steering Board, such Dispute may be referred by either the Authority or the Supplier to the Authority's commercial director general (the "**Director General**") and the Supplier's managing director (the "**Supplier's Managing Director**") (as appropriate) for resolution.

3.2 If:

- 3.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution;
- 3.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 3 of this Schedule 12; or
- 3.2.3 the Parties have not settled the Dispute within ten (10) Working Days of service of the Dispute being referred to the Director general and the Supplier's Managing Director in accordance with paragraph 3.1.2 of this Schedule 12,

either Party may serve a written notice to proceed to mediation (a "**Mediation Notice**") in accordance with paragraph 4 of this Schedule 12.

4. MEDIATION

- 4.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with CEDR's Model Mediation Agreement which shall be deemed to be incorporated by reference into this Contract.
- 4.2 If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Mediation Notice then either Party may apply to CEDR to nominate the Mediator.
- 4.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 4.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Variation Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

5. EXPERT DETERMINATION

- 5.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a financial technical or other aspect of a technical nature (as the Parties may agree) and the Dispute has not been resolved by discussion or mediation, then either Party may request (which request will not be unreasonably withheld or delayed) by written notice to the other that the Dispute is referred to an Expert for determination.
- 5.2 The Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the relevant professional body.
- 5.3 The Expert shall act on the following basis:
- 5.3.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- 5.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- 5.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his appointment

or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;

- 5.3.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
- 5.3.5 the process shall be conducted in private and shall be confidential; and
- 5.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

6. URGENT RELIEF

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

- 6.1.1 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
- 6.1.2 where compliance with paragraph 2.1 of this Schedule 12 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

SCHEDULE 13: VARIATION FORM

No of order being varied:

.....

Variation Form No:

.....

BETWEEN:

[INSERT NAME] ("the Authority")

and

[INSERT NAME] ("the Supplier")

1. This Contract is varied as follows and shall take effect on the date signed by both Parties:
[INSERT DETAILS OF VARIATION]
2. Words and expressions in this Variation shall have the meanings given to them in this Contract.
3. This Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

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

Signature

Date

Name (in Capitals)

Address

.....

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

Signature

Date

Name (in Capitals)

Address

SCHEDULE 14: COMMERCIALY SENSITIVE INFORMATION

1. INTRODUCTION

1.1 In this Schedule 14 (Commercially Sensitive Information) the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA.

1.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule 14 (Commercially Sensitive Information) applies.

1.3 Without prejudice to the Authority's obligation to disclose Information in accordance with FOIA or Clause 26.5 (Freedom of Information), the Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

No.	Date	Item(s)	Duration of Confidentiality
1	9 January 2017	All Pricing information	48 Months
2	9 January 2017	All team information relating to individuals working on the contract which constitutes personal data under Data Protection Act	48 Months
3	9 January 2017	Details of previous clients provided for reference purposes	48 Months
4	9 January 2017	Specific consultancy methodology unique to the Supplier that would be deemed intellectual property	48 Months

SCHEDULE 15: INSURANCE REQUIREMENTS

1. OBLIGATION TO MAINTAIN INSURANCES

- 1.1 Without prejudice to its obligations to the Authority under this Contract, including its indemnity obligations, the Supplier shall for the periods specified in this Schedule 15 take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 (Required Insurances) and any other insurances as may be required by applicable Law (together the “Insurances”). The Supplier shall ensure that each of the Insurances is effective no later than the Commencement Date.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 1.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Supplier is legally liable.

2. GENERAL OBLIGATIONS

- 2.1 Without limiting the other provisions of this Contract, the Supplier shall:
 - 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
 - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
 - 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3. FAILURE TO INSURE

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

4. EVIDENCE OF POLICIES

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

5. AGGREGATE LIMIT OF INDEMNITY

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

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

6. CANCELLATION

- 6.1 The Supplier shall notify the Authority in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

7. INSURANCE CLAIMS

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Contract for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Services or this Contract, the Supplier shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 7.2 Except where the Authority is the claimant party, the Supplier shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess of £10,000 (ten thousand pounds) relating to or arising out of the provision of the Services or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

ANNEX 1: REQUIRED INSURANCES

PART A: THIRD PARTY PUBLIC & PRODUCTS LIABILITY INSURANCE

1. INSURED

1.1 The Supplier

2. INTEREST

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

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

2.1.2 loss of or damage to property;

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

3. LIMIT OF INDEMNITY

3.1 Not less than £2,000,000 (two million) in respect of any one occurrence, the number of occurrences being unlimited, but £10,000,000 (ten million) in respect of any one occurrence and in the aggregate per annum in respect of products and pollution liability.

4. TERRITORIAL LIMITS

4.1 The United Kingdom of Great Britain and Northern Ireland

5. PERIOD OF INSURANCE

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

6. COVER FEATURES AND EXTENSIONS

6.1 Indemnity to principals clause.

7. PRINCIPAL EXCLUSIONS

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

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

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

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

7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.

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

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

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 £10,000,000 (ten million) respect of any one claim and in the aggregate per annum.

4. TERRITORIAL LIMITS

4.1 The United Kingdom of Great Britain and Northern Ireland.

5. PERIOD OF INSURANCE

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

6. COVER FEATURES AND EXTENSIONS

6.1 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.

7. PRINCIPAL EXCLUSIONS

7.1 War and related perils

7.2 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 and motor third party liability insurance.

SCHEDULE 16: CONDUCT OF CLAIMS

1. GENERAL

- 1.1 This Schedule 16 shall apply to the conduct by a Party from whom an indemnity is sought under this Contract (the “**Indemnifier**”), of claims made by a third person against a Party having (or claiming to have) the benefit of the indemnity (the “**Beneficiary**”).
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Contract (a “**Claim**”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.
- 1.3 Subject to Paragraph 1.9, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim, and the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
- 1.5 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
- 1.6 the Indemnifier shall not bring the name of the Beneficiary into disrepute;
- 1.7 the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
- 1.8 the Indemnifier shall conduct the Claim with all due diligence.
- 1.9 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Contract if:
- 1.9.1 the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
 - 1.9.2 the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or
 - 1.9.3 the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

2. RECOVERY OF SUMS

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

3. MITIGATION

3.1 Each of the Parties shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule 16.

SCHEDULE 17: KEY SUB-CONTRACTORS

In accordance with Clause 21.2 (Appointment of Key Sub-Contractors), the Supplier is entitled to sub-contract its obligations under this Contract to the Key Sub-Contractors listed below.

REDACTED

SCHEDULE 19: TRANSPARENCY REPORTS

1. GENERAL

- 1.1 Within three (3) months of the Commencement Date or the date so specified by the Authority the Supplier shall provide to the Authority for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content and format requirements in Annex 1 of this Schedule 19 (Transparency Reports) below.
- 1.2 If the Authority rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for Approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. This process shall be repeated until the parties have agreed versions of each Transparency Report.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1 of this Schedule 19 (Transparency Reports) below.
- 1.4 Any Dispute in connection with the preparation and/or approval of Transparency Reports shall be resolved in accordance with the Dispute Resolution Procedure.
- 1.5 The requirements in this Schedule 19 (Transparency Reports) are in addition to any other reporting requirements in this Contract.

ANNEX 1: LIST OF TRANSPARENCY REPORTS

Title of Report	Content	Format	Frequency
Headline Service performance	Service Performance Dashboard summarising EY performance against Authority KPIs	MS Powerpoint (or mobile App / Qorex dashboard upon request)	Monthly
Charges	Invoicing and summary documenting charging based on agreed pricing mechanisms	MS Excel	Monthly
Key Sub-Contractors	Summary of key sub-contractors (currently none used), and documentation of changes	MS Word	Annually or in notification of proposed change