

DATED

[dd/mm/yyyy]

Secretary of State for Defence

and

[SUPPLIER NAME]

ACQUISITION SUPPORT PARTNER MANAGED SERVICES CONTRACT

(Contract Ref: RM 3738)

Draft

TABLE OF CONTENT

A. PRELIMINARIES 5

1. DEFINITIONS AND INTERPRETATION 5

2. DUE DILIGENCE..... 6

3. REPRESENTATIONS AND WARRANTIES 6

4. GUARANTEE – NOT USED 8

B. DURATION OF CONTRACT..... 8

5. CONTRACT PERIOD 8

C. CONTRACT PERFORMANCE 9

6. GOODS AND/OR SERVICES..... 9

7. SERVICES..... 10

8. SERVICE LEVELS 11

9. CRITICAL SERVICE LEVEL FAILURE..... 13

10. DISRUPTION..... 13

11. SUPPLIER NOTIFICATION OF AUTHORITY CAUSE 13

12. CONTINUOUS IMPROVEMENT 14

D. CONTRACT GOVERNANCE..... 14

13. PERFORMANCE MONITORING..... 14

14. REPRESENTATIVES 14

15. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA 15

16. CHANGE 16

E. PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS..... 18

17. CONTRACT CHARGES AND PAYMENT 18

18. REFER TO SCHEDULE 16 DEFCONS 513, 522 AND 522J. PROMOTING TAX COMPLIANCE 20

19. BENCHMARKING – NOT USED 21

F. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS 21

20. KEY PERSONNEL 21

21. SUPPLIER PERSONNEL..... 22

22. SUPPLY CHAIN RIGHTS AND PROTECTION 23

G. PROPERTY MATTERS 27

23. AUTHORITY PREMISES – NOT USED 27

24. SUPPLIER EQUIPMENT..... 27

H. INTELLECTUAL PROPERTY AND INFORMATION 28

25. INTELLECTUAL PROPERTY RIGHTS 28

26. SECURITY AND PROTECTION OF INFORMATION 28

27. PUBLICITY AND BRANDING 34

I.	LIABILITY AND INSURANCE	35
	28. LIABILITY.....	35
	29. INSURANCE	37
J.	REMEDIES AND RELIEF	37
	30. AUTHORITY REMEDIES FOR DEFAULT.....	37
	31. SUPPLIER RELIEF DUE TO AUTHORITY CAUSE	39
	32. FORCE MAJEURE.....	40
K.	TERMINATION AND EXIT MANAGEMENT	41
	33. AUTHORITY TERMINATION RIGHTS	42
	34. SUPPLIER TERMINATION RIGHTS	43
	35. TERMINATION BY EITHER PARTY	44
	36. PARTIAL TERMINATION, SUSPENSION AND PARTIAL SUSPENSION... 44	
	37. CONSEQUENCES OF EXPIRY OR TERMINATION.....	44
L.	MISCELLANEOUS AND GOVERNING LAW	46
	38. COMPLIANCE.....	46
	39. ASSIGNMENT AND NOVATION.....	47
	40. WAIVER AND CUMULATIVE REMEDIES	47
	41. RELATIONSHIP OF THE PARTIES	48
	42. PREVENTION OF FRAUD AND BRIBERY	48
	43. SEVERANCE	49
	44. FURTHER ASSURANCES.....	50
	45. ENTIRE AGREEMENT	50
	46. THIRD PARTY RIGHTS	50
	47. NOTICES.....	50
	48. DISPUTE RESOLUTION.....	52
	49. GOVERNING LAW AND JURISDICTION	52
	50. ACCESS TO MOD SITES	52
	SCHEDULE 1: DEFINITIONS.....	55
	SCHEDULE 2: GOODS AND SERVICES	76
	ANNEX 1: THE SERVICES.....	77
	SCHEDULE 3: CONTRACT CHARGES, PAYMENT AND INVOICING	78
	ANNEX 1: CONTRACT CHARGES.....	81
	SCHEDULE 4: NOT USED	82
	SCHEDULE 5: SERVICE LEVELS, AND PERFORMANCE MONITORING.....	86
	ANNEX 1 TO PART A: SERVICE LEVELS TABLE	89
	ANNEX 1 TO PART B: ADDITIONAL PERFORMANCE MONITORING REQUIREMENTS	93

SCHEDULE 6: STANDARDS	94
SCHEDULE 7: SECURITY	95
ANNEX 1: SECURITY POLICY	106
ANNEX 2: SECURITY MANAGEMENT PLAN	107
SCHEDULE 8: EXIT MANAGEMENT	108
SCHEDULE 9: DISPUTE RESOLUTION PROCEDURE	118
SCHEDULE 10: VARIATION FORM	123
SCHEDULE 11: COMMERCIALY SENSITVE INFORMATION	124
SCHEDULE 12: INSURANCE REQUIREMENTS	125
ANNEX 1: REQUIRED INSURANCES	128
SCHEDULE 13: TENDER	132
SCHEDULE 14: KEY SUB-CONTRACTORS	133
SCHEDULE 15: GUARANTEE	134
SCHEDULE 16: MOD DEFCONs AND DEFFORMs	142

This agreement is made on **[insert Commencement Date dd/mm/yyyy]**.

BETWEEN:

- (1) [], (the "Authority");
- (2) **[insert COMPANY'S NAME]** which is a company registered in **[England and Wales]** under company number **[insert company no.]** and whose registered office is at **[insert address]** (the "Supplier").

RECITALS:

- A The Authority placed a contract notice **[Insert the OJEU reference number]** on **[Insert date of issue of OJEU dd/mm/yyyy]** (the "OJEU Notice") in the Official Journal of the European Union seeking tenders for Acquisition Support Partner (ASP) interested in entering into a contract for the supply of such Goods and/or Services to the Authority.
- B In response to the Invitation to Tender, the Supplier submitted the Tender to the Authority on **[insert date dd/mm/yyyy]** through which it represented to the Authority that it is capable of delivering the Goods and/or Services in accordance with the Authority's requirements as set out in the Invitation to Tender and, in particular, the Supplier made representations to the Authority in the Tender in relation to its competence, professionalism and ability to provide the Goods and/or Services in an efficient and cost effective manner.
- C On the basis of the Tender, the Authority selected the Supplier to enter into an agreement to provide the Goods and/or 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 Schedule 18 (MOD DEFCONS and DEFFORMS)
 - 1.3.2 the Clauses;
 - 1.3.3 the Schedules (except Schedule 13 (Tender) and Schedule 16 MOD DEFCONS and DEFFORMS);
 - 1.3.4 Schedule 13 (Tender).

2. DUE DILIGENCE

- 2.1 The Supplier acknowledges that:
- 2.1.1 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Contract;
 - 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
 - 2.1.3 it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
 - 2.1.4 it has 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; and/or
- 2.3 any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.
- 2.4 Where required by the Authority, the Supplier shall take such actions as are necessary to ensure that the MoD Terms and Conditions constitute legal, valid, binding and enforceable obligations on the Supplier.

3. REPRESENTATIONS AND WARRANTIES

- 3.1 Each Party represents and warranties that:

- 3.1.1 it has full capacity and authority to enter into and to perform this Contract;
 - 3.1.2 this Contract is executed by its duly authorised representative;
 - 3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Contract; and
 - 3.1.4 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).
- 3.2 The Supplier represents and warrants that:
- 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
 - 3.2.2 it has all necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into this Contract;
 - 3.2.3 its execution, delivery and performance of its obligations under this Contract does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a Default under any agreement by which it is bound;
 - 3.2.4 as at the Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract;
 - 3.2.5 as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
 - 3.2.6 it has and shall continue to have all necessary rights in and to the Third Party IPR, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Contract including the receipt of the Goods and/or Services by the Authority;
 - 3.2.7 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Authority's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Authority;
 - 3.2.8 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;

- 3.2.9 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
- 3.2.10 for the Contract Period and for a period of twelve (12) months after the termination or expiry of this Contract, the Supplier shall not employ or offer employment to any staff of the Customer which have been associated with the provision of the Goods and/or Services without Approval or the prior written consent of the Authority, which shall not be unreasonably withheld.
- 3.3 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Contract.
- 3.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 3.1 and 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.5 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of breach of that provision by the Supplier which constitutes a material Default.

4. GUARANTEE –

- 4.1 In the event that the Supplier does not have an Experian score greater than 51 or where an Experian report is not available, the Authority at its sole discretion may make award of this contract conditional upon the supplier delivering to the Authority:
- 4.2 an executed Guarantee from a Guarantor; and
- 4.3 a certified copy extract of the board minutes and/or resolution of the Guarantor approving the execution of the Guarantee,
- 4.4 on or prior to the Commencement Date or on such other date as is agreed between the Parties
- 4.5 If the Supplier fails to provide the documentation required by Clause 4.1 by the agreed date then the Authority shall be entitled to terminate this Contract in accordance with Clause 33.1.
- 4.6 The Authority may in its sole discretion at any time agree to waive compliance with the requirement in Clause 4.1 by giving the Supplier notice in writing

B. DURATION OF CONTRACT

5. CONTRACT PERIOD

5.1 This Contract shall take effect on the Commencement Date and shall expire either:

5.1.1 at the end of the Initial Period; or at the sole discretion of the Customer

5.1.2 unless it is terminated earlier in accordance with the terms of this Contract or otherwise by operation of Law.

C. CONTRACT PERFORMANCE

6. GOODS AND/OR SERVICES

6.1 Provision of the Goods and/or Services

6.1.1 The Supplier acknowledges and agrees that the Authority relies on the skill and judgment of the Supplier in the provision of the Goods and/or Services and the performance of its obligations under this Contract.

6.1.2 The Supplier shall ensure that the Goods and/or Services:

- (a) comply in all respects with the Authority's description of the Goods and/or Services in Schedule 2 (Goods and Services) or elsewhere in this Contract; and
- (b) are supplied in accordance with the provisions of this Contract including the Tender.

6.1.3 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 6.1.3(a) to (d).

6.1.4 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Goods and/or Services in accordance with this Contract;
- (b) subject to Clause 16.1 (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 Goods and/or Services;
- (c) ensure that any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Deliverables and/or the Goods and/or Services shall enable the Deliverables and/or Goods and/or Services to meet the requirements of the Authority;
- (d) the Supplier Assets will be free of all encumbrances (except as agreed in writing with the Authority); and
- (e) the Goods and/or Services are fully compatible with any Authority Property or Authority Assets used by the Supplier in connection with this Contract;

- (f) minimise any disruption to the Sites and/or the Authority's operations when providing the Goods and/or 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 Goods and/or Services to any Other Supplier and, on the Expiry Date for any reason, to enable the timely transition of the supply of the Goods and/or 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 Goods and/or 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 Goods and/or Services;
- (k) deliver the Goods and/or 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.

6.1.5 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. SERVICES

7.1 Time of Delivery of the Services

7.1.1 The Supplier shall provide the Services on the date(s) specified in the Task Order or elsewhere in the Contract.

7.2 Location and Manner of Delivery of the Services

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

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

7.3 Undelivered Services

7.3.1 In the event that any of the Services are not Delivered in accordance with Clauses 6.1 (Provision of the Goods and Services), 7.1 (Time of Delivery of the Services) and 7.2 (Location and Manner of Delivery of the Services) ("**Undelivered Services**"), the Authority, without prejudice to any other rights and remedies of the Authority howsoever arising, shall be entitled to withhold payment of the applicable Contract Charges for the Services that were not so Delivered until such time as the Undelivered Services are Delivered.

7.3.2 The Authority may, at its discretion and without prejudice to any other rights and remedies of the Authority howsoever arising, deem the failure to comply with Clauses 6.1, (Provision of the Goods and Services), 7.1 (Time of Delivery of the Services) and 7.2 (Location and Manner of Delivery of the Services) and meet the relevant Milestone Date (if any) to be a material Default.

7.4 Obligation to Remedy of Default in the Supply of the Services

7.4.1 Subject to DEFCONS 703 and 632 and without prejudice to any other rights and remedies of the Authority howsoever arising (including under Clauses 7.3.2 (Undelivered Services) and 30 (Authority Remedies for Default)), the Supplier shall, where practicable:

- (a) remedy any breach of its obligations in Clauses 6.1 and 7 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.

7.5 Continuing Obligation to Provide the Services

7.5.1 The Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the provision of the Services, notwithstanding:

- (a) any withholding or deduction by the Authority of any sum due to the Supplier pursuant to the exercise of a right of the Authority to such withholding or deduction under this Contract;
- (b) the existence of an unresolved Dispute; and/or
- (c) any failure by the Authority to pay any Contract Charges,
- (d) 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.

8. SERVICE LEVELS

8.1 Time of Delivery of the Services

8.1.1 The Supplier shall provide the Services on the date(s) specified in the Task Order or elsewhere in this Contract.

8.2 Location and Manner of Delivery of the Services

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

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

8.3 Undelivered Services

8.3.1 In the event that any of the Services are not Delivered in accordance with Clauses 6.1 (Provision of the Goods and Services), 7.1 (Time of Delivery of the Services) and 7.2 (Location and Manner of Delivery of the Services) ("**Undelivered Services**"), the Authority, without prejudice to any other rights and remedies of the Authority howsoever arising, shall be entitled to withhold payment of the applicable Contract Charges for the Services that were not so Delivered until such time as the Undelivered Services are Delivered.

8.3.2 The Authority may, at its discretion and without prejudice to any other rights and remedies of the Authority howsoever arising, deem the failure to comply with Clauses 6.1, (Provision of the Goods and Services), 7.1 (Time of Delivery of the Services) and 7.2 (Location and Manner of Delivery of the Services) and meet the relevant Milestone Date (if any) to be a material Default.

8.4 Obligation to Remedy of Default in the Supply of the Services

8.4.1 Subject to DEFCONS 703 632 and without prejudice to any other rights and remedies of the Authority howsoever arising (including under Clauses 7.3.2 (Undelivered Services) and 30 (Authority Remedies for Default)), the Supplier shall, where practicable:

- (a) remedy any breach of its obligations in Clauses 6.1 and 7 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.

8.5 Continuing Obligation to Provide the Services

8.5.1 The Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the provision of the Services, notwithstanding:

- (a) any withholding or deduction by the Authority of any sum due to the Supplier pursuant to the exercise of a right of the Authority to such withholding or deduction under this Contract;
 - (b) the existence of an unresolved Dispute; and/or
 - (c) any failure by the Authority to pay any Contract Charges,
- 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

9. CRITICAL SERVICE LEVEL FAILURE

9.1 On the occurrence of a Critical Service Level Failure:

9.1.1 the Authority shall be entitled to withhold and retain as compensation for the Critical Service Level Failure a sum equal to any Contract Charges which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Critical Service Level Failure**"),

provided that the operation of this Clause 9.1 shall be without prejudice to the right of the Authority to terminate this Contract and/or to claim damages from the Supplier for material Default as a result of such Critical Service Level Failure.

9.2 The Supplier:

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

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

10. DISRUPTION

10.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.

10.2 The Supplier shall immediately inform the Authority of any actual or potential industrial action, whether such action be by the Supplier Personnel or others, which affects or might affect the Supplier's ability at any time to perform its obligations under this Contract.

10.3 In the event of industrial action by the Supplier Personnel, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Goods and/or Services in accordance with its obligations under this Contract.

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

10.5 If the Supplier is temporarily unable to fulfil the requirements of this Contract owing to disruption of normal business solely caused by the Authority, an appropriate allowance by way of an extension of time will be Approved by the Authority. In addition, the Authority will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

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 a Authority Cause has occurred or is reasonably likely to occur, giving details of:

11.1.1 the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Contract; and

11.1.2 any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and

11.1.3 use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

12. CONTINUOUS IMPROVEMENT

12.1 The Supplier shall have an ongoing obligation throughout the Contract Period to identify new or potential improvements to the provision of the Goods and/or Services in accordance with this Clause 12 with a view to reducing the Authority's costs (including the Contract Charges) and/or improving the quality and efficiency of the Goods and/or Services and their supply to the Authority. As part of this obligation the Supplier shall identify and report to the Authority once every twelve (12) months:

12.1.1 the emergence of new and evolving relevant technologies which could improve the Sites and/or the provision of the Goods and/or Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;

12.1.2 new or potential improvements to the provision of the Goods and/or Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Goods and/or Services;

12.1.3 changes to the Sites, business processes and ways of working that would enable the Goods and/or Services to be provided at lower costs and/or at greater benefits to the Authority; and/or

12.1.4 NOT USED

12.2 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.

12.3 If the Authority wishes to incorporate any improvement identified by the Supplier, the Authority shall request a Variation in accordance with the Variation Procedure and the Supplier shall implement such Variation at no additional cost to the Authority.

D. CONTRACT GOVERNANCE

13. PERFORMANCE MONITORING

13.1 Unless otherwise Approved or notified by the Authority, the Supplier shall comply with the monitoring requirements set out in Part B of Schedule 5 (Service Levels, Service Credits and Performance Monitoring).

13.2 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure, monitor and report on the Supplier's performance of the provision of the Goods and/or Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels. Unless the Authority specifies otherwise, the Supplier shall obtain Approval of the relevant measuring and monitoring tools and procedures prior to using the same.

14. REPRESENTATIVES

- 14.1 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.
- 14.2 The initial Supplier Representative shall be the person notified to the Authority in writing by the Supplier within (5) Working Days of the Commencement Date. Any change to the Supplier Representative shall be agreed in accordance with Clause 21 (Supplier Personnel).
- 14.3 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.

15. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA

- 15.1 The Supplier shall keep and maintain for seven (7) years after the Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Contract including the Goods and/or Services provided under it, any Sub-Contracts and the amounts paid by the Authority.
- 15.2 The Supplier shall:
- 15.2.1 keep the records and accounts referred to in Clause 15.1 in accordance with Good Industry Practice and Law; and
 - 15.2.2 afford any Auditor access to the records and accounts referred to in Clause 15.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Contract Period and the period specified in Clause 15.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Contract including for the following purposes 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 Goods and/or Services;
 - (c) verify the Open Book Data;
 - (d) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
 - (e) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - (f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or the Guarantor and/or any Sub-Contractors or their ability to perform the Goods and/or Services;
 - (g) obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;

- (h) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
 - (i) carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
 - (j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - (k) review any Performance Monitoring Reports provided under Part B of Schedule 5 (Service Levels, Service Credits and Performance Monitoring) and/or other records relating to the Supplier's performance of the provision of the Goods and/or Services and to verify that these reflect the Supplier's own internal reports and records;
 - (l) verify the accuracy and completeness of any information delivered or required by this Contract;
 - (m) review the Supplier's quality management systems (including any quality manuals and procedures);
 - (n) review the Supplier's compliance with the Standards;
 - (o) inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or
 - (p) review the integrity, confidentiality and security of the Authority Data.
- 15.3 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 Goods and/or Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Authority.
- 15.4 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:
- 15.4.1 all reasonable information requested by the Authority within the scope of the audit;
 - 15.4.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Goods and/or Services; and
 - 15.4.3 access to the Supplier Personnel.
- 15.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 15, 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.

16. CHANGE

16.1 Variation Procedure

- 16.1.1 Subject to the provisions of this Clause 16 and of Schedule 3 (Contract Charges, Payment and Invoicing), either Party may request a variation to this Contract provided that such variation does not amount to a material

change of this Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".

16.1.2 A Party may request a Variation by completing 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.

16.1.3 The Authority may require the Supplier to carry out an impact assessment of the Variation on the Goods and/or 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 Goods and/or Services and the Supplier's ability to meet its other obligations under this Contract;
- (b) details of the cost of implementing the proposed Variation;
- (c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Contract Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
- (d) a timetable for the implementation, together with any proposals for the testing of the Variation; and
- (e) such other information as the Authority may reasonably request in (or in response to) the Variation request.

16.1.4 The Parties may agree to adjust the time limits specified in the Variation Form to allow for the preparation of the Impact Assessment.

16.1.5 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 Goods and/or Services and the proposed Variation.

16.1.6 In the event that:

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

the Authority may:

- (i) agree to continue to perform its obligations under this Contract without the Variation; or
- (ii) terminate this Contract with immediate effect, except where the Supplier has already fulfilled part or all of the Goods and/or Services ordered in accordance with this Contract or where the Supplier can show evidence of substantial work being carried out to provide the Goods and/or Services under this Contract, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

16.1.7 If the Parties agree the Variation, the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Contract.

16.2 Legislative Change

16.2.1 The Supplier shall neither be relieved of its obligations under this Contract nor be entitled to an increase in the Contract Charges as the result of a:

- (a) General Change in Law;
- (b) Specific Change in Law where the effect of that Specific Change in Law on the Goods and/or Services is reasonably foreseeable at the Commencement Date.

16.2.2 If a Specific Change in Law occurs or will occur during the Contract Period (other than as referred to in Clause 16.2.1(b)), the Supplier shall:

- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change including:
 - (i) whether any Variation is required to the provision of the Goods and/or Services, the Contract Charges or this Contract; and
 - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Service Level Performance Measures; and
- (b) provide to the Authority with evidence:
 - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Goods and/or Services; and
 - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 12 (Continuous Improvement), has been taken into account in amending the Contract Charges.

16.2.3 Any change in the Contract Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 16.2.1(b)) shall be implemented in accordance with the Variation Procedure.

E. PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

17. CONTRACT CHARGES AND PAYMENT

17.1 Contract Charges

17.1.1 In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Goods and/or 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).

- 17.1.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses, 15 (Records, Audit Access and Open Book Data), 26.5 (Freedom of Information), 26.6 (Protection of Personal Data).
- 17.1.3 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.
- 17.2 VAT
 - 17.2.1 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.
 - 17.2.2 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 17.2 (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.
- 17.3 Retention and Set Off
 - 17.3.1 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.
 - 17.3.2 If the Authority wishes to exercise its right pursuant to Clause 17.3.1 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.
 - 17.3.3 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.
- 17.4 Foreign Currency
 - 17.4.1 Any requirement of Law to account for the Goods and/or Services in any currency other than Sterling, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Authority.
 - 17.4.2 The Authority shall provide all reasonable assistance to facilitate compliance with Clause 17.4.1 by the Supplier.
- 17.5 Income Tax and National Insurance Contributions

17.5.1 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 Goods and/or Services by the Supplier or any Supplier Personnel.

17.5.2 In the event that any one of the Supplier Personnel is a Worker as defined in Schedule 1 (Definitions), and that particular Worker is liable to be taxed in the UK in respect of any consideration it receives relating to the Services, then the Supplier shall ensure that its contract with the Worker includes the following requirements:

- (a) that the Worker must comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration;
- (b) that the Worker must comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to national insurance contributions in respect of that consideration;
- (c) that the Authority may, at any time during the Contract Period, request that the Worker provide information which demonstrates how the Worker complies with the above requirements (a) and (b), 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;
- (d) that the Worker's contract may be terminated at the Authority's request if:
 - (i) the Worker fails to provide information requested by the Authority within the time specified by the Authority; and/or
 - (ii) the Worker provides information which the Authority considers is inadequate to demonstrate how the Worker complies with requirements (a) or (b) or confirms that the Worker is not complying with those requirements; and

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.

18. REFER TO SCHEDULE 16 DEFCONS 513, 522 AND 522J. PROMOTING TAX COMPLIANCE

18.1 If, at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

- 18.1.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
- 18.1.2 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.
- 18.2 In the event that the Supplier fails to comply with this Clause 18 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.

19. BENCHMARKING – NOT USED

F. SUPPLIER PERSONNEL AND SUPPLY CHAIN MATTERS

20. KEY PERSONNEL

- 20.1 The Parties have agreed that individuals named in Task Orders will become Key Personnel for the purposes of this Contract
- 20.2 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Contract Period.
- 20.3 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 20.4 The Supplier shall not remove or replace any Key Personnel unless:
 - 20.4.1 requested to do so by the Authority;
 - 20.4.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 20.4.3 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
 - 20.4.4 the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 20.5 The Supplier shall:
 - 20.5.1 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);
 - 20.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
 - 20.5.3 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;

- 20.5.4 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 Goods and/or Services; and
- 20.5.5 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.
- 20.5.6 shall and shall procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Contract Period without Approval.
- 20.6 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.]

21. SUPPLIER PERSONNEL

21.1 Supplier Personnel

- 21.1.1 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 Goods and/or 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 and provide the Goods and/or 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 7 (Security);
 - (c) , 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.

21.1.2 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 Goods and/or Services of the relevant person(s).

21.1.3 The decision of the Authority as to whether any person is to be refused access to the Authority Premises shall be final and conclusive.

22. SUPPLY CHAIN RIGHTS AND PROTECTION

22.1 Appointment of Sub-Contractors

22.1.1 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 Goods and/or 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.

22.1.2 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 Goods and/or 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.

22.1.3 If requested by the Authority within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 22.1.2, the Supplier shall also provide:

- (a) a copy of the proposed Sub-Contract; and
- (b) any further information reasonably requested by the Authority.

22.1.4 The Authority may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 22.1.2 (or, if later, receipt of any further information requested pursuant to Clause 22.1.3), object to the appointment of the relevant Sub-Contractor if they consider that:

- (a) the appointment of a proposed Sub-Contractor may prejudice the provision of the Goods and/or Services or may be contrary to the interests respectively of the Authority under this Contract;
- (b) the proposed Sub-Contractor is unreliable and/or has not provided reasonable services to 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.

22.1.5 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 22.1.2; and
 - (ii) any further information requested by the Authority pursuant to Clause 22.1.3; 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 22.2 (Appointment of Key Sub-Contractors)],
the Supplier may proceed with the proposed appointment.

22.2 Appointment of Key Sub-Contractors

22.2.1 The Authority has consented to the engagement of the Key Sub-Contractors listed in Schedule 14 (Key Sub-Contractors).

22.2.2 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 not will 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 Goods and/or 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.

22.2.3 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.

22.2.4 Except where the Authority has given its prior written consent under Clause 22.2.1, 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 6.1.4(l) (Provision of Goods and/or Services);
 - (iv) the keeping of records in respect of the goods and/or services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
 - (v) the conduct of audits set out in Clause 15 (Records, Audit Access & Open Book Data);
- (f) provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 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 Goods and/or Services provided to the Supplier under the Sub-Contract without first seeking the written consent of the Authority;

22.3 Supply Chain Protection

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

22.3.2 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a Valid Invoice;
- (b) include within the Performance Monitoring Reports required under Part B of Schedule 5 (Service Levels, Service Credits and Performance Monitoring) a

summary of its compliance with this Clause 22.3.2, such data to be certified each quarter by a director of the Supplier as being accurate and not misleading.

22.3.3 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).

22.4 Termination of Sub-Contracts

22.4.1 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 33.6 (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 Goods and/or 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.

22.5 Competitive Terms

22.5.1 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 22.4 (Termination of Sub-Contracts), enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.

22.5.2 If the Authority exercises the option pursuant to Clause 22.5.1, then the Contract Charges shall be reduced by an amount that is agreed in accordance with the Variation Procedure.

22.5.3 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.

22.6 Retention of Legal Obligations

22.6.1 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 22 (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

23. AUTHORITY PREMISES – NOT USED

23.1 REFER to schedule 16, **DEFCON 76**

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 The Supplier shall be solely responsible for the cost of carriage of the Supplier Equipment to the Sites and/or any Authority Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on the Expiry Date the Supplier shall be responsible for the removal of all relevant Supplier Equipment from the Sites and/or any Authority Premises, including the cost of packing, carriage and making good the Sites and/or the Authority Premises following removal.

24.4 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Authority shall be liable for loss of or damage to any of the Supplier's property located on Authority Premises which is due to the negligent act or omission of the Authority.

24.5 The loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Contract, including the Service Level Performance Measures.

24.6 The Supplier shall maintain all Supplier Equipment within the Sites and/or the Authority Premises in a safe, serviceable and clean condition.

24.7 The Supplier shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:

24.7.1 remove from the Authority Premises any Supplier Equipment or any component part of Supplier Equipment which in the reasonable opinion of

the Authority is either hazardous, noxious or not in accordance with this Contract; and

24.7.2 replace such Supplier Equipment or component part of Supplier Equipment with a suitable substitute item of Supplier Equipment.

24.8 Where a failure of Supplier Equipment or any component part of Supplier Equipment causes two (2) or more Service Failures in any twelve (12) Month period, the Supplier shall notify the Authority in writing and shall, at the Authority's request (acting reasonably), replace such Supplier Equipment or component part thereof at its own cost with a new item of Supplier Equipment or component part thereof (of the same specification or having the same capability as the Supplier Equipment being replaced).

H. INTELLECTUAL PROPERTY AND INFORMATION

25. INTELLECTUAL PROPERTY RIGHTS

25.1 Refer to DEFCONs 703. 632,

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 7 (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 Goods and/or 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 Goods and/or 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 at an Approved location. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 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 Authority may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent 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 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 Goods and/or 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 Goods and/or 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 British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 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 that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. 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 Goods and/or 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 that 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,

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

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 Goods, 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 DEFCONS 703 and 632 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 28.1.1 (Unlimited Liability), the Supplier's total aggregate liability:

- (a) in respect of all:
 - (i) Compensation for Critical Service Level Failure;
- (b) in respect of all other Losses incurred by the Authority under or in connection with this Contract as a result of Defaults by the Supplier shall in no event exceed:
 - (i) in relation to any Defaults occurring from the Commencement Date to the end of the first Contract Year, the higher of £10,000,000 and a sum equal to [one hundred and fifty per cent (150%)] of the Estimated Year 1 Contract Charges;
 - (ii) in relation to any Defaults occurring in each subsequent Contract Year that commences during the remainder of the Contract Period, the higher of £10,000,000 in each such Contract Year and a sum equal to [one hundred and fifty per cent (150%)] of the Contract Charges payable to the Supplier under this Contract in the previous Contract Year; and
 - (iii) in relation to any Defaults occurring in each Contract Year that commences after the end of the Contract Period, the higher of £10,000,000 in each such

Contract Year and a sum equal to [one hundred and fifty percent (150%)] of the Contract Charges payable to the Supplier under this Contract in the last Contract Year commencing during the Contract Period.

28.2.2 Subject to Clauses 28.1.1 (Unlimited Liability) and 28.2.1 (Financial Limits) and without prejudice to its obligation to pay the undisputed Contract Charges as and when they fall due for payment, the Authority's total aggregate liability in respect of all Losses as a result of Authority Causes shall be limited to:

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

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 Goods and/or Services for the remainder of the Contract Period and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Goods and/or 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 Any Deductions shall not be taken into consideration when calculating the Supplier's liability under Clause 28.2.1 (Financial Limits).

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 12 (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 5 (Service Levels, Service Credits and Performance Monitoring)) and subject to the exclusive financial remedy provisions in Clauses **Error! Reference source not found.** (Service Levels) if the Supplier commits any Default of this Contract then the Authority may (whether or not any part of the Goods and/or 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 Goods and/or 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 Goods and/or 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 Goods and/or 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 Goods and/or

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 Good and/or 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 Goods and/or 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 Goods and/or 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):

- (a) the Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within five (5) Working Days (or such other period as may be agreed between the Parties) from the date of Authority's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Authority's request for a draft Rectification Plan.
- (b) the draft Rectification Plan shall set out:
 - (i) full details of the Default that has occurred, including a root cause analysis;
 - (ii) the actual or anticipated effect of the Default; and
 - (iii) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).

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 by an expert in accordance with paragraph 5 of Schedule 9 (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; and/or
- (d) will rectify the Default 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 Milestone by its Milestone Date;

31.1.2 provide the Goods and/or Services in accordance with the Service Levels;

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 a Authority Cause, then (subject to the Supplier fulfilling its obligations in Clause 11 (Supplier Notification of Authority Cause)):

(a) the Supplier shall not be treated as being in breach of this Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;

(b) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance to terminate this Contract pursuant to Clause 33 (Authority Termination Rights) except Clause 33.6 (Termination Without Cause);

(c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:

(i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause;

(ii) if the Authority, acting reasonably, considers it appropriate, the Task Order shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause;

and/or

(d) where the Supplier Non-Performance constitutes a Service Level Failure:

(i) the Supplier shall not be liable to accrue Service Credits;

(ii) the Authority shall not be entitled to any Compensation for Critical Service Level Failure pursuant to Clause 9 (Critical Service Level Failure); and

- (iii) the Supplier shall be entitled to invoice for the Contract Charges for the provision of the relevant Goods and/or Services affected by the Authority Cause,
- (iv) in each case, to the extent that the Supplier can demonstrate that the Service Level Failure was caused by the Authority Cause.

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 (Supplier Notification of Authority Cause); and
- 31.2.2 within ten (10) Working Days of becoming aware that a Authority Cause has caused, or is likely to cause, a Supplier Non-Performance, give the Authority notice (a “**Relief Notice**”) setting out details of:
 - (a) the Supplier Non-Performance;
 - (b) the Authority Cause and its effect on the Supplier’s ability to meet its obligations under this Contract; and
 - (c) the relief claimed by the Supplier.

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 Clauses 7.5 (Continuing obligation to provide the Services) and, 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 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 this Clause 32 a Party may claim relief under this 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. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

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 this Clause 32 to the extent that consequences of the relevant Force Majeure Event:
- 32.3.1 are capable of being mitigated by any of the provision of any Goods and/or Services 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 goods and/or services similar to the Goods and/or 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 Goods and/or 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 Goods and/or Services is materially impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days; and
 - (b) the Supplier shall not be liable for any Default and the Authority shall not be liable for any Authority Cause arising as a result of such failure;
 - 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;
 - (b) the Supplier shall be entitled to receive payment of the Contract Charges (or a proportional payment of them) only to the extent that the Goods and/or Services (or part of the Goods and/or Services) continue to be provided in accordance with the terms of this Contract 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 in Relation to Guarantee

33.1.1 This Contract is conditional on the Supplier procuring a Guarantee pursuant to Clause 4 (Guarantee), the Authority may terminate this Contract by issuing a Termination Notice to the Supplier where:

- (a) the Guarantor withdraws the Guarantee for any reason whatsoever;
- (b) the Guarantor is in breach or anticipatory breach of the Guarantee;
- (c) an Insolvency Event occurs in respect of the Guarantor;
- (d) the Guarantee becomes invalid or unenforceable for any reason whatsoever

and in each case the Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Authority within the period of time specified by the Authority.;

- (e) the Supplier fails to provide the Guarantee and accompanying documentation required by Clause **Error! Reference source not found.**

33.2 Termination on Material Default

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

- (a) the Supplier commits a Critical Service Level Failure;
- (b) the representation and warranty given by the Supplier pursuant to Clause 3.2.5 (Representations and Warranties) is materially untrue or misleading and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable;
- (c) as a result of any Defaults, the Authority incurs Losses in any Contract Year which exceed 80% of the value of the Supplier's aggregate annual liability limit for that Contract Year as set out in Clauses 28.2.1(a) and 28.2.1(b) (Liability);
- (d) the Authority expressly reserves the right to terminate this Contract for material Default, including pursuant to any of the following Clauses: 7.3.2 (Undelivered Services) , 9.1 (Critical Service Level Failure), 10.4 (Disruption), 15.5 (Records, Audit Access and Open Book Data), 18 (Promoting Tax Compliance). 26.3.9 (Confidentiality), 42.6.2 (Prevention of Fraud and Bribery);
- (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;

33.2.2 For the purpose of Clause 33.2.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

33.3 Termination in Relation to Financial Standing

33.3.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Authority there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:

- (a) adversely impacts on the Supplier's ability to supply the Goods and/or Services under this Contract; or
- (b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Goods and/or Services under this Contract.

33.4 Termination on Insolvency

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

33.5 Termination on Change of Control

33.5.1 The Supplier shall notify the Authority immediately if the Supplier is intending to undergo, undergoes or has undergone a Change of Control and provided this does not contravene any Law, shall notify the Authority immediately in writing of any circumstances suggesting and/or explaining that a Change of Control is planned or is in contemplation or has taken place. The Authority may terminate this Contract by issuing a Termination Notice to the Supplier within six (6) Months of:

- (a) being notified in writing that a Change of Control is planned 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 planned 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.

33.6 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 £1,000,000 (one million pounds) 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 17.3 (Retention and Set off).

- 34.1.2 The Supplier shall not suspend the supply of the Goods and/or 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, by issuing a Termination Notice to the other Party terminate this Contract if, 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 Goods and/or 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 Goods and/or Services that have not been terminated if the partial termination arises due to the exercise of any of the Authority's termination rights under Clause 33 (Authority Termination Rights) except Clause 33.6 (Termination Without Cause); and

- 36.3.2 reject the Variation.

37. CONSEQUENCES OF EXPIRY OR TERMINATION

- 37.1 **Consequences of termination under Clauses [33.1 (Termination in Relation to Guarantee),] 33.2 (Termination on Material Default), 33.3 (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 any of the Clauses referred to in Clause 37.1; and
- (b) then makes other arrangements for the supply of the Goods and/or 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 Where:

- (a) the Authority terminates (in whole or in part) this Contract under Clause 33.6 (Termination without Cause); or
- (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, provided that the Supplier takes all reasonable steps to mitigate such Losses. The Supplier shall submit a fully itemised and costed list of such Losses, with supporting evidence including such further evidence as the Authority may require, reasonably and actually incurred by the Supplier as a result of termination under Clause 33.6 (Termination without Cause).

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; or
- (b) when added to any sums paid or due to the Supplier under this Contract, exceeds the total sum that would have been payable to the Supplier if this Contract had not been terminated.

37.3 Consequences of termination under Clause 35.1 (Termination for Continuing Force Majeure Event)

37.3.1 The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Contract for a continuing Force Majeure Event pursuant to Clause 35.1 (Termination for Continuing Force Majeure Event).

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 15 (Records, Audit Access & Open Book Data), 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 8 (Exit Management), Schedule 9 (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 8 (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 Goods and/or 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 Goods and/or 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 Supplier shall, when working on the Sites, perform its obligations under this Contract in accordance with the Environmental Policy of the Authority.

38.4.2 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; or

39.2.2 any private sector body which substantially performs the functions of the Authority,

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 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 39.2.2 (the "**Transferee**" in the rest of this Clause) the right of termination of the Authority in Clause 33.4 (Termination on Insolvency) shall be available to the Supplier in the event of insolvency of the Transferee as if the references to Supplier in Clause 33.4 (Termination on Insolvency) and to Supplier or Guarantor 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 Goods and/or 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 15 (Records, Audit Access and Open Book Data).

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 this 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 this 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 supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

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 The provisions of paragraphs , 3.1 and 3.3 of Part B, paragraphs 2.1 and 2.3 of Part C and the provisions of paragraph 9.9 of Schedule 8 (Exit Management) (together “**Third Party Provisions**”) confer benefits on persons named in such provisions other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

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

46.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.

46.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 46.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

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 this 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	9.00am on the first Working Day after	Dispatched as a pdf attachment to an e-mail to

and 47.4)	sending	the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For™ 1 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 This 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:

For the attention of: [

47.6.2 For the Supplier:
[insert name of supplier]
Address: [insert address of supplier]
For the attention of: [insert supplier contact name]

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 Goods and/or 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 10 (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.

50. ACCESS TO MOD SITES

- 50.1 In this Clause 50:
- 50.1.1 The Authority shall issue passes for those representatives of the Supplier who are approved for admission to the Site and a representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Authority and shall be surrendered on demand or on completion of the supply of the Goods and/or Services.
- 50.1.2 The Supplier's representatives when employed within the boundaries of a Site, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the time being for the conduct of personnel at that Site. When on board ship, compliance shall be with the Ship's Regulations as interpreted by the Officer in charge. Details of such rules, regulations and requirements shall be provided, on request, by the Officer in charge.
- 50.1.3 The Supplier shall be responsible for the living accommodation and maintenance of its representatives while they are employed at a Site. Sleeping accommodation and messing facilities, if required, may be provided by the Authority wherever possible, at the discretion of the Officer in charge, at a cost fixed in accordance with current Ministry of Defence regulations. At Sites overseas, accommodation and messing facilities, if required, shall be provided wherever possible. The status to be accorded to the Supplier's personnel for messing purposes shall be at the discretion of the Officer in charge who shall, wherever possible give his decision before the commencement of this Contract where so asked by the Supplier. When sleeping accommodation and messing facilities are not available, a certificate to this effect may be required by the Authority and shall be obtained by the Supplier from the Officer in charge. Such

certificate shall be presented to the Authority with other evidence relating to the costs of this Contract.

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

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

Signed duly authorised for and on behalf of the SUPPLIER

Signature:

Name:

Position:

Date

Signed for and on behalf of the AUTHORITY

Signature:

Name:

Position:

Date

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 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 Officed) HM Treasury or the Cabinet Officee) 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 Goods and/or 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
- c) 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"

means:

- 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:
 - 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 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 Goods and/or 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 Responsibilities"

means the responsibilities of the Authority agreed in writing between the Parties from time to time in connection with this Contract;

"Authority's Confidential Information"

means:

- 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 information derived from any of the above;

"Central Government Body"	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none">a) Government Department;b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);c) Non-Ministerial Department; ord) Executive Agency;
"Change in Law"	means any change in Law which impacts on the supply of the Goods and/or 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;
"Charges"	means the charges raised under or in connection with this Contract from time to time;
"Commercially Sensitive Information"	means the Confidential information listed in Schedule 14 (Commercially Sensitive Information) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
"Comparable Supply"	means the supply of Goods and/or Services to another customer of the Supplier that are the same or similar to the Goods and/or Services;
"Compensation for Critical Service Level Failure"	has the meaning given to it in Clause 9.1.1 (Critical Service Level Failure);
"Confidential Information"	means the Authority's Confidential Information and/or the Supplier's Confidential Information, as the context specifies;
"Contract"	means this written agreement between the Authority and the Supplier consisting of these terms and the MoD Terms and Conditions (DEF CONS)
" Contract Charges"	means the prices (inclusive of any Milestone Payments and exclusive of any applicable VAT), payable to the Supplier by the Authority under this Contract, as set out in

Annex 1 of Schedule 3 (Contract Charges, Payment and Invoicing), for the full and proper performance by the Supplier of its obligations under this Contract less any Deductions;

- " **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;
- "**Conviction**" means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006;]
- "**Commencement Date**" means [***Insert date of commencement dd/mm/yy***];
- "**Costs**" the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Goods and/or Services:
- a) the cost to the Supplier or the Sub-Contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including:
 - i) base salary paid to the Supplier Personnel;
 - ii) employer's national insurance contributions;
 - iii) pension contributions;
 - iv) car allowances;
 - v) any other contractual employment benefits;
 - vi) staff training;
 - vii) work place accommodation;
 - viii) work place IT equipment and tools reasonably necessary to provide the Goods and/or Services (but not including items included within limb (b) below); and
 - ix) reasonable recruitment costs, as agreed with the Authority;
 - b) costs incurred in respect of those Supplier Assets which are detailed on the Registers and which would be treated as capital costs according to generally

accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Authority or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;

- c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Goods and/or Services;

but excluding:

- a) Overhead;
- b) financing or similar costs;
- c) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Contract Period whether in relation to Supplier Assets or otherwise;
- d) taxation;
- e) fines and penalties;
- f) amounts payable under Clause 19 (Benchmarking); and
- g) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

"Critical Service Level Failure"

means any instance of critical service level failure specified in Annex 2 to Part A of Schedule 6 (Service Levels, Service Credits and Performance Monitoring);

"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;
"Deductions"	means all Service Credits or any other deduction which the Authority is paid or is payable under this Contract;
"Default"	means any breach of the obligations of the Supplier (including but not limited to including abandonment of this Contract in breach of its terms) or any other default (including material Default) after the words, act, omission, negligence or statement of the Supplier, of its Sub-Contractors or any Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to the Authority;
"Delay"	means: <ul style="list-style-type: none"> a) a delay in the Achievement of a Milestone by its Milestone Date; or b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Task Order;
"Deliverable"	means an item or feature in the supply of the Goods and/or Services delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Task Order (if any) or at any other stage during the performance of this Contract;
"Delivery"	means, in respect of Goods, the time at which the Goods have been delivered and, in respect of Services, the time at which the Services have been provided or performed by the Supplier as confirmed by the issue by the Authority of a Satisfaction Certificate in respect of the relevant Milestone thereof (if any) 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 Goods and/or 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;

"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 10 (Dispute Resolution Procedure);
"Document"	includes specifications, plans, drawings, photographs and books;
"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 Goods and/or Services; c) is required by the Supplier in order to provide the Goods and/or Services; and/or d) has been or shall be generated for the purpose of providing the Goods and/or 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: <ul style="list-style-type: none"> 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 Information Regulations or EIRs"

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 Policy"

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;

"Estimated Year 1 Contract Charges"

means the sum of £11,000,000 pounds estimated by the Authority to be payable by it to the Supplier as the total aggregate Contract Charges from the Commencement Date until the end of the first Contract Year;

"Expedited Dispute Timetable"

means the timetable set out in paragraph 5 of Schedule 10 (Dispute Resolution Procedure);

" Expiry Date"

means:

- a) the end date of the Initial Period; or
- b) the end date of any Extension Period;

if this Contract is terminated before the end date of the Initial Period or Extension Period as appropriate, the earlier date of termination of this Contract in accordance with its terms;

"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"

means any event, occurrence, circumstance, matter or cause affecting the performance by either the Authority or the Supplier of its obligations arising from:

- a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Contract;
- b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
- c) acts of the Crown, local government or Regulatory Bodies;
- d) fire, flood or any disaster; and
- e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
 - 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 goods and/or services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Goods and/or Services (or any part of the Goods and/or 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;
"General Anti-Abuse Rule"	means (a) the legislation in [Part 5] of the Finance Act 2013 and; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
"General Change in Law"	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"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;
"Guarantee"	means a deed of guarantee in favour of the Authority in the form set out in Schedule 16 (Guarantee) granted pursuant to Clause 4 (Guarantee);
"Guarantor"	means the person acceptable to the Authority to give a Guarantee;
"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;
"Impact Assessment"	has the meaning given to it in Clause 16.1.3 (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 its first year of operating the contract anniversary;
"Insolvency Event"	means, in respect of the Supplier or Guarantor (as applicable): <ul style="list-style-type: none"> a) a proposal is made for a voluntary arrangement

within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or

- b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- 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 or Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or
- 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 12 (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;
"IPR Claim"	means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Goods and/or Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority in the fulfilment of its obligations under this Contract;
"Key Personnel"	means the individuals (identified in accordance with Clause 20
"Key Role(s)"	[has the meaning given to it in Clause 20.1 (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 14 (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 Goods and/or 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 Goods and/or 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;
"Man Day"	means 8 Man Hours, whether or not such hours are worked consecutively and whether or not they are

	worked on the same day;
"Man Hours"	means the hours spent by the Supplier Personnel properly working on the provision of the Goods and/or Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
"Milestone"	means an event or task described in the Task Order which, if applicable, must be completed by the relevant Milestone Date;
"Milestone Date"	means the target date set out against the relevant Milestone in the Task Order by which the Milestone must be Achieved;
"Milestone Payment"	means a payment identified in the Task Order to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone;
MoD Terms and Conditions"	means the contractual terms and conditions listed in Schedule [16 which form part of the Contract
"Month"	means a calendar month and "Monthly" shall be interpreted accordingly;
"Officer in charge"	" shall include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Officers superintending Government Establishments
"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 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;
"Open Book Data "	means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Contract Charges already paid or

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

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

"Other Supplier"

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

"Overhead"

means those amounts which are intended to recover a proportion of the Supplier's or the relevant Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the

	provision of Supplier Personnel and accordingly included within limb (a) of the definition of "Costs";
"Parent Company"	means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;
"Party"	means the Authority or the Supplier and "Parties" shall mean both of them;
"Performance Monitoring System"	has the meaning given to it in paragraph 1.1.2 in Part B of Schedule 5 (Service Levels, and Performance Monitoring);
"Performance Monitoring Reports"	has the meaning given to it in paragraph 3.1 of Part B of Schedule 5 (Service Level, and Performance Monitoring);
"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 Agreement; 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) 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:

- 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 2006 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;

"Related Supplier"

means any person who provides goods and/or services to the Authority which are related to the Goods and/or Services from time to time;

"Relevant Conviction"

means:

- a) a Conviction that is relevant to the nature of the Goods and/or Services to be provided; or
- b) [***Please insert relevant convictions if any***];or
- c) a conviction designated as such specified elsewhere in this Contract;

"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 Goods"	means any goods which are substantially similar to any of the Goods and which the Authority receives in substitution for any of the Goods following the Expiry Date, whether those goods are provided by the Authority internally and/or by any third party;
"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 Goods and/or Services appointed by or at the direction of the Authority from time to time or where the Authority is providing Replacement Goods and/or 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 Goods and/or 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);
"Schedule"	means a schedule to this Contract;
"Security Management Plan"	means the Supplier's security management plan prepared pursuant to paragraph 4 of Schedule 7 (Security) a draft of which has been provided by the Supplier to the Authority in accordance with paragraph 4 of Schedule 7 (Security) and as updated from time to time;
"Security Policy"	means the Authority's security policy in force as at the Commencement Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
"Security Policy Framework"	the HMG Security Policy Framework;

"Service Failure"	means an unplanned failure and interruption to the provision of the Goods and/or Services, reduction in the quality of the provision of the Goods and/or Services or event which could affect the provision of the Goods and/or Services in the future;
"Service Level Failure"	means a failure to meet the Service Level Performance Measure in respect of a Service Level Performance Criterion;
"Service Level Performance Criteria"	has the meaning given to it in paragraph 3.2 of Part A of Schedule 5 (Service Levels, and Performance Monitoring);
"Service Level Performance Measure"	shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Schedule 5 (Service Levels, and Performance Monitoring);
"Service Level Threshold"	shall be as set out against the relevant Service Level Performance Criterion in Annex 1 of Part A of Schedule 5 (Service Levels, and Performance Monitoring);
"Service Levels"	means any service levels applicable to the provision of the Goods and/or Services under this Contract specified in Annex 1 to Part A of Schedule 5 (Service Levels, and Performance Monitoring);
"Service Period"	has the meaning given to in paragraph Error! Reference source not found. of Schedule 5 (Service Levels, and Performance Monitoring);
"Service Transfer"	means any transfer of the Goods and/or Services (or any part of the Goods and/or 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 referred to Annex A of Schedule 2 (Goods and Services);]
"Sites"	<p>means any premises (including the Authority Premises, the Supplier's premises or third party premises) and shall include any of Her Majesty's Ships or Vessels and Service Stations.</p> <p>from, to or at which:</p> <ol style="list-style-type: none"> a) the Goods and/or Services are (or are to be) provided; or b) the Supplier manages, organises or otherwise directs the provision or the use of the Goods and/or Services;

"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 give to it in Schedule 9 (Staff Transfer);
"Standards"	means any: <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) standards detailed by the Authority in Paragraph 1 of Schedule 6 (Standards) or agreed between the Parties from time to time; 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 between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Goods and/or Services or any part thereof or facilities, services necessary for the provision of the Goods and/or Services or any part thereof or necessary for the management, direction or control of the provision of the Goods and/or Services or any part thereof;
"Sub-Contractor"	means any third party engaged by the Supplier from time to time under a Sub-Contract permitted pursuant to this Contract or its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents;
"Supplier"	means the person, firm or company named in the recitals with whom the Authority enters into this Contract;
"Supplier Assets"	means all assets and rights used by the Supplier to provide the Goods and/or 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 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 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 Profit"	means, in relation to a period or a Milestone (as the context requires), the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;
"Supplier Profit Margin"	means, in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Contract Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
"Supplier Representative"	means the representative appointed by the Supplier and notified to the Authority in accordance with Clause 14(Representatives);
"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.
"Tender"	means the tender submitted by the Supplier to the Authority on [insert date dd/mm/yyyy] and annexed to or referred to in Schedule 13 (Tender);

"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 Goods and/or Services;
"Undelivered Services"	has the meaning given to it in Clause 7.3.1 (Undelivered Services);
"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 6 (Invoicing Procedure) of Schedule 3 (Contract Charges, Payment and Invoicing);
"Variation"	has the meaning given to it in Clause 16.1 (Variation Procedure);
"Variation Form"	means the form set out in Schedule 11 (Variation Form);
"Variation Procedure"	means the procedure set out in Clause 16.1 (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 0712 – Tax Arrangements of Public Appointees https://www.gov.uk/government/publications/procurement-policy-note-07-12-tax-arrangements-of-public-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][Scotland][Northern Ireland].

SCHEDULE 2: GOODS AND SERVICES

1. INTRODUCTION

1.1 This Schedule specifies the:

1.1.1 Goods and Services to be provided under this Contract, in Annex 1;

ANNEX 1: THE SERVICES

[Guidance Note: insert details of the Services to be provided by the Supplier including the location/sites of Delivery and dates for Delivery.]

SCHEDULE 3: CONTRACT CHARGES, PAYMENT AND INVOICING

[Guidance Note: Schedule to be amended to reflect the pricing detail of the relevant procurement.]

1. DEFINITIONS

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

a)

"Supporting Documentation"

means sufficient information in writing to enable the Authority to reasonably to assess whether the contract Charges, Reimbursable Expenses and other sums due from the Authority under this Contract detailed in the information are properly payable.

2. GENERAL PROVISIONS

2.1 This Schedule details:

2.1.1 the Contract Charges for the Goods and/or the Services 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 Contract Charges.

3. CONTRACT CHARGES

3.1 The Contract Charges which are applicable to this Contract are set out in Annex 1 of this Schedule.

3.2 The Supplier acknowledges and agrees that, subject to paragraph 7 of this Schedule (Adjustment of Contract Charges), the Contract Charges cannot be increased during the Contract Period.

4. COSTS AND EXPENSES

4.1 The Contract Charges include all costs and expenses relating to the Goods and/or 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. PAYMENT TERMS/PAYMENT PROFILE

- 5.1 The payment terms/profile which are applicable to this Contract are set out in Annex 2 of this Schedule.

6. INVOICING PROCEDURE

- 6.1 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 6.5 of this Schedule and in accordance with the provisions of this Contract.
- 6.2 The Supplier shall ensure that each invoice (whether submitted electronically or in a paper form, as the Authority may specify):
 - 6.2.1 contains:
 - (a) all appropriate references, including the unique order reference number; and
 - (b) a detailed breakdown of the Delivered Goods and/or Services, including the Milestone(s) (if any) and Deliverable(s) within this Contract to which the Delivered Goods and/or Services relate, against the applicable due and payable Contract Charges; and
 - 6.2.2 shows separately:
 - (a) the VAT added to the due and payable Contract Charges in accordance with Clause 17.2.1 of this Contract (VAT) and the tax point date relating to the rate of VAT shown; and
 - 6.2.3 it is supported by any other documentation reasonably required by the Authority to substantiate that the invoice is a Valid Invoice.
- 6.3 The Supplier shall accept the Government Procurement Card as a means of payment for the Goods and/or Services where such card is agreed with the Authority to be a suitable means of payment. The Supplier shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Authority.
- 6.4 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.
- 6.5 The Supplier shall submit invoices directly to:


7. ADJUSTMENT OF CONTRACT CHARGES

- 7.1 The Contract Charges shall only be varied:
- 7.1.1 due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Contract Charges in accordance with Clause 16.2 of this Contract (Legislative Change);
 - 7.1.2 where all or part of the Contract Charges are reduced as a result of a review of the Contract Charges in accordance with Clause 12 of this Contract (Continuous Improvement);
 - 7.1.3 where all or part of the Contract Charges are reviewed and reduced in accordance with paragraph 8 of this Schedule;
- 7.2 Subject to paragraphs 7.1.1 to 7.1.33 of this Schedule, the Contract Charges will remain fixed for duration of the Contract.

8. SUPPLIER PERIODIC ASSESSMENT OF CONTRACT CHARGES

- 8.1 Every six (6) Months during the Contract Period, the Supplier shall assess the level of the Contract Charges to consider whether it is able to reduce them.
- 8.2 Such assessments by the Supplier under paragraph 8 of this Schedule 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 Contract Charges it shall promptly notify the Authority in writing and such reduction shall be implemented in accordance with paragraph 9.1.4 of this Schedule below.

8.3

8.3.1

9. IMPLEMENTATION OF ADJUSTED CONTRACT CHARGES

- 9.1 Variations in accordance with the provisions of this Schedule to all or part the Contract Charges (as the case may be) shall be made by the Authority to take effect:
- 9.1.1 in accordance with Clause 16.2 of this Contract (Legislative Change) where an adjustment to the Contract Charges is made in accordance with paragraph 7.1.1 of this Schedule;
 - 9.1.2 in accordance with Clause 12 of this Contract (Continuous Improvement) where an adjustment to the Contract Charges is made in accordance with paragraph 7.1.2 of this Schedule;
 - 9.1.3 NOT USED
 - 9.1.4 on [1 June] for assessments made on [1 May] and on [1 January] for assessments made on [1 December] where an adjustment to the Contract Charges is made in accordance with paragraph 7.1.3 of this Schedule[.] [; or]
 - 9.1.5 [NOT USED]
 - 9.1.6 [NOT USED]

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

ANNEX 1: CONTRACT CHARGES



[Guidance Note: Prior to the commencement of this Contract, the Authority will incorporate here the Supplier's tendered Contract Charges including any discounts e.g. volume discounts]

**SCHEDULE 4: IMPLEMENTATION PLAN, AUTHORITY RESPONSIBILITIES AND KEY
PERSONNEL – NOT USED**

1. GENERAL

1.1.1 NOT USED

PART B: AUTHORITY RESPONSIBILITIES

1. GENERAL

1.1 NOT USED

PART C: KEY PERSONNEL

1. GENERAL

1.1 NOT USED

[REDACTED]

[Guidance Note: Insert details of any Key Personnel and their Key Roles if any or change to "Not Used".]

SCHEDULE 5: SERVICE LEVELS, AND PERFORMANCE MONITORING

1. SCOPE

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

PART A: SERVICE LEVELS

1. GENERAL PROVISIONS

- 1.1 The Supplier shall provide a proactive Contract manager to ensure that all Service Levels in this Contract are achieved to the highest standard throughout the Contract Period.
- 1.2 The Supplier shall provide a managed service through the provision of a dedicated Contract manager where required on matters relating to:
 - 1.2.1 Authority support;
 - 1.2.2 Accurate and timely invoices.
- 1.3 The Supplier accepts and acknowledges that failure to meet the Service Level Performance Measures set out in the table in Annex 1 to this Part A of this Schedule will result in Service Credits being due to the Authority.

2. PRINCIPAL POINTS

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

3. SERVICE LEVELS

- 3.1 Annex 1 to this Part A of this Schedule sets out the Service Levels the performance of which the Parties have agreed to measure.
- 3.2 The Supplier shall monitor its performance of this Contract by reference to the relevant performance criteria for achieving the Service Levels shown in Annex 1 to this Part A of this Schedule (the "**Service Level Performance Criteria**") and shall send the Authority a Performance Monitoring Report detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Schedule.
- 3.3 The Supplier shall, at all times, provide the Goods and/or Services in such a manner that the Service Levels Performance Measures are achieved.
- 3.4 If the level of performance of the Supplier of any element of the provision by it of the Goods and/or Services during the Contract Period:
 - 3.4.1 is likely to or fails to meet any Service Level Performance Measure or
 - 3.4.2 is likely to cause or causes a Critical Service Failure to occur,
 - 3.4.3 the Supplier shall immediately notify the Authority in writing and the Authority, in its absolute discretion and without prejudice to any other of its rights howsoever arising including under Clause **Error! Reference source not found.** of this Contract (Service Levels), may:

- (a) require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Authority and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring; and
 - (b) if the action taken under paragraph (a) above has not already prevented or remedied the Service Level Failure or Critical Service Level Failure, the Authority shall be entitled to instruct the Supplier to comply with the Rectification Plan Process; or
 - (c) if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure in accordance with Clause 9 of this Contract (Critical Service Level Failure) (including subject, for the avoidance of doubt, the proviso in Clause 9.1.1 of this Contract in relation to Material Breach).
- 3.5 Approval and implementation by the Authority of any Rectification Plan shall not relieve the Supplier of any continuing responsibility to achieve the Service Levels, or remedy any failure to do so, and no estoppels or waiver shall arise from any such Approval and/or implementation by the Authority.

ANNEX 1 TO PART A: SERVICE LEVELS TABLE

Service Levels			
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Service Level Threshold
[Accurate billing of Authority	Accuracy	at least 98% at all times	[]
Access to Authority support	Availability	at least 98% at all times	[]

PART B: PERFORMANCE MONITORING

1. PRINCIPAL POINTS

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

2. REPORTING OF SERVICE FAILURES

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

3. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

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

- 3.2.3 be attended by the Supplier's Representative and the Authority's Representative; and
 - 3.2.4 be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Authority's Representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Authority's Representative at each meeting.
- 3.3 The Authority shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.
 - 3.4 The Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.

4. SATISFACTION SURVEYS

- 4.1 In order to assess the level of performance of the Supplier, the Authority may undertake satisfaction surveys in respect of the Supplier's provision of the Goods and/or Services.
- 4.2 The Authority shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Goods and/or Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.
- 4.3 All other suggestions for improvements to the provision of Goods and/or Services shall be dealt with as part of the continuous improvement programme pursuant to Clause 12 of this Contract (Continuous Improvement).

ANNEX 1 TO PART B: ADDITIONAL PERFORMANCE MONITORING REQUIREMENTS

[Guidance Note: The Customer to insert any further details of Performance Monitoring]

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- By the 10th of each month at the latest, the contractor will provide the following
 - .1 a report to each customer (flc / strat progs) showing
 - .1.1 spend to the end of the previous month incurred by the customer (including costs incurred but not yet billed) broken down by task and identifying:
 - .1.1.1 total cost incurred to the end of the previous month broken down by:
 - (a) billed and paid
 - (b) billed and awaiting payment
 - (c) not yet billed
 - .1.1.2 total cost incurred to the end of the previous month broken down by
 - (a) billed and paid
 - (b) billed and awaiting payment
 - (c) not yet billed
 - .1.2 work undertaken within the customer area identifying:
 - .1.2.1 milestones and deliverables met in the previous month broken down by task order
 - .1.2.2 further work still to under that task order
 - .2 a report to the ASA showing
 - .2.1 total spend to the end of the previous month incurred as part of the contract (including costs incurred but not yet billed) broken down by task and identifying:
 - .2.1.1 total cost incurred to the end of the previous month broken down by:
 - (a) billed and paid
 - (b) billed and awaiting payment
 - (c) not yet billed
 - .2.1.2 total cost incurred to the end of the previous month broken down by
 - (a) billed and paid
 - (b) billed and awaiting payment
 - (c) not yet billed
 - .2.2 work undertaken within the customer areas identifying:
 - .2.2.1 milestones and deliverables met in the previous month broken down by task order broken down by customer area

SCHEDULE 6: STANDARDS

1. STANDARDS

Compliance with ASH / ASOM

Good accounting practice

Industry best practice on provision of advice

Industry best practice for Project, Programme, Portfolio and Performance Management Compliance with ASH / ASOM

Good accounting practice

Industry best practice on provision of advice

Industry best practice for Project, Programme, Portfolio and Performance Management

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SCHEDULE 7: SECURITY

1

[SHORT FORM – PARAGRAPHS 1 TO 5]

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

in either case as more particularly set out in the Security Policy;

2. INTRODUCTION

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

2.2 This Schedule covers:

- 2.2.1 principles of protective security to be applied in delivering the Goods and/or 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 Goods and/or 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 Goods and/or Services and/or the Authority Data; and
- 3.2.5 complies with the Authority's ICT policies.
- 3.3 Subject to **Clause 26 of this Contract (Security and Protection of Information)** the references to standards, guidance and policies contained or set out in paragraph 3.2 of this Schedule 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. 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 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 Goods and/or Services, processes associated with the provision of the Goods and/or Services, the Authority Premises, the Sites 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 Goods and/or Services;
 - (d) unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Goods and/or Services and all processes associated with the provision of the Goods and/or Services, including the Authority Premises, the Sites, 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 Goods and/or Services;
 - (e) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Goods and/or Services and all processes associated with the provision of the Goods and/or Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Goods and/or 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 Goods and/or Services and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.

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 of the Security Management Plan), the Supplier shall prepare and deliver to the Authority for Approval a fully complete and up to date Security Management Plan which will be based on the draft 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 of the Security Management Plan), 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. 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 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.

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 Goods and/or 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 Goods and/or 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.

[LONG FORM – PARAGRAPHS 1 TO 8] WE ARE USING THE SHORT VERSION

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 Goods and/or Services, the Sites and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Authority Data) used by the Authority and/or the Supplier in connection with this Contract; and/or
 - b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including any copies of such information or data, used by the Authority and/or the Supplier in connection with this Contract,
- in either case as more particularly set out in the security requirements in the Security Policy;
- "ISMS"** the information security management system and process developed by the Supplier in accordance with paragraph 3 (ISMS) as updated from time to time in accordance with this Schedule 7; and
- "Security Tests"** tests to validate the ISMS and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security.

2. INTRODUCTION

- 2.1 The Parties acknowledge that the purpose of the ISMS and Security Management Plan are to ensure a good organisational approach to security under which the specific requirements of this Contract will be met.
- 2.2 The Parties shall each appoint a security representative to be responsible for Security. The initial security representatives of the Parties are:
- 2.2.1 [insert security representative of the Authority]
 - 2.2.2 [insert security representative of the Supplier]
- 2.3 If the persons named in paragraphs 2.2.1 and 2.2.2 are included as Key Personnel, Clause 20 (Key Personnel) shall apply in relation to such persons.
- 2.4 The Authority shall clearly articulate its high level security requirements so that the Supplier can ensure that the ISMS, security related activities and any mitigations are driven by these fundamental needs.
- 2.5 Both Parties shall provide a reasonable level of access to any members of their personnel for the purposes of designing, implementing and managing security.

- 2.6 The Supplier shall use as a minimum Good Industry Practice in the day to day operation of any system holding, transferring or processing Authority Data and any system that could directly or indirectly have an impact on that information, and shall ensure that Authority Data remains under the effective control of the Supplier at all times.
- 2.7 The Supplier shall ensure the up-to-date maintenance of a security policy relating to the operation of its own organisation and systems and on request shall supply this document as soon as practicable to the Authority.
- 2.8 The Authority and the Supplier acknowledge that information security risks are shared between the Parties and that a compromise of either the Supplier or the Authority's security provisions represents an unacceptable risk to the Authority requiring immediate communication and co-operation between the Parties.

3. ISMS

- 3.1 The Supplier shall develop and submit to the Authority for the Authority's Approval, within twenty (20) working days after the Commencement Date or such other date as agreed between the Parties, an information security management system for the purposes of this Contract, which shall comply with the requirements of paragraphs 3.3 to 3.5 of this Schedule 8 (Security).
- 3.2 The Supplier acknowledges that the Authority places great emphasis on the reliability of the performance of the Goods and/or Services, confidentiality, integrity and availability of information and consequently on the security provided by the ISMS and that the Supplier shall be responsible for the effective performance of the ISMS.
- 3.3 The ISMS shall:
- 3.3.1 unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Goods and/or Services and all processes associated with the provision of the Goods and/or Services, including the Authority Premises, the Sites, any ICT, information and data (including the Authority's Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Contract;
 - 3.3.2 meet the relevant standards in ISO/IEC 27001 and ISO/IEC27002 in accordance with Paragraph7; and
 - 3.3.3 at all times provide a level of security which:
 - (a) is in accordance with the Law and this Contract;
 - (b) as a minimum demonstrates Good Industry Practice;
 - (c) complies with the Security Policy;
 - (d) complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255910/HMG_Security_Policy_Framework_V11.0.pdf ;
 - (e) takes account of guidance issued by the Centre for Protection of National Infrastructure on Risk Management http://www.cpni.gov.uk/Documents/Publications/2005/2005003-Risk_management.pdf
 - (f) complies with HMG Information Assurance Maturity Model and Assurance Framework <http://www.cesg.gov.uk/publications/Documents/iamm-assessment-framework.pdf>

- (g) meets any specific security threats of immediate relevance to the Goods and/or Services and/or Authority Data; and
- (h) complies with the Authority's ICT policies:
 - 3.3.4 document the security incident management processes and incident response plans;
 - 3.3.5 document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Goods and/or Services of any new threat, vulnerability or exploitation technique of which the Supplier becomes aware; and
 - 3.3.6 be certified by (or by a person with the direct delegated authority of) a Supplier's main board representative, being the "Chief Security Officer", "Chief Information Officer", "Chief Technical Officer" or "Chief Financial Officer" (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Security Management Plan).
- 3.4 Subject to Clause 26 of this Contract (Security and Protection of Information) the references to Standards, guidance and policies contained or set out in paragraph 3.3 of this Schedule 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.
- 3.5 In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in paragraph 3.3 of this Schedule, the Supplier shall immediately notify the Authority Representative of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier as to which provision the Supplier shall comply with.
- 3.6 If the ISMS submitted to the Authority pursuant to paragraph 3.1 of this Schedule is Approved by the Authority, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the ISMS is not Approved by the Authority, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission of the ISMS to the Authority. If the Authority does not Approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Authority pursuant to this paragraph 3 of this Schedule may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in paragraphs 3.3 to 3.5 of this Schedule shall be deemed to be reasonable.
- 3.7 Approval by the Authority of the ISMS pursuant to paragraph 3.6 of this Schedule or of any change to the ISMS shall not relieve the Supplier of its obligations under this Schedule.

4. SECURITY MANAGEMENT PLAN

- 4.1 Within twenty (20) Working Days after the Commencement Date, the Supplier shall prepare and submit to the Authority for Approval in accordance with paragraph 4 of this Schedule a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of paragraph 4.2 of this Schedule.
- 4.2 The Security Management Plan shall:

- 4.2.1 be based on the initial Security Management Plan set out in Annex 2 (Security Management Plan);
 - 4.2.2 comply with the Security Policy;
 - 4.2.3 identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule is complied with by the Supplier;
 - 4.2.4 detail the process for managing any security risks from Sub-Contractors and third parties authorised by the Authority with access to the Goods and/or Services, processes associated with the delivery of the Goods and/or Services, the Authority Premises, the Sites 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 Goods and/or Services;
 - 4.2.5 unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Goods and/or Services and all processes associated with the delivery of the Goods and/or Services, including the Authority Premises, the Sites 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 Goods and/or Services;
 - 4.2.6 set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Goods and/or Services and all processes associated with the delivery of the Goods and/or Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Goods and/or Services comply with the provisions of this Schedule 8 (including the requirements set out in paragraph 3.3 of this Schedule);
 - 4.2.7 set out the plans for transiting all security arrangements and responsibilities from those in place at the Commencement Date to those incorporated in the ISMS within the timeframe agreed between the Parties.
 - 4.2.8 be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards; and
 - 4.2.9 be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Authority engaged in the Goods and/or Services and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule .
- 4.3 If the Security Management Plan submitted to the Authority pursuant to paragraph 3.1 of this Schedule is Approved by the Authority, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not approved by the Authority, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of the first submission to the Authority of the Security Management Plan. If the Authority does not Approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Authority pursuant to this paragraph may be unreasonably withheld or delayed.

However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 4.2 of this Schedule shall be deemed to be reasonable.

- 4.4 Approval by the Authority of the Security Management Plan pursuant to paragraph 4.3 of this Schedule or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Schedule.

5. AMENDMENT AND REVISION OF THE ISMS AND SECURITY MANAGEMENT PLAN

- 5.1 The ISMS and Security Management Plan shall be fully reviewed and updated by the Supplier and at least annually to reflect:

- 5.1.1 emerging changes in Good Industry Practice;
- 5.1.2 any change or proposed change to Goods and/or Services and/or associated processes;
- 5.1.3 any changes to the Security Policy;
- 5.1.4 any new perceived or changed security threats; and
- 5.1.5 any reasonable change in requirement requested by the Authority.

- 5.2 The Supplier shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Authority. The results of the review shall include, without limitation:

- 5.2.1 suggested improvements to the effectiveness of the ISMS;
- 5.2.2 updates to the risk assessments;
- 5.2.3 proposed modifications to respond to events that may impact on the ISMS including the security incident management process, incident response plans and general procedures and controls that affect information security; and
- 5.2.4 suggested improvements in measuring the effectiveness of controls.

- 5.3 Subject to paragraph 5.4 of this Schedule, any change which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to paragraph 5.1 of this Schedule, a Authority request, a change to Annex 1 (Security) or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved in writing by the Authority.

- 5.4 The Authority may, where it is reasonable to do so, Approve and require changes or amendments to the ISMS or 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.

6. SECURITY TESTING

- 6.1 The Supplier shall conduct Security Tests from time to time (and at least annually across the scope of the ISMS) and additionally after any change or amendment to the ISMS (including security incident management processes and incident response plans) or the Security Management Plan. Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Goods and/or

Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier's ability to deliver the Goods and/or Services so as to meet the Service Level Performance Measures, the Supplier shall be granted relief against any resultant under-performance for the period of the Security Tests.

- 6.2 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Authority with the results of such Security Tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.
- 6.3 Without prejudice to any other right of audit or access granted to the Authority pursuant to this Contract, the Authority and/or its authorised representatives shall be entitled, at any time upon giving reasonable notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Authority may notify the Supplier of the results of such tests after completion of each such test. If any such Authority's test adversely affects the Supplier's ability to deliver the Services so as to meet the Target Performance Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the Authority's test.
- 6.4 Where any Security Test carried out pursuant to paragraphs 6.2 or 6.3 of this Schedule reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Supplier shall promptly notify the Authority of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Authority's prior written Approval, the Supplier shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or security requirements (as set out in Annex 1 (Security Policy) to this Schedule) or the requirements of this Schedule, the change to the ISMS or Security Management Plan shall be at no cost to the Authority.
- 6.5 If any repeat Security Test carried out pursuant to paragraph 6.4 of this Schedule reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall constitute a material Default of this Contract.

7. ISMS COMPLIANCE

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

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

8. BREACH OF SECURITY

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

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

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

- (a) minimise the extent of actual or potential harm caused by any Breach of Security;
- (b) remedy such Breach of Security to the extent necessary protect the integrity of the Authority Property and/or Authority Assets to the extent within its control against any such Breach of Security or any potential or attempted Breach of Security;
- (c) apply a tested mitigation against any such Breach of Security or attempted Breach of Security and provided that reasonable testing has been undertaken by the Supplier, if the mitigation adversely affects the Supplier's ability to provide the Goods and/or Services so as to meet the relevant Service Level Performance Measures, the Supplier shall be granted relief against any resultant under-performance for such period as the Authority, acting reasonably, may specify by written notice to the Supplier;
- (d) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure; and
- (e) supply any requested data to the Authority (or the Computer Emergency Response Team for UK Government ("GovCertUK")) on the Authority's request within two (2) Working Days and without charge (where such requests are reasonably related to a possible incident or compromise); and
- (f) as soon as reasonably practicable provide to the Authority full details (using the reporting mechanism defined by the ISMS) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.

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

ANNEX 1: SECURITY POLICY

ANNEX 2: SECURITY MANAGEMENT PLAN

SCHEDULE 8: EXIT MANAGEMENT

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

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

"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 perform the Goods and/or Services or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation;
"Transferring Assets"	has the meaning given to it in paragraph 9.2.1 of this Schedule;
"Transferring Contracts"	has the meaning given to it in paragraph 9.2.3 of this Schedule.

2. INTRODUCTION

- 2.1 This Schedule describes provisions that should be included in the Exit Plan, the duties and responsibilities of the Supplier to the Authority leading up to and covering the Expiry Date. The objectives of the exit planning and service transfer arrangements are to ensure a smooth transition of the availability of the Goods and/or 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:
- (a) Supplier Assets, detailing their:
- (i) make, model and asset number;
 - (ii) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
 - (iii) Net Book Value;
 - (iv) condition and physical location; and
 - (v) use (including technical specifications); and
- (b) Sub-Contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Goods and/or Services;
- 3.1.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Goods and/or Services, which shall contain sufficient detail to permit the Authority and/or Replacement Supplier to understand how the Supplier provides the Goods and/or Services and to enable the smooth transition of the Goods and/or Services with the minimum of disruption;
- 3.1.3 agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and
- 3.1.4 at all times keep the Registers up to date, in particular in the event that Assets, Sub-Contracts or other relevant agreements are added to or removed from the Goods and/or Services.

3.2 The Supplier shall:

3.2.1 procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Goods and/or Services under this Contract; and

3.2.2 (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 Goods and/or Services (or part of them) without restriction (including any need to obtain any consent or approval) or payment by the Authority.

3.3 Where the Supplier is unable to procure that any Sub-Contract or other agreement referred to in paragraph 3.2.2 of this Schedule which the Supplier proposes to enter into after the Commencement Date is assignable and/or capable of novation to the Authority (and/or its nominee) and/or any Replacement Supplier without restriction or payment, the Supplier shall promptly notify the Authority of this and the Parties shall (acting reasonably and without undue delay) discuss the appropriate action to be taken which, where the Authority so directs, may include the Supplier seeking an alternative Sub-Contractor or provider of 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 and provide written notification of such appointment to the other Party within three (3) months of the Commencement Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-Contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite Authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Contract and all matters connected with this Schedule and each Party's compliance with it.

4. OBLIGATIONS TO ASSIST ON RE-TENDERING OF GOODS AND/OR 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 Goods and/or Services;

4.1.6 all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Contract; and

- 4.1.7 such other material and information as the Authority shall reasonably require,
(together, the “**Exit Information**”).
- 4.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this paragraph 4.2 of this Schedule disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-Contractors' prices or costs).
- 4.3 The Supplier shall:
- 4.3.1 notify the Authority within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Goods and/or 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 Goods and/or Services; and
- 4.5.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

5. EXIT PLAN

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

- 5.3.3 the management structure to be employed during the Termination Assistance Period;
- 5.3.4 a detailed description of both the transfer and cessation processes, including a timetable;
- 5.3.5 how the Goods and/or Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);
- 5.3.6 details of contracts (if any) which will be available for transfer to the Authority and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Goods and/or Services will be available for such transfer);
- 5.3.7 proposals for the training of key members of the Replacement Supplier's personnel in connection with the continuation of the provision of the Goods and/or Services following the Expiry Date charged at rates agreed between the Parties at that time;
- 5.3.8 proposals for providing the Authority or a Replacement Supplier copies of all documentation:
 - (a) used in the provision of the Goods and/or Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and
 - (b) relating to the use and operation of the Goods and/or Services;
- 5.3.9 proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Goods and/or Services;
- 5.3.10 proposals for the identification and return of all Authority Property in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);
- 5.3.11 proposals for the disposal of any redundant Goods and/or Services and materials;
- 5.3.12 NOT USED
- 5.3.13 how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Goods and/or Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Goods and/or Services during the Termination Assistance Period; and
- 5.3.14 proposals for the supply of any other information or assistance reasonably required by the Authority or a Replacement Supplier in order to effect an orderly handover of the provision of the Goods and/or Services.

6. TERMINATION ASSISTANCE

- 6.1 The Authority shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- 6.1.1 the date from which Termination Assistance is required;
 - 6.1.2 the nature of the Termination Assistance required; and
 - 6.1.3 the period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) months after the date that the Supplier ceases to provide the Goods and/or Services.
- 6.2 The Authority shall have an option to extend the Termination Assistance Period beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) months after the date the Supplier ceases to provide the Goods and/or Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Authority shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier to such effect.

7. TERMINATION ASSISTANCE PERIOD

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

7.3 If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Goods and/or Services and provision of the Termination Assist during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Level Performance Measure(s), the Parties shall vary the relevant Service Level Performance Measure(s) and/or the applicable Service Credits to take account of such adverse effect.

8. TERMINATION OBLIGATIONS

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

8.2 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Goods and/or Services and the Termination Assistance and its compliance with the other provisions of this Schedule), the Supplier shall:

- 8.2.1 cease to use the Authority Data;
- 8.2.2 provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
- 8.2.3 erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
- 8.2.4 return to the Authority such of the following as is in the Supplier's possession or control:
 - (a) all copies of 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 Error! Reference source not found.** 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 Goods and/or Services not Delivered by the Expiry Date;
- 8.2.5 vacate any Authority Premises;
- 8.2.6 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Goods and/or Services and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier and/or any Supplier Personnel;
- 8.2.7 provide access during normal working hours to the Authority and/or the Replacement Supplier for up to twelve (12) months after expiry or termination to:

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

9. ASSETS AND SUB-CONTRACTS

- 9.1 Following notice of termination of this Contract and during the Termination Assistance Period, the Supplier shall not, without the Authority's prior written consent:
- 9.1.1 terminate, enter into or vary any Sub-Contract;
 - 9.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets; or
 - 9.1.3 terminate, enter into or vary any licence for software in connection with the provision of Goods and/or Services.
- 9.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to paragraph 7.1.5 of this Schedule, the Authority shall provide written notice to the Supplier setting out:
- 9.2.1 which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier ("**Transferring Assets**");
 - 9.2.2 which, if any, of:
 - (a) the Exclusive Assets that are not Transferable Assets; and
 - (b) the Non-Exclusive Assets,
 - the Authority and/or the Replacement Supplier requires the continued use of; and
 - 9.2.3 which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the "**Transferring Contracts**"),
- in order for the Authority and/or its Replacement Supplier to provide the Goods and/or Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Supplier, the Supplier shall

provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Goods and/or Services or the Replacement Goods and/or Replacement Services.

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

10. CHARGES

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

11. APPORTIONMENTS

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

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

11.1.2 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

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

11.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under paragraph 11.1 of this Schedule as soon as reasonably practicable.

SCHEDULE 9: DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

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

2. INTRODUCTION

2.1 If a Dispute arises then:

2.1.1 the representative of the Authority and the Supplier Representative shall attempt in good faith to resolve the Dispute; and

2.1.2 if such attempts are not successful within a reasonable time either Party may give to the other a Dispute Notice.

2.2 The Dispute Notice shall set out:

2.2.1 the material particulars of the Dispute;

2.2.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and

2.2.3 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 2.6 of this Schedule, the reason why.

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

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

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

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

- 2.4.3 lastly by recourse to arbitration (as prescribed in paragraph 6 of this Schedule) or litigation (in accordance with Clause 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.
- 2.6 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 2.7 If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.5 or is otherwise specified under the provisions of this Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:
- 2.7.1 in paragraph 3.2.3, ten (10) Working Days;
 - 2.7.2 in paragraph 4.2, ten (10) Working Days;
 - 2.7.3 in paragraph 5.2, five (5) Working Days; and
 - 2.7.4 in paragraph 6.2, ten (10) Working Days.
- 2.8 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

3. COMMERCIAL NEGOTIATIONS

- 3.1 Following the service of a Dispute Notice, the Authority and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Authority's representative and the Supplier's representative **1**.
- 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; or
 - 3.2.3 the Parties have not settled the Dispute in accordance with paragraph 3.1 of this Schedule within thirty (30) Working Days of service of the Dispute Notice,
- either Party may serve a written notice to proceed to mediation (a "**Mediation Notice**") in accordance with paragraph 4 of this Schedule.

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 Goods and/or Services or otherwise relates to a financial technical or other aspect of a technical nature (as the Parties may agree) and the Dispute has not been resolved by discussion or mediation, then either Party may request (which request will not be unreasonably withheld or delayed) by written notice to the other that the Dispute is referred to an Expert for determination.
- 5.2 The Expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of the relevant professional body.
- 5.3 The Expert shall act on the following basis:
 - 5.3.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
 - 5.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
 - 5.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
 - 5.3.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
 - 5.3.5 the process shall be conducted in private and shall be confidential; and
 - 5.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

6. ARBITRATION

- 6.1 The Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 6.4 of this Schedule.
- 6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a “**Counter Notice**”) on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 6.4 of this Schedule or be subject to the jurisdiction of the courts in accordance with Clause 49 of this Contract (Governing Law and Jurisdiction). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 6.3 If:
- 6.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 6.4 of this Schedule shall apply;
 - 6.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 52 of this Contract (Governing Law and Jurisdiction), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
 - 6.3.3 the Authority does not serve a Counter Notice within the fifteen (15) Working Days period referred to in paragraph 6.2 of this Schedule, the Supplier may either commence arbitration proceedings in accordance with paragraph 6.4 of this Schedule or commence court proceedings in the courts in accordance with Clause 49 of this Contract (Governing Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.
- 6.4 In the event that any arbitration proceedings are commenced pursuant to paragraphs 6.1 to 6.3 of this Schedule, the Parties hereby confirm that:
- 6.4.1 all disputes, issues or claims arising out of or in connection with this Contract (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“**LCIA**”) (subject to paragraphs 6.4.5 to 6.4.7 of this Schedule);
 - 6.4.2 the arbitration shall be administered by the LCIA;
 - 6.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
 - 6.4.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
 - 6.4.5 the chair of the arbitral tribunal shall be British;
 - 6.4.6 the arbitration proceedings shall take place in [London] and in the English language; and
 - 6.4.7 the seat of the arbitration shall be [London].

[Guidance Note: Authority to consider whether London is an appropriate seat for the needs of the Parties]

7. URGENT RELIEF

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

7.1.1 for interim or interlocutory remedies in relation to this Contract or infringement by the other Party of that Party's Intellectual Property Rights; and/or

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

SCHEDULE 10: VARIATION FORM

No of order being varied:

.....

Variation Form No:

.....

BETWEEN:

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

and

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

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

[Guidance Note: Insert details of the Variation]

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

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

Signature

Date

Name (in Capitals)

Address

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

Signature

Date

Name (in Capitals)

Address

.....

SCHEDULE 11: COMMERCIALY SENSITIVE INFORMATION

1. INTRODUCTION

- 1.1 In this **Schedule 1+** (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 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
	[insert date]	[insert details]	[insert duration]

SCHEDULE 12: 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 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 Goods and/or 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 Goods and/or 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. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations under this Agreement.

5. AGGREGATE LIMIT OF INDEMNITY

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 Goods and/or 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 Goods and/or 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 £25,000 relating to or arising out of the provision of the Goods and/or 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) and arising out of or in connection with the provision of the Goods and/or Services and in connection with this Contract.

3. LIMIT OF INDEMNITY

3.1 Not less than [**£ 5,000,000sum to be determined by the Authority**]in respect of any one occurrence, the number of occurrences being unlimited, but [**£sum to be determined by the Authority**]any one occurrence and in the aggregate per annum in respect of products and pollution liability.

4. TERRITORIAL LIMITS

4.1 [to be determined by the Authority]

5. PERIOD OF INSURANCE

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

6. COVER FEATURES AND EXTENSIONS

6.1 Indemnity to principals clause.

7. PRINCIPAL EXCLUSIONS

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

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

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

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

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

8. MAXIMUM DEDUCTIBLE THRESHOLD

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

PART B: 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 Goods and/or Services.

3. LIMIT OF INDEMNITY

3.1 Not less than **[£5,000,000]** in respect of any one claim and in the aggregate per annum.

4. TERRITORIAL LIMITS

4.1 **[[To be determined by the Authority]**

5. PERIOD OF INSURANCE

5.1 From the date of this Contract Agreement 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 Agreement 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 Agreement or retroactive date to be no later than the Contract Commencement Date.

7. PRINCIPAL EXCLUSIONS

7.1 War and related perils

7.2 Nuclear and radioactive risks

8. MAXIMUM DEDUCTIBLE THRESHOLD

8.1 Not to exceed **[[insert threshold set out in the Supplier's Tender]]** each and every claim.

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 13: TENDER

1. GENERAL

This Schedule 13 sets out a copy of the Supplier's Tender

SCHEDULE 14: KEY SUB-CONTRACTORS

1. In accordance with **Clause 22.2 (Appointment of Key Sub-Contractors)**, the Supplier is entitled to sub-contract its obligations under this Contract to the Key Sub-Contractors listed below.

SCHEDULE 15: GUARANTEE NOT USED

DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the day of 20[]

BETWEEN:

- (1) [Insert the name of the Guarantor] [a company incorporated in England and Wales] with number [insert company no.] whose registered office is at [insert details of the Guarantor's registered office here] [OR] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] (“**Guarantor**”); in favour of
- (2) [The Authority] whose principal office is at [] (“**Beneficiary**”)

WHEREAS:

- (A) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.
- (B) It is the intention of the Parties that this document be executed and take effect as a deed.
- (C) Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

2. DEFINITIONS AND INTERPRETATION

In this Deed of Guarantee:

2.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;

2.2 the words and phrases below shall have the following meanings:

[Guidance Note: Insert and/or settle Definitions, including from the following list]

[“**Beneficiary**” means the Authority and “Beneficiaries” shall be construed accordingly;]

[“**Contract**” means the agreement for the Goods and/or Services dated on or about the date hereof made between the Authority and the Supplier;]

[“**Goods**” shall have the meaning given in the Contract;]

[“**Guaranteed Agreement**” means Contract made between the Beneficiary and the Supplier on [insert date];]

[“**Services**” has the meaning given in the Contract;]

“**Guaranteed**” means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement

Obligations”

together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement;

- 2.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
- 2.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 2.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 2.6 the words “other” and “otherwise” are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 2.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 2.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 2.9 unless the context otherwise requires, any phrase introduced by the words “including”, “includes”, “in particular”, “for example” or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 2.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
- 2.11 references to liability are to include any liability whether actual, contingent, present or future.

3. GUARANTEE AND INDEMNITY

- 3.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
- 3.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
- 3.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
 - 3.3.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect

of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and

3.3.2 as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.

3.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

4. OBLIGATION TO ENTER INTO A NEW CONTRACT

4.1 If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

5. DEMANDS AND NOTICES

5.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

5.1.1 [Address of the Guarantor in England and Wales]

5.1.2 [Facsimile Number]

5.1.3 For the Attention of [insert details]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

5.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

5.2.1 if delivered by hand, at the time of delivery; or

- 5.2.2 if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or
 - 5.2.3 if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.
- 5.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.
- 5.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

6. BENEFICIARY'S PROTECTIONS

- 6.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
- 6.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
- 6.2.1 it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
 - 6.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
 - 6.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
 - 6.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 6.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Supplier of any Guaranteed Obligation shall not preclude the

Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.

- 6.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 6.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 6.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 6.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

7. GUARANTOR INTENT

- 7.1 Without prejudice to the generality of Clause 6 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

8. RIGHTS OF SUBROGATION

- 8.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:
 - 8.1.1 of subrogation and indemnity;
 - 8.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
 - 8.1.3 to prove in the liquidation or insolvency of the Supplier,
only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Supplier and

agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

9. DEFERRAL OF RIGHTS

- 9.1 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:
- 9.1.1 exercise any rights it may have to be indemnified by the Supplier;
 - 9.1.2 claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement;
 - 9.1.3 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement;
 - 9.1.4 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or
 - 9.1.5 claim any set-off or counterclaim against the Supplier;
- 9.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

10. REPRESENTATIONS AND WARRANTIES

- 10.1 The Guarantor hereby represents and warrants to the Beneficiary that:
- 10.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
 - 10.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
 - 10.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:
 - (a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
 - (b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
 - (c) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
 - 10.1.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise

its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and

- 10.1.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

11. PAYMENTS AND SET-OFF

- 11.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 11.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee 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.
- 11.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

12. GUARANTOR'S ACKNOWLEDGEMENT

- 12.1 The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

13. ASSIGNMENT

- 13.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.
- 13.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

14. SEVERANCE

- 14.1 If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

15. THIRD PARTY RIGHTS

15.1 A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

16. GOVERNING LAW

16.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.

16.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.

16.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).

16.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

16.5 [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by

[Insert name of the Guarantor] acting by [Insert/print names]

Director

Director/Secretary

SCHEDULE 16: MOD DEFCONS AND DEFFORMS

The following MOD DEFCONS and DEFFORMs form part of this Contract:

DEFCON No	Description
DEFCON 76	Contractor's Personnel at Government Establishments
DEFCON 502	Specification Changes
DEFCON 503	Amendments to Contract
DEFCON 522JA	Payment Under P2P – Matching Invoice & Order (two way match)
DEFCON 523	Payment of Bills Using the Bankers Automated Service (BACS) System
DEFCON 526	Notices
DEFCON 529	Law English
DEFCON 530	Dispute Resolution (English Law)
DEFCON 531	Disclosure of Information
DEFCON 537	Rights of Third Parties
DEFCON 538	Severability
DEFCON 539	Transparency
DEFCON 566	Change of Control of Contractor
DEFCON 606	Change and Configuration Control Procedure
DEFCON 610A	Enabling Contracts – Duration Period
DEFCON 614	Default
DEFCON 615A	Orders for articles / services under enabling contracts
DEFCON 616	Competition / Alternative Sourcing

DEFCON 617	Enabling Contracts – Estimated Quantities
DEFCON 618	Enabling Contracts – Standing Offer
DEFCON 620	Contract Change Control Procedure
DEFCON 625	Cooperation on Expiry Contract
DEFCON 656	Break
DEFCON 659	Protection of Information (being re-written based on new Cove Security Classification)
DEFCON 670	Tax Compliance
DEFCON 681	Decoupling Clause
DEFCON 703	IPR

DEFFORMs (Ministry of Defence Forms)

DEFFORM No	VERSION	DESCRIPTION
DEFFORM 30	Edn 02/14	The Electronic Transactions Agreement

Note:

For access to the latest versions of DEFCONs and DEFFORMs, potential suppliers should follow the link below to the MOD Acquisition Operating Framework, having first registered for access: <https://www.gov.uk/acquisition-operating-framework>