

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 5

SOFTWARE

Software

1 THE SOFTWARE

- 1.1 The Software below is licensed to the Authority in accordance with Clauses 16 (*Intellectual Property Rights*) and 17 (*Licences Granted by the Supplier*).
- 1.2 The Parties agree that they will update this Schedule periodically, as a controlled document, to record any Supplier Software or Third Party Software subsequently licensed by the Supplier or third parties for the purposes of the delivery of the Services.

2

The Supplier Software includes the following items:

Software & Version to be Deployed	Supplier (if an Affiliate of the Supplier)	Purpose	Number of Licences & Licence Metric	Restrictions	Number of Copies	Type (COTS or Non-COTS)	Support or Maintenance Agreement in Place?
None							

Software & Version to be Deployed	Supplier (if an Affiliate of the Supplier)	Purpose	Number of Licences & Licence Metric	Restrictions	Number of Copies	Type (COTS or Non-COTS)	Support or Maintenance Agreement in Place?

3 THIRD PARTY SOFTWARE

The Third Party Software shall include the following items:

Third Party Software	Supplier	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non-COTS)	Support or Maintenance Agreement in Place?
None							

Third Party Software	Supplier	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non-COTS)	Support or Maintenance Agreement in Place?

ANNEX 1

FORM OF LETTER RE SUB-LICENSING OF SUPPLIER COTS SOFTWARE AND SUPPLIER COTS
BACKGROUND IPRs

[Supplier letterhead]

[insert
name and address]

Authority

[Date]

Dear Sirs

LICENCES FOR SUPPLIER COTS SOFTWARE AND SUPPLIER COTS BACKGROUND IPRs

We refer to the agreement between us dated [insert date] in respect of [brief summary of subject of the Agreement] (the “Agreement”). Capitalised expressions used in this letter have the same meanings as in the Agreement.

In accordance with Clause 17.3(b) of the Agreement we confirm that:

1. the Authority is licensed by the Supplier to use the Supplier COTS Software and Supplier COTS Background IPRs identified in the first column of the Appendix to this letter (the “Appendix”) on the terms of the licences identified in the second column of the Appendix (the “Licences”); and
2. notwithstanding any provision to the contrary in the Licences, it is agreed that the Authority may sub-license, assign and novate the Supplier COTS Software and Supplier COTS Background IPRs as referred to in Clause 17.3(b) of the Agreement.

Yours faithfully,

Signed:

On behalf of [name of the Supplier]

ANNEX 2

FORM OF CONFIDENTIALITY UNDERTAKING

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [*date*] 20

BETWEEN:

- (1) [*insert name*] of [*insert address*] (the “Sub-licensee”); and
- (2) [*insert name*] of [*insert address*] (the “Supplier” and together with the Supplier, the “Parties”).

WHEREAS:

- (A) [*insert name of Authority*] (the “Authority”) and the Supplier are party to a contract dated [*insert date*] (the “Contract”) for the provision by the Supplier of [*insert brief description of services*] to the Authority.
- (B) The Authority wishes to grant a sub-licence to the Sub-licensee in respect of certain software and intellectual property rights licensed to the Authority pursuant to the Contract (the “Sub-licence”).
- (C) It is a requirement of the Contract that, before the Authority grants such sub-licence to the Sub-licensee, the Sub-licensee execute a confidentiality agreement in favour of the Supplier in or substantially in the form of this Agreement to protect the Confidential Information of the Supplier.

IT IS AGREED as follows:

1 Interpretation

- 1.1 In this Agreement, unless the context otherwise requires:

**“Confidential
Information”**

1. MEANS:

(a) Information, including all personal data within the meaning of the Data Protection Act 1998, and however it is conveyed, provided by the Authority to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:

(i) the Supplier; or

(ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;

(b) the source code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation supplied by the Supplier to the Authority pursuant to or in connection with the Sub-licence;

(c) other Information provided by the Authority pursuant to this Agreement to the Sub-licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub-licensee's attention or into the Sub-licensee's possession in connection with the Sub-licence; and

(d) Information derived from any of the above,

but not including any Information that:

- (i) was in the possession of the Sub-licensee without obligation of confidentiality prior to its disclosure by the Authority;
- (ii) the Sub-licensee obtained on a non-confidential basis from a third party who is not, to the Sub-licensee's knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Sub-licensee;
- (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
- (iv) was independently developed without access to the Confidential Information;

“Information” means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

“Sub-licence” has the meaning given to that expression in recital (B) to this Agreement.

1.2 In this Agreement:

1.2.1 a reference to any gender includes a reference to other genders;

1.2.2 the singular includes the plural and vice versa;

1.2.3 the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;

1.2.4 references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;

1.2.5 headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and

1.2.6 references to Clauses are to clauses of this Agreement.

2 Confidentiality Obligations

2.1 In consideration of the Authority entering into the Sub-licence, the Sub-licensee shall:

- 2.1.1 treat all Confidential Information as secret and confidential;
- 2.1.2 have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- 2.1.3 not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Agreement;
- 2.1.4 not transfer any of the Confidential Information outside the United Kingdom;
- 2.1.5 not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;
- 2.1.6 immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- 2.1.7 upon the expiry or termination of the Sub-licence:
 - (a) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
 - (b) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub-licensee) from any computer, word processor, voicemail system or any other device; and
 - (c) make no further use of any Confidential Information.

3 Permitted Disclosures

3.1 The Sub-licensee may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:

3.1.1 reasonably need to receive the Confidential Information in connection with the Sub-licence; and

3.1.2 have been informed by the Sub-licensee of the confidential nature of the Confidential Information; and

3.1.3 have agreed to terms similar to those in this Agreement.

3.2 The Sub-licensee shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Sub-licensee.

3.3 Before making a disclosure pursuant to Clause 3.2, the Sub-licensee shall, if the circumstances permit:

3.3.1 notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and

3.3.2 ask the court or other public body to treat the Confidential Information as confidential.

4 General

4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.

4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:

4.2.1 to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;

4.2.2 to require the Supplier to disclose, continue disclosing or update any Confidential Information; or

- 4.2.3 as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub-licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub-licensee of any of the provisions of this Agreement. Accordingly, the Sub-licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Sub-licensee to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

5 Notices

- 5.1 Any notice to be given under this Agreement (each a “**Notice**”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical

address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.

5.2 Any Notice:

5.2.1 if to be given to the Supplier shall be sent to:

[Address]

Attention: [Contact name and/or position, e.g. "The Finance Director"]

5.2.2 if to be given to the Sub-licensee shall be sent to:

[Name of Organisation]
[Address]

Attention: []

6 Governing law

6.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.

6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

IN WITNESS of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of [name of Supplier]

Signature:

Date:

Name:

Position:

For and on behalf of [*name of Sub-licensee*]

Signature:

Date:

Name:

Position:

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 6.1

IMPLEMENTATION PLAN

IMPLEMENTATION PLAN

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Public Sector Network (PSN)”	“A UK Government programme to unify the provision of network infrastructure across the United Kingdom public sector into an interconnected “ network of networks ” to increase efficiency and reduce overall public expenditure ” ;
“Test Plan”	has the meaning given in Schedule 6.2 (<i>Testing Procedures</i>).

2 INTRODUCTION

2.1 This Schedule:

- (a) defines the process for the preparation and implementation of the Outline Implementation Plan and Detailed Implementation Plan; and
- (b) identifies the Key Milestones (and associated Deliverables) including the Key Milestones which trigger payment to the Supplier of the applicable Milestone Payments following the issue of the applicable Milestone Achievement Certificate.

3 OUTLINE IMPLEMENTATION PLAN

3.1 The Outline Implementation Plan is set out in Annex 1.

3.2 All changes to the Outline Implementation Plan shall be subject to the Change Control Procedure provided that the Supplier shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise (except in accordance with Clause 32 (*Authority Cause*)).

4 APPROVAL OF THE DETAILED IMPLEMENTATION PLAN

- 4.1 The Parties acknowledge the importance of detailed planning for the implementation of all of the Services under this Agreement and the need to develop the Detailed Implementation Plan in accordance with this Schedule.
- 4.2 The Supplier shall submit a draft of the Detailed Implementation Plan to the Authority for approval which aligns with the ITSM Toolset Plan within 10 Working Days of the Effective Date.
- 4.3 The Supplier shall ensure that the draft Detailed Implementation Plan:
- a) incorporates all of the Milestones and Milestone Dates set out in the Outline Implementation Plan;
 - b) includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones:
 - i) the completion of the design and build phase;
 - ii) the completion of any Testing to be undertaken in accordance with Schedule 6.2 (Testing Procedures) for Service Desk activities and align with the ITSM Toolset Testing schedule and where appropriate interaction is required from the other Service Suppliers to perform end to end Testing and any relevant training and knowledge transfer activities; and
 - iii) Operational service readiness;
 - c) clearly outlines all the steps required to implement the Key Milestones to be achieved in the timescales agreed with the Authority, together with a high level plan for the rest of the programme, in conformity with the Authority Requirements;
 - d) clearly outlines the required roles and responsibilities of both Parties, including staffing requirements including that required to complete the Transition; and
 - e) is produced using a software tool as specified, or agreed by the Authority.

4.4 Prior to the submission of the draft Detailed Implementation Plan to the Authority in accordance with Paragraph 4.1, the Authority shall have the right:

- a) to review any documentation produced by the Supplier in relation to the development of the Detailed Implementation Plan, including:
 - i) details of the Supplier's intended approach to the Detailed Implementation Plan and its development;
 - ii) copies of any drafts of the Detailed Implementation Plan produced by the Supplier; and
 - iii) any other work in progress in relation to the Detailed Implementation Plan; and
- b) require the Supplier to include any reasonable changes or provisions in the Detailed Implementation Plan.
- c) the Authority may require the Supplier to attend review meetings with the Authority to discuss the proposed contents of the Detailed Implementation Plan.

4.5 Following receipt of the draft Detailed Implementation Plan from the Supplier, the Authority shall:

- a) review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and
- b) notify the Supplier in writing that it approves or rejects the draft Detailed Implementation Plan no later than 5 Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Authority.

4.6 If the Authority rejects the draft Detailed Implementation Plan:

- a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
- b) the Supplier shall then revise the draft Detailed Implementation Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Authority for the

Authority's approval within 5 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 4.5 and this Paragraph 4.6 shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

- 4.7 If the Authority approves the draft Detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of the Authority's notice of approval.

5 UPDATES TO AND MAINTENANCE OF THE DETAILED IMPLEMENTATION PLAN

- 5.1 Following the approval of the Detailed Implementation Plan by the Authority:
- a) the Supplier shall submit a revised Detailed Implementation Plan to the Authority every 7 Working days or otherwise advised by the Authority from the Effective Date;
 - b) without prejudice to Paragraph 5.1(a), the Authority shall be entitled to request a revised Detailed Implementation Plan at any time by giving written notice to the Supplier and the Supplier shall submit a draft revised Detailed Implementation Plan to the Authority within 5 Working Days of receiving such a request from the Authority (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure);
 - c) any revised Detailed Implementation Plan shall (subject to Paragraph 5.2) be submitted by the Supplier for approval in accordance with the procedure set out in Paragraph 4; and
 - d) the Supplier's performance against the Implementation Plan shall be monitored at meetings of the Service Management Board (as defined in Schedule 8.1 (Governance)). In preparation for such meetings, the current Detailed Implementation Plan shall be provided by the Supplier to the Authority not less than 5 Working Days in advance of each meeting of the Service Management Board.

5.2 Save for any amendments which are of a type identified and notified by the Authority (at the Authority's discretion) to the Supplier in writing as not requiring approval, any material amendments to the Detailed Implementation Plan shall be subject to the Change Control Procedure provided that:

a) any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments; and

b) in no circumstances shall the Supplier be entitled to alter or request an alteration to any Key Milestone Date except in accordance with Clause 32 (Authority Cause).

5.3 Any proposed amendments to the Detailed Implementation Plan shall not come into force until they have been approved in writing by the Authority.

6 Government reviews

6.1 The Supplier acknowledges that the Services may be subject to Government review at key stages of the project (such as Gateway Reviews). The Supplier shall cooperate with any bodies undertaking such review and shall allow for such reasonable assistance as may be required for this purpose within the Charges.

ANNEX 1 - OUTLINE IMPLEMENTATION PLAN

Key Milestone	Deliverables (bulleted list showing all Deliverables (and associated tasks) required for each Milestone)	Duration (Working Days)	Key Milestone Date	Authority Responsibilities (if applicable)	Link to ATP/CPP
REDACTED	<ul style="list-style-type: none"> REDACTED 	REDACTED	REDACTED	REDACTED	
REDACTED	<ul style="list-style-type: none"> REDACTED 	REDACTED	REDACTED	REDACTED	
REDACTED	<ul style="list-style-type: none"> REDACTED 	REDACTED	REDACTED	REDACTED	
REDACTED	<ul style="list-style-type: none"> REDACTED 	REDACTED	REDACTED		
REDACTED	<ul style="list-style-type: none"> REDACTED 	REDACTED	REDACTED	REDACTED	
REDACTED	<ul style="list-style-type: none"> REDACTED 	REDACTED	REDACTED	REDACTED	
REDACTED	<ul style="list-style-type: none"> REDACTED 	REDACTED	REDACTED	REDACTED	
REDACTED	<ul style="list-style-type: none"> REDACTED 	REDACTED	REDACTED		
REDACTED	<ul style="list-style-type: none"> REDACTED 	REDACTED	REDACTED		
REDACTED	<ul style="list-style-type: none"> REDACTED 	REDACTED	REDACTED		
REDACTED	<ul style="list-style-type: none"> REDACTED 	REDACTED	REDACTED		REDACTED
REDACTED	<ul style="list-style-type: none"> REDACTED 	REDACTED	REDACTED	REDACTED	
REDACTED	<ul style="list-style-type: none"> REDACTED 	REDACTED	REDACTED	REDACTED	
REDACTED	<ul style="list-style-type: none"> REDACTED 	REDACTED	REDACTED	REDACTED	

Key Milestone	Deliverables (bulleted list showing all Deliverables (and associated tasks) required for each Milestone)	Duration (Working Days)	Key Milestone Date	Authority Responsibilities (if applicable)	Link to ATP/CPP
REDACTED	• REDACTED	REDACTED	REDACTED	REDACTED	
REDACTED	• REDACTED	REDACTED	REDACTED	REDACTED	
REDACTED	• REDACTED	REDACTED	REDACTED		REDACTED
REDACTED	• REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
REDACTED	• REDACTED	REDACTED	REDACTED	.	REDACTED
REDACTED	• REDACTED	REDACTED	REDACTED		
REDACTED	• REDACTED	REDACTED	REDACTED	REDACTED	
REDACTED	• REDACTED	REDACTED	REDACTED		
REDACTED	• REDACTED	REDACTED	REDACTED	REDACTED	

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 6.2

TESTING PROCEDURES

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“Component”	any constituent parts of the infrastructure for a Service, hardware or Software;
“Material Test Issue”	a Test Issue of Severity Level 1 or Severity Level 2;
“Severity Level”	the level of severity of a Test Issue, the criteria for which are described in Annex 1;
“Test Certificate”	a certificate materially in the form of the document contained in Annex 2 issued by the Authority when a Deliverable has satisfied its relevant Test Success Criteria;
“Test Issue”	any variance or non-conformity of a Deliverable from its requirements (such Requirements being set out in the relevant Test Success Criteria);
“Test Issue Threshold”	in relation to the Tests applicable to a Key Milestone / Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan;
“Test Issue Management Log”	a log for the recording of Test Issues as described further in Paragraph 9.1;
“Test Plan”	a plan: (a) for the Testing of Deliverables; and (b) setting out other agreed criteria related to the achievement of Key Milestone/ Milestones, as described further in Paragraph 5;
“Test Reports”	the reports to be produced by the Supplier setting out the results of Tests;
“Test Specification”	the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph 7;
“Test Strategy”	a strategy for the conduct of Testing as described further in Paragraph 4;
“Test Success Criteria”	in relation to a Test, the test success criteria for that Test as referred to in Paragraph 6;
“Test Witness”	any person appointed by the Authority pursuant to Paragraph 10.1; and
“Testing Procedures”	the applicable testing procedures and Test Success Criteria set out in this Schedule.

2. RISK

- 2.1 The issue of a Test Certificate, a Milestone Achievement Certificate and/or a conditional Milestone Achievement Certificate shall not:
- a) operate to transfer any risk that the relevant Deliverable or Key Milestone/ Milestone is complete or will meet and/or satisfy the Authority's requirements for that Deliverable or Key Milestone/ Milestone; or
 - b) affect the Authority's right subsequently to reject:
 - i) all or any element of the Deliverables to which a Test Certificate relates; or
 - ii) any Key Milestone to which the Milestone Achievement Certificate relates.
- 2.2 Notwithstanding the issuing of any Milestone Achievement Certificate (including the Milestone Achievement Certificate in respect of Authority to Proceed), the Supplier shall remain solely responsible for ensuring that:
- a) the Supplier Solution as designed and developed is suitable for the delivery of the Services and meets the Authority Requirements;
 - b) the Services are implemented in accordance with this Agreement; and
 - c) each Target Performance Level is met from the relevant Operational Service Commencement Date.

3. TESTING OVERVIEW

- 3.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, the Test Plans and the Test Specifications
- 3.2 The Supplier shall not submit any Deliverable for Testing:
- a) unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;

- b) until the Authority has issued a Test Certificate in respect of any prior, dependant Deliverable(s); and
 - c) until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).
- 3.3 The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.
- 3.4 Prior to the issue of a Test Certificate, the Authority shall be entitled to review the relevant Test Reports and the Test Issue Management Log.
- 3.5 Any Disputes between the Authority and the Supplier regarding Testing shall be referred to the Dispute Resolution Procedure using the Expedited Dispute Timetable.

4 TEST STRATEGY

- 4.1 The Supplier shall develop the final Test Strategy and submit these for the approval of the Authority as soon as practicable after the Effective Date but in any case no later than 20 Working Days (or such other period as the Parties may agree in writing) after the Effective Date.
- 4.2 The final Test Strategy shall include:
- a) an overview of how Testing will be conducted in accordance with the Implementation Plan;
 - b) the process to be used to capture and record Test results and the categorisation of Test Issues;
 - c) the method for mapping the expected Test results to the Test Success Criteria;
 - d) the procedure to be followed if a Deliverable fails to satisfy the Test Success Criteria or produces unexpected results, including a procedure for the resolution of Test Issues;
 - e) the procedure to be followed to sign off each Test;

- f) the process for the production and maintenance of Test Reports and reporting, including templates for the Test Reports and the Test Issue Management Log, and a sample plan for the resolution of Test Issues;
- g) the names and contact details of the Authority's and the Supplier's Test representatives;
- h) a high level identification of the resources required for Testing, including facilities, infrastructure, personnel and Authority and/or third party involvement in the conduct of the Tests;
- i) the technical environments required to support the Tests; and
- j) the procedure for managing the configuration of the Test environments.

5 TEST PLANS

- 5.1 The Supplier shall develop Test Plans and submit these for the approval of the Authority as soon as practicable but in any case no later than 20 Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start date for the relevant Testing (as specified in the Implementation Plan).
- 5.2 Each Test Plan shall include as a minimum:
 - a) the relevant Test definition and the purpose of the Test, the Key Milestone/ Milestone to which it relates, the requirements being tested and, for each Test, the specific Test Success Criteria to be satisfied;
 - b) a detailed procedure for the Tests to be carried out, including:
 - i) the timetable for the Tests, including start and end dates;
 - ii) the Testing mechanism;
 - iii) dates and methods by which the Authority can inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;

- iv) the mechanism for ensuring the quality, completeness and relevance of the tests;
- v) the format and an example of Test progress reports and the process with which the Authority accesses daily Test schedules;
- vi) the process which the Authority will use to review Test Issues and the Supplier's progress in resolving these in a timely basis;
- vii) the Test Schedule;
- viii) the re-Test procedure, the timetable and the resources which would be required for re-Testing; and
- ix) the process for escalating Test Issues from a re-test situation to the taking of specific remedial action to resolve the Test Issue.

5.3 The Authority shall not unreasonably withhold or delay its approval of the Test Plans provided that the Supplier shall incorporate any reasonable requirements of the Authority in the Test Plans.

6 TEST SUCCESS CRITERIA

6.1 The Test Success Criteria for:

- a) each Test that must be Achieved for the Supplier to Achieve either the ATP Key Milestone or a CPP Milestone are set out in Annex 4; and
- b) all other Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 5.

7 TEST SPECIFICATION

7.1 Following approval of a Test Plan, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least 10 Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start of the relevant Testing (as specified in the Implementation Plan).

7.2 Each Test Specification shall include as a minimum:

- a) the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Authority and the extent to which it is equivalent to live operational data;
- b) a plan to make the resources available for Testing;
- c) Test scripts;
- d) Test pre-requisites and the mechanism for measuring them; and
- e) expected Test results, including:
 - i) a mechanism to be used to capture and record Test results; and
 - ii) a method to process the Test results to establish their content.

8 TESTING

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8.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.

8.2 The Supplier shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test

Specification. Tests may be witnessed by the Test Witnesses in accordance with Paragraph 10.

8.3 The Supplier shall notify the Authority at least 10 Working Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Tests and the Authority shall ensure that the Test Witnesses attend the Tests, except where the Authority has specified in writing that such attendance is not necessary.

8.4 The Authority may raise and close Test Issues during the Test witnessing process.

8.5 The Supplier shall provide to the Authority in relation to each Test:

- a) a draft Test Report not less than 2 Working Days (or such other period as the Parties may agree in writing) prior to the date on which the Test is planned to end; And
- b) the final Test Report within 5 Working Days (or such other period as the Parties may agree in writing) of completion of Testing.

8.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:

- a) an overview of the Testing conducted;
- b) identification of the relevant Test Success Criteria that have been satisfied;
- c) identification of the relevant Test Success Criteria that have not been satisfied together with the Supplier's explanation of why those criteria have not been met;
- d) the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
- e) the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with Paragraph 9.1; and

- f) the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.

9 TEST ISSUES

9.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.

9.2 The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Authority upon request.

9.3 The Authority shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Supplier. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

10 TEST WITNESSING

10.1 The Authority may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Authority, each of whom shall have appropriate skills to fulfil the role of a Test Witness.

10.2 The Supplier shall give the Test Witnesses access to any documentation and testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.

10.3 The Test Witnesses:

- a) shall actively review the Test documentation;
- b) will attend and engage in the performance of the Tests on behalf of the Authority so as to enable the Authority to gain an informed view of whether a

Test Issue may be closed or whether the relevant element of the Test should be re-Tested;

- c) shall not be involved in the execution of any Test;
- d) shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
- e) may produce and deliver their own, independent reports on Testing, which may be used by the Authority to assess whether the Tests have been Achieved;
- f) may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
- g) may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

11 TEST QUALITY AUDIT

11.1 Without prejudice to its rights pursuant to Clause 12.2(b) (Records, Reports, Audits & Open Book Data), the Authority may perform on-going quality audits in respect of any part of the Testing (each a “**Testing Quality Audit**”) subject to the provisions set out in the agreed Quality Plan.

11.2 The focus of the Testing Quality Audits shall be on:

- a) adherence to an agreed methodology;
- b) adherence to the agreed Testing process;
- c) adherence to the Quality Plan;
- d) review of status and key development issues; and
- e) identification of key risk areas.

11.3 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.

11.4 The Authority will give the Supplier at least 5 Working Days' written notice of the Authority's intention to undertake a Testing Quality Audit and the Supplier may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the Supplier's reasonable opinion, the carrying out

of a Testing Quality Audit at the time specified by the Authority will materially and adversely impact the Implementation Plan.

11.5 A Testing Quality Audit may involve document reviews, interviews with the Supplier Personnel involved in or monitoring the activities being undertaken pursuant to this Schedule, the Authority witnessing Tests and demonstrations of the deliverables to the Authority. Any Testing Quality Audit shall be limited in duration to a maximum time to be agreed between the Supplier and the Authority on a case by case basis (such agreement not to be unreasonably withheld or delayed). The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Authority to enable it to carry out the Testing Quality Audit.

11.6 If the Testing Quality Audit gives the Authority concern in respect of the Testing Procedures or any Test, the Authority shall:

- a) discuss the outcome of the Testing Quality Audit with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities; and
- b) subsequently prepare a written report for the Supplier detailing its concerns, and the Supplier shall, within a reasonable timeframe, respond in writing to the Authority's report.

11.7 In the event of an inadequate response to the Authority's report from the Supplier, the Authority (acting reasonably) may withhold a Test Certificate (and consequently delay the grant of a Milestone Achievement Certificate) until the issues in the report have been addressed to the reasonable satisfaction of the Authority.

12 OUTCOME OF TESTING

12.1 The Authority shall issue a Test Certificate when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.

12.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Authority shall notify the Supplier and:

- a) the Authority may issue a Test Certificate conditional upon the remediation of the Test Issues;

- b) where the Parties agree that there is sufficient time prior to the relevant Key Milestone/ Milestone Date, the Authority may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or
- c) where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Key Milestone/ Milestone, then without prejudice to the Authority's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of Clause 28.1 (Rectification Plan Process).

12.3 The Authority shall be entitled, without prejudice to any other rights and remedies that it has under this Agreement, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.

13 ISSUE OF MILESTONE ACHIEVEMENT CERTIFICATE

13.1 The Authority shall issue a Milestone Achievement Certificate in respect of a given Key Milestone as soon as is reasonably practicable following:

- a) the issuing by the Authority of Test Certificates and/or conditional Test Certificates in respect of all Deliverables related to that Key Milestone which are due to be Tested; and
- b) performance by the Supplier to the reasonable satisfaction of the Authority of any other tasks identified in the Implementation Plan as associated with that Key Milestone (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).

13.2 The grant of a Milestone Achievement Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of Schedule 7.1 (Charges and Invoicing).

13.3 If a Key Milestone/ Milestone is not Achieved, the Authority shall promptly issue a report to the Supplier setting out:

- a) the applicable Test Issues ; and
- b) any other reasons for the relevant Key Milestone not being Achieved.

13.4 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Authority shall issue a Milestone Achievement Certificate.

13.5 If there is one or more Material Test Issue(s), the Authority shall refuse to issue a Milestone Achievement Certificate and, without prejudice to the Authority's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of Clause 28.1 (Rectification Plan Process).

13.6 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Authority may at its discretion (without waiving any rights in relation to the other options) choose to issue a Milestone Achievement Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:

- a) any Rectification Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless the Authority agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Authority within 10 Working Days of receipt of the Authority's report pursuant to Paragraph 13.3); and
- b) where the Authority issues a conditional Milestone Achievement Certificate, it may (but shall not be obliged to) revise the failed Key Milestone Date and any subsequent Key Milestone Date.

ANNEX 1 - Test Issues - Severity Levels

- 1. SEVERITY LEVEL 1 TEST ISSUE: A TEST ISSUE THAT CAUSES NON-RECOVERABLE CONDITIONS, E.G. IT IS NOT POSSIBLE TO CONTINUE USING A COMPONENT, A COMPONENT CRASHES, THERE IS DATABASE OR FILE CORRUPTION, OR DATA LOSS;**
- 2. SEVERITY LEVEL 2 TEST ISSUE: A TEST ISSUE FOR WHICH, AS REASONABLY DETERMINED BY THE AUTHORITY, THERE IS NO PRACTICABLE WORKAROUND AVAILABLE, AND WHICH:**
 - a) causes a Component to become unusable;
 - b) causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
 - c) has an adverse impact on any other Component(s) or any other area of the Services;
- 3. SEVERITY LEVEL 3 TEST ISSUE: A TEST ISSUE WHICH:**
 - a) causes a Component to become unusable;
 - b) causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
 - c) has an impact on any other Component(s) or any other area of the Services;

but for which, as reasonably determined by the Authority, there is a practicable workaround available
- 4. SEVERITY LEVEL 4 TEST ISSUE: A TEST ISSUE WHICH CAUSES INCORRECT FUNCTIONALITY OF A COMPONENT OR PROCESS, BUT FOR WHICH THERE IS A SIMPLE, COMPONENT BASED, WORKAROUND, AND WHICH HAS NO IMPACT ON THE CURRENT TEST, OR OTHER AREAS OF THE SERVICES; AND**
- 5. SEVERITY LEVEL 5 TEST ISSUE: A TEST ISSUE THAT CAUSES A MINOR PROBLEM, FOR WHICH NO WORKAROUND IS REQUIRED, AND WHICH HAS NO IMPACT ON THE CURRENT TEST, OR OTHER AREAS OF THE SERVICES**

ANNEX 2 - Test Certificate

To: [NAME OF SUPPLIER]

FROM: [NAME OF AUTHORITY]

[Date]

Dear Sirs,

TEST CERTIFICATE

Deliverables: [insert description of Deliverables]

We refer to the agreement (the “Agreement”) relating to the provision of the Services between the [name of Authority] (the “Authority”) and [name of Supplier] (the “Supplier”) dated [date].

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (Definitions) or Schedule 6.2 (Testing Procedures) of the Agreement.

[We confirm that the Deliverables listed above have been tested successfully in accordance with the Test Plan relevant to those Deliverables.]

OR

[This Test Certificate is issued pursuant to Paragraph 12.1 of Schedule 6.2 (Testing Procedures) of the Agreement on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

*delete as appropriate

Yours faithfully

[Name]

[Position]

Acting on behalf of [name of Authority]

ANNEX 3 - Milestone Achievement Certificate

To: [NAME OF SUPPLIER]

FROM: [NAME OF AUTHORITY]

[Date]

Dear Sirs,

MILESTONE ACHIEVEMENT CERTIFICATE

Milestone: [insert description of Milestone]

We refer to the agreement (the “Agreement”) relating to the provision of the Services between the [name of Authority] (the “Authority”) and [name of Supplier] (the “Supplier”) dated [date].

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (Definitions) or Schedule 6.2 (Testing Procedures) of the Agreement.

[We confirm that all the Deliverables relating to Key Milestone [number] have been tested successfully in accordance with the Test Plan relevant to this Milestone [or that a conditional Test Certificate has been issued in respect of those Deliverables that have not satisfied the relevant Test Success Criteria.]]*

OR

[This Milestone Achievement Certificate is granted pursuant to Paragraph 13.1 of Schedule 6.2 (Testing Procedures) of the Agreement on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

[You may now issue an invoice in respect of the key Milestone Payment associated with this Milestone in accordance with the provisions of Schedule 7.1 (Charges and Invoicing)]*

*delete as appropriate

Yours faithfully

[Name]

[Position]

Acting on behalf of [Authority]

ANNEX 4 - Test Success Criteria

1. Tests to be Achieved in order to Achieve the ATP Milestone

Test

Pre-conditions*

Test Success Criteria

[List all Tests relating to ATP Milestone]

* Note: The Pre-Conditions are that e.g. the Success Criteria for the previous Tests must be satisfied before the ATP Milestone tests are commenced.

2. Tests to be Achieved in order to Achieve a CPP Milestone

CPP Milestone Charge
No.

Test

Test Success Criteria

[List all Tests relating to CPP Milestone Charge No.]

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 7.1

CHARGES AND INVOICING

Charges and Invoicing

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Achieved Profit Margin”	the cumulative Supplier Profit Margin calculated from (and including) the Effective Date (or, if applicable, the date of the last adjustment to the Charges made pursuant to Paragraph 2.2 of Part D) to (and including) the last day of the elapsed period referred to in the Financial Model submitted in accordance with Schedule 7.5, Part B, paragraph 1.1;
“Anticipated Contract Life Profit Margin”	the anticipated Supplier Profit Margin over the Term as reflected in the Contract Inception Report;
“Bid Pass-through Margin”	The margin (or handling fee) of 5% applied to Pass-through charges identified in Schedule 7.1 Table 2 to Annex 2;
“Capped ADR”	in relation to a Milestone Payment, Change Request or Service Charge means a capped average day rate calculated by reference to a Time and Materials pricing mechanism, as identified in Schedule 7.1, Annex 1, Table 1;
“Certificate of Costs”	a certificate of costs signed by the Supplier’s Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant certificate) and substantially in the format set out in Annex 3A or Annex 3B as appropriate;
“Costs”	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:</p> <p>(a) the cost to the Supplier or the Key Sub-contractor (as the context requires), calculated per Man Day, of engaging the Supplier Personnel, including:</p> <p>(i) base salary paid to the Supplier Personnel;</p> <p>(ii) employer’s national insurance contributions;</p>

- (iii) pension contributions;
 - (iv) car allowances; and
 - (v) any other contractual employment benefits;
 - (vi) staff training;
 - (vii) work place accommodation;
 - (viii) work place IT equipment and tools reasonably necessary to perform the services (but not including items included within limb (b) below); and
 - (ix) reasonable recruitment costs, as agreed with the Authority;
- (b) costs incurred in respect of those 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 Assets by the Supplier to the Authority or (to the extent that risk and title in any Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those 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 delivery of the Services;
 - (d) Forecast Contingency Costs (Annex 4);
 - (e) Reimbursable Expenses to the extent these are incurred in delivering any Services where the Charges for those Services are to be calculated on a Fixed Price pricing mechanism;

but excluding:

- (i) Overhead;
- (ii) Not Used ;
- (iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term, whether in relation to Assets or otherwise;
- (iv) taxation;
- (v) Not used;
- (vi) amounts payable under

	Schedule 7.3 (<i>Benchmarking</i>); and
	(vii) Not Used ;
“Delay Payment Rate”	has the meaning given in Paragraph 1.1(a) of Part C;
“Forecast Contingency Costs”	the costs which the Supplier forecasts may be incurred in relation to the risks and contingencies that are identified in the Risk Register, such costs being those set out in the column headed ‘Forecast Contingency Costs’ in the Risk Register (as such costs are updated from time to time);
“Guaranteed Maximum Price”	in relation to a Milestone, 110% of the Target Price for the relevant Milestone;
“Incurred Costs”	in relation to a Milestone, the sum of: <ul style="list-style-type: none"> (a) the fixed day costs set out in Table 3 of Annex 1 multiplied by the number of Man Days that have been expended by the Supplier Personnel in Achieving the relevant Milestone; and (b) any amount that would fall within limbs (b) or (c) of the definition of “Costs” (but subject to exceptions (i) to (vii) in that definition), to the extent that such amount has been incurred in Achieving the relevant Milestone;
“Indexation” and “Index”	the adjustment of an amount or sum in accordance with Paragraph 5 of Part C;
“Man Day”	8 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
“Man Hours”	the hours spent by the Supplier Personnel properly working on the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
“Maximum Permitted Profit Margin”	the Anticipated Contract Life Profit Margin plus 5%;
“Milestone Group”	has the meaning given in Paragraph 1.5 of Part B;

“Milestone Retention”	has the meaning given in Paragraph 1.3 of Part B;
“Pass-through”	TEL1 Charges identified in Schedule 7.1 Table 2 of Annex 2 to be marked up to the Bid Pass-through Margin;
“Overhead”	those amounts which are intended to recover a proportion of the Supplier’s or the Key Sub-contractor’s (as the context requires) indirect corporate costs (including marketing, advertising, research and development and insurance costs) 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” or the day rate set out in Table 1 of Annex 1;
“Reimbursable Expenses”	<p>reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Authority’s expenses policy current from time to time, but not including:</p> <ul style="list-style-type: none"> (a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Authority otherwise agrees in advance in writing; and (b) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;
“Service Measurement Period”	means any prescribed service measurement period, the dates of which are set out in the SMP Calendar in Annex 6 of Schedule 7.1 (<i>Charges and Invoicing</i>);
“Supplier Profit”	in relation to a period or a Milestone whether historical (in otherwords being an actual reported result) or forecast (as the context requires), the difference between the total Charges and the sum of total Costs, total

	Overheads, total risks (as appropriate) and total Allowable Assumptions (as appropriate) for the relevant period or in relation to the relevant Milestone;
“Supplier Profit Margin”	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 Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
“Supporting Documentation”	sufficient verifiable (as reasonably determined by the Authority) information in writing to enable the Authority reasonably to assess whether the Costs, Charges, Reimbursable Expenses and other sums due from the Authority detailed in the information are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts;
“Target Cost”	has the meaning given in Paragraph 3.1 of Part A;
“Target Price”	has the meaning given in Paragraph 3.1 of Part A;
“Verification Period”	in relation to an Allowable Assumption, the period from (and including) the Effective Date to (and including) the date at which the relevant Allowable Assumption expires, as set out against the relevant Allowable Assumption in column 10 in the table in Annex 5.

PART A
Pricing

1 APPLICABLE PRICING MECHANISM

- 1.1 Milestone Payments and Service Charges shall be calculated using the pricing mechanism specified in Annex 2 and on the basis of the rates and prices specified in Annex 1 as more particularly set out in this Schedule.
- 1.2 Table 1 of Annex 2 sets out which pricing mechanism shall be used to calculate each Milestone Payment, which shall be one or more of the following:
- (a) **“Time and Materials”**, in which case the provisions of Paragraph 2 shall apply;
 - (b) Not used;
 - (c) **“Fixed Price”**, in which case the provisions of Paragraph 4 shall apply; or
 - (d) Not used.
- 1.3 Table 2 of Annex 2 sets out which pricing mechanism shall be used to calculate each Service Charge, which shall be one or more of the following:
- (a) Not used;
 - (b) **“Volume Based”** pricing, in which case the provisions of Paragraph 6 shall apply; or
 - (c) **“Fixed Price”** in which case the provisions of Paragraph 4 shall apply.

2 TIME AND MATERIALS MILESTONE PAYMENTS OR SERVICE CHARGES

- 2.1 Where Table 1 or Table 2 of Annex 2 indicates that a Milestone Payment or Service Charge (as applicable) is to be calculated by reference to a Time and Materials pricing mechanism:
- (a) the day rates set out in Table 1 of Annex 1 shall be used to calculate the relevant Charges, provided that the Supplier (or its Sub-contractor) shall:
 - (i) not be entitled to include any uplift for risks or contingencies within its day rates;
 - (ii) not be paid any Charges to the extent that they would otherwise exceed the cap specified against the relevant Charge in Table 2 of Annex 1 unless the Supplier has obtained the

Authority's prior written consent. The Supplier shall monitor the amount of each Charge incurred in relation to the relevant cap and notify the Authority immediately in the event of any risk that the cap may be exceeded and the Authority shall instruct the Supplier on how to proceed;

(iii) unless otherwise agreed by the Authority in relation to the relevant Milestone Payment or Service Charge (as the case may be), not be paid any Charges to the extent that they would otherwise exceed the amount calculated by multiplying:

(A) the total number of days expended by the Supplier in relation to the relevant Milestone; or

(B) the total number of days expended by the Supplier during the relevant Service Measurement Period in relation to the relevant Service,

by the Capped ADR; and

(iv) only be entitled to be paid Charges that have been properly and reasonably incurred, taking into account the Supplier's obligation to deliver the Services in a proportionate and efficient manner; and

(b) the Supplier shall keep records of hours properly worked by Supplier Personnel (in the form of timesheets) and expenses incurred and submit a summary of the relevant records with each invoice. If the Authority requests copies of such records, the Supplier shall make them available to the Authority within 10 Working Days of the Authority's request.

2.2 Not Used

3 **Not Used**

3.1 Not Used.

3.2 Not used.

3.3 Not used.

3.4 Not used.

4 **FIXED PRICE MILESTONE PAYMENTS OR SERVICE CHARGES**

4.1 Where Table 1 or Table 2 of Annex 2 indicates that a Milestone Payment or Service Charge is to be calculated by reference to a Fixed Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Table 5 of Annex 1.

- 4.2 Charges calculated by reference to a Fixed Price pricing mechanism shall not be subject to increase by way of Indexation.

5 Not Used

- 5.1 Not Used.

- 5.2 Not Used.

6 VOLUME BASED SERVICE CHARGES

- 6.1 Where Table 2 of Annex 2 indicates that a Service Charge is to be calculated by reference to a Volume Based pricing mechanism, the relevant Charges shall be calculated on the basis of the unit costs set out against that Service Charge in Table 7 of Annex 1.

- 6.2 In the event that the volume of any Services that are to be calculated by reference to a Volume Based pricing mechanism fall outside the relevant volume bands set out against that Service Charge in Table 7 of Annex 1, the relevant Service Charges shall be calculated in accordance with the Change Control Procedure and Paragraph 4 of Part C.

- 6.3 The Charge per unit set out in Table 7 of Annex 1 shall not be subject to annual Indexation.

- 6.4 TEL1 Charges identified in Table 2 of Annex 2 as Pass-through shall be charged to the Authority at the actual rate at which such charges are incurred by the Supplier. For the avoidance of doubt, this is the amount charged to the Supplier, net of any adjustments, discounts or rebates received for the provision of services marked up to the Bid Pass-through Margin only. No further uplifts or cost recovery shall apply.

7 REIMBURSEABLE EXPENSES

- 7.1 Where:

- (a) Services are to be charged using the Time and Materials pricing mechanism; and
- (b) the Authority so agrees in writing,

the Supplier shall be entitled to be reimbursed by the Authority for Reimbursable Expenses (in addition to being paid the relevant Charges), provided that such Reimbursable Expenses are supported by Supporting Documentation.

- 7.2 The Authority shall provide a copy of its current expenses policy to the Supplier upon request.

- 7.3 Except as expressly set out in Paragraph 7.1, the Charges shall include all costs and expenses relating to the Deliverables, the Services and/or the Supplier's performance of its obligations under this Agreement 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:

- (a) any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document and report reproduction, shipping, desktop and office equipment costs required by the Supplier Personnel, including network or data interchange costs or other telecommunications charges; or
- (b) any amount for any services provided or costs incurred by the Supplier prior to the Effective Date.

PART B
Charging Mechanisms

1 MILESTONE PAYMENTS

- 1.1 On the Achievement of a Milestone the Supplier shall be entitled to invoice the Authority for the Milestone Payment associated with that Milestone.
- 1.2 Each invoice relating to a Milestone Payment shall be supported by:
 - (a) a Milestone Achievement Certificate; and
 - (b) a Certificate of Costs with Supporting Documentation.
- 1.3 Not Used.
- 1.4 Not used.
- 1.5 Not used.
- 1.6 Not used.
- 1.7 Not used.
- 1.8 Not used.
- 1.9 Milestone Payments are the Supplier's sole means of charging the Authority for the cost of the Implementation Services. Milestone Payments shall have due regard for the underlying costs of the Implementation Services only and must not have a higher margin than the Anticipated Contract Life Profit Margin (expressed as a percentage) or cross-subsidise any element of the Services or seek to pull forward revenue.
- 1.10 The Supplier shall provide the Authority with a Certificate of Costs (as set out at Annex 3B of this Schedule 7.1) within 20 working Days of a Key Milestone being Achieved.

2 SERVICE CHARGES

- 2.1 Each Service to which a Service Charge relates shall commence on the Achievement of the Milestone set out against that Service in the "*Service Charge Trigger Event*" column of Table 2 of Annex 2.
- 2.2 Service Charges shall be invoiced by the Supplier for each Service Measurement Period in arrears in accordance with the requirements of Part E.
- 2.3 If a Service Charge is to be calculated by reference to a Fixed Price pricing mechanism and the relevant Service:

- (a) commences on a day other than the first day of a Service Measurement Period ; and/or
- (b) ends on a day other than the last day of a Service Measurement Period,

the Service Charge for the relevant Service Measurement Period shall be pro-rated based on the proportion which the number of days in the Service Measurement Period for which the Service is provided bears to the total number of days in that Service Measurement Period.

- 2.4 Any Service Credits that accrue during a Service Measurement Period shall be calculated and settled in accordance with Part C Paragraph 3 of this Schedule 7.1.

3 OPTIONAL SERVICES

Not Used.

PART C

Adjustments to the Charges and Risk Register

1 DELAY PAYMENTS

1.1 If a Key Milestone has not been Achieved on or before the relevant Milestone Date, the Supplier shall pay a Delay Payment to the Authority in respect of that Key Milestone. Delay Payments shall accrue:

- (a) at the daily rate (the “**Delay Payment Rate**”) determined in accordance with Paragraph 1.2;
- (b) from (but excluding) the relevant Key Milestone Date to (and including) the earlier of:
 - (i) the date on which the Key Milestone is Achieved; and
 - (ii) the expiry of the Delay Deduction Period;
- (c) on a daily basis, with any part day’s Delay counting as a day.

1.2 Where a Delay Payment is payable in respect of a Key Milestone, the Delay Payment Rate shall be calculated as:

Key Milestone	Delay Payment calculation
Key Milestone 1 (ISM1) and Key Milestone 2 (ISM2) as set out in the Implementation Plan at Schedule 6.1.	<p>For each calendar day of Delay:</p> <p>The demonstrable losses (in relation to Implementation Services only) incurred by the Authority in relation to the delay in delivery of the Key Milestone 1 (charge number ISM1) and/or Key Milestone 2 (charge number ISM2).</p> <p>For example this may include (but is not limited to) the incremental cost to the Authority of employing additional resource to ensure the milestone(s) are achieved in accordance with any revised implementation plan resulting from the delay.</p> <p>Such losses to be capped by REDACTED</p>

Key Milestone 3 (ISM3) as set out in the Implementation Plan at Schedule 6.1.	<p>For each calendar day of Delay:</p> <p>(1) £18,000 x D</p> <p>Where:</p> <p>D = the period of Delay in Achievement of the Key Milestone expressed in calendar days</p> <p>AND</p> <p>Any other demonstrable losses (in relation to Implementation Services only) incurred by the Authority in relation to the delay in delivery of the Key Milestone 3 (charge number ISM3) to the extent that the losses are not recovered elsewhere. Such losses to be capped by REDACTED.</p> <p>For the avoidance of doubt, the total maximum delay payment shall not exceed REDACTED per calendar day.</p>
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1.3 Not used.

1.4 Not used.

1.5 Not used.

1.6 The Delay Payment in respect of a Key Milestone shall be presented by the Supplier to the Authority for the total amount of the Delay Payment as a credit note (clearly stated without ambiguity and accompanied by any supporting file or information which shall completely and accurately reconcile to the said credit note) in favour of the Authority and at the earliest opportunity but in any event no later than 30 days after the Key Milestone is Achieved except where Paragraph 1.7 applies.

1.7 However, where the Authority is required to submit a claim to support demonstrable losses in relation to a Delay Payment, the Supplier shall present the credit note to the Authority within 30 days of receiving such claim.

- 1.8 The Supplier confirms and agrees that it has modelled the potential impact that Delay Payments may have and that this risk has been considered in both the Implementation Plan and in setting the level of the Charges. The Supplier agrees that the Milestone Delay Payments are a reasonable method of estimating compensation due to the Authority as a result of delay against Key Milestones as agreed with the Authority in the Implementation Plan.

2 PAYMENTS FOR DELAYS DUE TO AUTHORITY CAUSE

- 2.1 If the Supplier is entitled in accordance with Clause 32.1(iii)(D) (*Authority Cause*) to compensation for failure to Achieve a Milestone by its Milestone Date, then, subject always to Clause 26 (*Limitations on Liability*), such compensation shall be determined in accordance with the following principles:

- (a) the compensation shall reimburse the Supplier for additional Costs incurred by the Supplier that the Supplier:
 - i. can demonstrate it has incurred solely and directly as a result of the Authority Cause; and
 - ii. is, has been, or will be unable to mitigate, having complied with its obligations under Clause 32.1 (*Authority Cause*)

together with an amount equal to the Anticipated Contract Life Profit Margin thereon;

- (b) the compensation shall not operate so as to put the Supplier in a better position than it would have been in but for the occurrence of the Authority Cause;

- (c) Not used.

- 2.2 The Supplier shall provide the Authority with any information the Authority may require in order to assess the validity of the Supplier's claim to compensation.

3 SERVICE CREDITS

- 3.1 Service Credits shall be calculated by reference to the total number of Service Points accrued in any one Service Measurement Period pursuant to the provisions of Schedule 2.2 (*Performance Measures*).

- 3.2 For each Service Measurement Period:

- (a) the total number of Service Points accrued shall be converted to a percentage deduction from the Service Charges for the relevant Service Measurement Period on the basis of one point equating to a 0.16667% deduction in the Service Charges; and

- (b) the total Service Credits applicable for the Service Measurement Period shall be calculated in accordance with the following formula:

$$SC = TSP \times X \times AC$$

where:

SC	is the total Service Credits for the relevant Service Measurement Period;
TSP	is the total Service Points that have accrued for the relevant Service Measurement Period;
X	is the conversion rate 0.16667% ; and
AC	is the total Services Charges payable for the relevant Service Measurement Period (prior to deduction of applicable Service Credits).

- 3.3 The liability of the Supplier in respect of Service Credits shall be subject to Clause 26.4 (b) (*Financial and other Limits*) provided that, for the avoidance of doubt, the operation of the Service Credit Cap shall not affect the continued accrual of Service Points in excess of such financial limit in accordance with the provisions of Schedule 2.2 (*Performance Measures*).
- 3.4 Service Credits are a reduction of the Service Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.
- 3.5 Service Credits shall be presented to the Authority as a credit note in favour of the Authority separately to any invoice for the Services Charges. The credit note shall be presented clearly and without ambiguity (accompanied by any supporting file or information which shall completely and accurately reconcile to the said credit note) at the earliest opportunity immediately succeeding the Service Measurement Period to which they relate and in any event no later than 30 days after the end of the Service Measurement Period to which the Service Credits relate.
- 3.6 The Supplier and Authority confirm and agree that any Service Credits which may become due under the provisions of this Schedule 7.1 Part C, Paragraph 3, are a genuine pre-estimate of a pricing adjustment to reflect a given level of poor performance against the Service Levels set out in Schedule 2.2 (*Performance Measures*). The Supplier confirms and agrees that it has modelled the Service Credits (as set out in Schedule 7.1 Part C, Paragraph 3), has taken them into account in setting the level of Service Charges and that the potential for Service Credits are not considered to be a penalty.

A Service Credit Cap applies and is defined in Schedule 1.

4 CHANGES TO CHARGES

- 4.1 Any Changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 8.2 (*Change Control Procedure*) and on the basis that the Supplier Profit Margin on such Charges shall:
- (a) be no greater than that applying to Charges using the same pricing mechanism as at the Effective Date (as set out in the Contract Inception Report); and
 - (b) in no event exceed the Anticipated Contract Life Profit Margin as contained in the Contract Inception Report
- 4.2 Not Used.
- 4.3 In the event volumes for the Telephony Band A (Annex 1 Table 7) drops below 22,000 as an average volume per Service Measurement Period (measured over a consecutive 4 month period) and the Supplier requests that the Authority enter into a re-pricing discussion the Authority shall enter into such re-pricing discussions. For the avoidance of doubt, the Authority is under no obligation to agree to any re-pricing and will not in any circumstances permit any re-pricing to allow the Supplier Profit Margin to exceed the amount stated in the Contract Inception Report.

5 Not Used

6 ALLOWABLE ASSUMPTIONS

- 6.1 The Supplier shall determine whether each Allowable Assumption is accurate within its Verification Period. All Allowable Assumptions are to be included in the Financial Models and will be reviewed quarterly and replaced with actual costs or nil values through Supplier updates to the Financial Models.
- 6.2 During each Verification Period, the Authority shall provide the Supplier with reasonable assistance and access to information within its possession or reasonable control and which the Authority deems is relevant to the Allowable Assumption being verified.
- 6.3 Within 10 Working Days of the end of each Verification Period, the Supplier shall provide the Authority with a written report setting out the results of the Supplier's verification activity for the relevant Allowable Assumption, including whether the Allowable Assumption is accurate or whether the Implementation Plan and/or the Contract Inception Report require adjustment.
- 6.4 Each Allowable Assumption shall be deemed accurate unless adjusting for;
- (a) Not Used

(b) Not Used

(c) slippage in the timing of the Trigger for Invocation date as set out in column 8 of Annex 5, up to but not exceeding the Expiry date as set out in column 10 of Annex 5; and/or

(d) Charges where the Allowable Assumption is not triggered.

6.4A The Supplier shall take all reasonable steps to mitigate the impact of the Allowable Assumption on the Financial Model and/or the Implementation Plan.

6.5 Not Used.

(a) Not Used.

(b) Not Used.

(c) Not Used.

(d) Not Used.

7 RISK REGISTER

The Parties shall review the Risk Register set out in Annex 4 quarterly and as otherwise required for the purposes of Schedule 8.1 (*Governance*).

PART D

Excessive Supplier Profit Margin

1 LIMIT ON SUPPLIER PROFIT MARGIN

- 1.1 The Supplier acknowledges that the Achieved Profit Margin applicable over the Term shall not exceed the Maximum Permitted Profit Margin.
- 1.2 The Supplier shall include in each Annual Contract Report the Achieved Profit Margin as at the end of the Contract Year to which the Annual Contract Report is made up and the provisions of Paragraph 2 of Part B of Schedule 7.5 (*Financial Reports and Audit Rights*) shall apply to the approval of the Annual Contract Report. The Supplier shall provide updates on the Achieved Profit Margin within each Quarterly Contract Report, which accurately reports the Achieved Profit Margin to date and the Achieved Profit Margin within the quarter under review.

2 ADJUSTMENT TO THE CHARGES IN THE EVENT OF EXCESS SUPPLIER PROFIT

- 2.1 If an Annual Contract Report or Quarterly Contract Report demonstrates (or it is otherwise determined pursuant to Paragraph 2 of Part B of Schedule 7.5 (*Financial Reports and Audit Rights*)) that the Achieved Profit Margin as at the end of the quarter (pursuant to Schedule 7.5 Part B) or Contract Year to which the Quarterly or Annual Contract Report is made up exceeds the Maximum Permitted Profit Margin:
 - (a) on submission of the Annual Contract Report (and if the Authority requests in writing that it requires an adjustment be made to the Charges on submission of a Quarterly Contract Report) the Supplier shall, within 5 Working Days of delivery to the Authority of the Annual Contract Report or Quarterly Contract Report, propose such adjustments to the Charges as will ensure that the Achieved Profit Margin over the Term will not exceed the Maximum Permitted Profit Margin;
 - (b) the Authority (acting reasonably) may agree or reject the proposed adjustments;
 - (c) if the Authority rejects the proposed adjustments it shall give reasons and the Supplier shall propose revised adjustments within 10 Working Days of receiving those reasons;
 - (d) if the Parties cannot agree such revised adjustments and the Authority terminates this Agreement by issuing a Termination Notice to the Supplier pursuant to Clause 34.1(a) (*Termination by the Authority*), then for the purpose of calculating any Compensation Payment due to the Supplier, the Termination Notice shall be deemed to have been served as at the date of receipt by the Authority of the relevant Quarterly Contract Report or Annual Contract Report; and

- (e) The adjustment to the Charges shall be implemented at the earliest quarterly opportunity and may at the Authority's request be a credit note issued to make a 'one off' adjustment (repayment or credit note) or an adjustment to the on-going Charges.
- (f) Where adjustments to Charges have been made over the Term, any final payments due to or from the Authority will be addressed upon the Supplier submission of the Final Reconciliation Report. The Authority may at its discretion request an Audit of the Final Reconciliation Report.

2.2 Pending agreement of a proposed adjustment to the Charges pursuant to this Part D, the Charges then in force shall continue to apply. Once the adjustments to the Charges are agreed in accordance with Paragraph 2.1, the Parties shall document the adjustment in a Change Authorisation Note and the adjusted Charges shall apply with effect from the first day of the Service Measurement Period that immediately follows the Service Measurement Period in which the Change Authorisation Note is executed or such other date as is specified in the Change Authorisation Note.

PART E

INVOICING AND PAYMENT TERMS

1 **SUPPLIER INVOICES**

- 1.1 The Supplier shall prepare and provide to the Authority for approval of the format a template invoice within 10 Working Days of the Effective Date which shall include, as a minimum, the details set out in Paragraph 1.2 together with such other information as the Authority may reasonably require to assess whether the Charges that will be detailed therein are properly payable. If the template invoice is not approved by the Authority then the Supplier shall make such amendments as may be reasonably required by the Authority.
- 1.2 The Supplier shall ensure that each invoice contains the following information:
- (a) the date of the invoice;
 - (b) a unique invoice number;
 - (c) the Service Measurement Period or other period(s) to which the relevant Charge(s) relate;
 - (d) the correct reference for this Agreement;
 - (e) the reference number of the purchase order to which it relates (if any);
 - (f) the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
 - (g) a description of the Services;
 - (h) the pricing mechanism used to calculate the Charges (such as Volumetric, Fixed Price, Time and Materials etc) as well as the volume being applied to each Resource Unit (as set out in Annex 2 Table 2 to Schedule 7.1) included in the Charge
 - (i) any payments due in respect of Achievement of a Milestone, including the Milestone Achievement Certificate number for each relevant Milestone;
 - (j) the total Charges gross and net of any applicable deductions and, separately, the amount of any Reimbursable Expenses properly chargeable to the Authority under the terms of this Agreement, and, separately, any VAT or other sales tax payable in respect of each of the same;

- (k) details of any Service Credits or Delay Payments or similar deductions that shall apply to the Charges detailed on the invoice;
- (l) reference to any reports required by the Authority in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Authority, then to any such reports as are validated by the Authority in respect of the Services);
- (m) a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries; and
- (n) the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).

1.3 The Supplier shall invoice the Authority in respect of Services in accordance with the requirements of Part B.

1.4 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Authority as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice.

1.5 The Supplier shall submit all invoices and Supporting Documentation as follows:

- (a) A PDF electronic copy of the invoice, along with Supporting Documentation to be sent to the Authority's Supplier Invoice Validation Team mailbox sdd.servicecostmgt@dwp.gsi.gov.uk;
- (b) A hard copy issued to the Authority's Supplier Invoice Validation Team

Customer contact:

Supplier Invoice Validation Team
DWP Group Finance
301 Bridgewater Place
Birchwood Technology Park
Birchwood
Warrington
Cheshire
WA3 6XF ;and

- (c) A hard copy issued to the Authority's Shared Services Centre address for input to RM.

SSCL

Accounts Payable Team

Room 6124, Tomlinson House

Norcross

Blackpool

FY5 3TA

with a copy (again including any Supporting Documentation) to such other person and at such place as the Authority may reasonably notify to the Supplier from time to time.

- 1.6 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.
- 1.7 The Authority shall regard an invoice as valid only if it complies with the provisions of this Part E. Where any invoice does not conform to the Authority's requirements set out in this Part E, the Authority shall return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.

2 PAYMENT TERMS

- 2.1 Subject to the relevant provisions of this Schedule, the Authority shall make payment to the Supplier within 30 days of receipt of a valid invoice by the Authority at its nominated address for invoices.
- 2.2 Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.

Annex 1
Pricing Mechanism

1. TABLE 1: SUPPLIER PERSONNEL RATE CARD FOR CALCULATION OF TIME AND MATERIALS CHARGES

Charge Number	Role Type (See Annex 7 for rate card role descriptions)	All Contract Years £
RCG1R1	Programme Manager/Director	Redacted
RCG1R2	Project Manager	Redacted
RCG1R3	Service Desk Delivery / Implementation Manager	Redacted
RCG1R4	Business Consultant/Analyst	Redacted
RCG1R5	Technical Specialist / Architect	Redacted
RCG1R6	Technical Implementer	Redacted
RCG1R7	Service Management ITIL Function Owner / Team Manager / Service Management Expert	Redacted
RCG1R8	Security Specialist	Redacted
RCG1R9	Test Manager	Redacted
RCG1R10	Training and Communication Lead	Redacted
RCG1R11	Admin/Risk/PMO	Redacted

The day rates in table 1 above reflect the most senior grades of any given role. In respect of Milestones, Change Requests or Service Charges, the appropriate grade of resource will be allocated and rates agreed with the Authority.

2. Not used.

3. Not used.

4. Not used.

5. TABLE 5: FIXED PRICES

	Implementation (Transition) £	OSC* Date To expiry of the IT** £
ITIL v3 Service Charge (per SMP)	N/A	Redacted
Implementation Services - Key Milestone 1 (ISM1)	Redacted	N/A
Implementation Services - Key Milestone 2 (ISM2)	Redacted	N/A
Implementation Services - Key Milestone 3 (ISM3)	Redacted	N/A
Total	Redacted	

* Operational Service Commencement Date

**Expiry of the Initial Term

*** The Authority and Supplier agree that the split of Implementation Services charges as summarised in the table above are indicative only and that a true and representative split of the **REDACTED** total will be agreed between the Parties as part of the work required to finalise the Detailed Implementation Plan as set out in Schedule 6.1

6. Not used.

7. TABLE 7: Volumetric Charges

Charge Number	Resource Unit	Number of units per SMP	Unit Charge (£)			
			OSC* Date To 08-Jan-2017	09-Jan-2017 To 07-Jan-2018	08-Jan-2018 To 06-Jan-2019	07-Jan-2019 To expiry of the IT**
VSC1TA	Telephony Band A	0 - 22,000	Redacted	Redacted	Redacted	Redacted
VSC2TB	Telephony Band B	>22,000	Redacted	Redacted	Redacted	Redacted
VSC3Web	Web Chat	0 - 25,000	Redacted	Redacted	Redacted	Redacted
VSC4Port	Portal	0 - 25,000	Redacted	Redacted	Redacted	Redacted
Tel1	Telephony 0800 line	Actual	5% Margin	5% Margin	5% Margin	5% Margin

* Operational Services Commencement Date

** Initial Term

Annex 2

Charging mechanism and adjustments

1. TABLE 1: MILESTONE PAYMENTS

Charge Number	Milestones	Pricing Mechanism (VOL / FIX / T&M)
KM1	Key Milestone 1	Fixed Price
KM2	Key Milestone 2	Fixed Price
KM3	Key Milestone 3	Fixed Price

.

2. TABLE 2: SERVICE CHARGES

Charge Number	Pricing Mechanism (VOL / FIX / T&M)	Service Charge Trigger Event
ITILFP1	Fixed Price	Achievement of Key Milestone 3
VSC1TA	Volumetric	
VSC2TB	Volumetric	
VSC3Web	Volumetric	
VSC4Port	Volumetric	
Tel1	Pass-through	

3. Not used.

4. Not used.

Annex 3A
Pro-forma Certificate of Costs

I ***[name of CFO or Director of Finance or equivalent as agreed in advance in writing with the Authority]*** of ***[insert name of Supplier]***, certify that the financial information provided in the attached Contract Amendment Report/Quarterly Contract Report/Annual Contract Report/Final Reconciliation Report ***[Delete as appropriate]*** pursuant to Schedule 7.5 Part B disclosing all costs incurred in relation to the ***[insert name/reference for the Agreement]*** (the “***Agreement***”) :

- 1 has been reasonably and properly incurred in accordance with ***[name of Supplier]***’s books, accounts, other documents and records;
- 2 is accurate and not misleading in all material respects; and
- 3 is in conformity with the Agreement and with all generally accepted accounting principles within the United Kingdom.

Signed ***[Director of Finance or equivalent]***

[Name of Supplier]

Annex 3B
Pro-forma Certificate of Costs

I ***[name of CFO or Director of Finance or equivalent as agreed in advance in writing with the Authority]*** of ***[insert name of Supplier]***, certify that the financial information provided in this Certificate of Costs, incurred in relation to Implementation Services ***[insert name/reference for the Agreement]*** (the “***Agreement***”), specifically Milestone ***[insert milestone reference]***:

- 1 has been reasonably and properly incurred in accordance with ***[name of Supplier]***’s books, accounts, other documents and records;
- 2 is accurate and not misleading in all material respects;
- 3 relates specifically and only to Implementation Services (as agreed by the Authority) in relation to the Milestone referred to above; and
- 4 is in conformity with the Agreement and with all generally accepted accounting principles within the United Kingdom.

Signed ***[Director of Finance or equivalent]***

[Name of Supplier]

ANNEX 4

Risk Register

[illegible]

ANNEX 5
Allowable Assumptions

Column 1	Column 2	Column 3	Column 4	Column 5
Ref	Description of proposed Allowable Assumption	Impact on the Implementation Plan if the Allowable Assumption is not accurate	Cost Impact (Cost impact as included in the Financial Model)	Basis of Calculation of Cost Impact
REDACTED	REDACTED	REDACTED	REDACTED	REDACTED

Column 6	Column 7	Column 8	Column 9	Column 10
Charge Impact (Impact to Charges)	Verification Method (how the Supplier will verify the Allowable Assumption)	Trigger for Invocation (what will determine that the Allowable Assumption has crystallised)	Period of Impact (period that the updated assumption will have an impact)	Expiry Date (Date at which the Allowable Assumption expires)
REDACTED	REDACTED	REDACTED	REDACTED	REDACTED

ANNEX 6

Service Measurement Period (SMP) Calendar

SERVICE MEASUREMENT PERIODS - 2014 to 2022					
Period	Month	Start	End	Weeks	Reporting Year
2014-15					
01	April	10/03/2014	06/04/2014	4	2014 -2015
02	May	07/04/2014	11/05/2014	5	2014 -2015
03	June	12/05/2014	15/06/2014	5	2014 -2015
04	July	16/06/2014	13/07/2014	4	2014 -2015
05	August	14/07/2014	10/08/2014	4	2014 -2015
06	September	11/08/2014	14/09/2014	5	2014 -2015
07	October	15/09/2014	12/10/2014	4	2014 -2015
08	November	13/10/2014	09/11/2014	4	2014 -2015
09	December	10/11/2014	14/12/2014	5	2014 -2015
10	January	15/12/2014	11/01/2015	4	2014 -2015
11	February	12/01/2015	08/02/2015	4	2014 -2015
12	March	09/02/2015	15/03/2015	5	2014 -2015
2015-16					
01	April	16/03/2015	12/04/2015	4	2015 -2016
02	May	13/04/2015	10/05/2015	4	2015 -2016
03	June	11/05/2015	14/06/2015	5	2015 -2016
04	July	15/06/2015	12/07/2015	4	2015 -2016
05	August	13/07/2015	09/08/2015	4	2015 -2016
06	September	10/08/2015	13/09/2015	5	2015 -2016
07	October	14/09/2015	11/10/2015	4	2015 -2016
08	November	12/10/2015	08/11/2015	4	2015 -2016
09	December	09/11/2015	13/12/2015	5	2015 -2016
10	January	14/12/2015	10/01/2016	4	2015 -2016
11	February	11/01/2016	07/02/2016	4	2015 -2016
12	March	08/02/2016	13/03/2016	5	2015 -2016
2016-17					
01	April	14/03/2016	10/04/2016	4	2016 -2017
02	May	11/04/2016	08/05/2016	4	2016 -2017
03	June	09/05/2016	12/06/2016	5	2016 -2017
04	July	13/06/2016	10/07/2016	4	2016 -2017
05	August	11/07/2016	07/08/2016	4	2016 -2017
06	September	08/08/2016	11/09/2016	5	2016 -2017
07	October	12/09/2016	09/10/2016	4	2016 -2017
08	November	10/10/2016	06/11/2016	4	2016 -2017
09	December	07/11/2016	11/12/2016	5	2016 -2017
10	January	12/12/2016	08/01/2017	4	2016 -2017
11	February	09/01/2017	05/02/2017	4	2016 -2017
12	March	06/02/2017	12/03/2017	5	2016 -2017

Period	Month	Start	End	Weeks	Reporting Year
2017-18					
01	April	13/03/2017	09/04/2017	4	2017 -2018
02	May	10/04/2017	07/05/2017	4	2017 -2018
03	June	08/05/2017	11/06/2017	5	2017 -2018
04	July	12/06/2017	09/07/2017	4	2017 -2018
05	August	10/07/2017	06/08/2017	4	2017 -2018
06	September	07/08/2017	10/09/2017	5	2017 -2018
07	October	11/09/2017	08/10/2017	4	2017 -2018
08	November	09/10/2017	05/11/2017	4	2017 -2018
09	December	06/11/2017	10/12/2017	5	2017 -2018
10	January	11/12/2017	07/01/2018	4	2017 -2018
11	February	08/01/2018	04/02/2018	4	2017 -2018
12	March	05/02/2018	11/03/2018	5	2017 -2018
2018-19					
01	April	12/03/2018	08/04/2018	4	2018 -2019
02	May	09/04/2018	06/05/2018	4	2018 -2019
03	June	07/05/2018	10/06/2018	5	2018 -2019
04	July	11/06/2018	08/07/2018	4	2018 -2019
05	August	09/07/2018	05/08/2018	4	2018 -2019
06	September	06/08/2018	09/09/2018	5	2018 -2019
07	October	10/09/2018	07/10/2018	4	2018 -2019
08	November	08/10/2018	04/11/2018	4	2018 -2019
09	December	05/11/2018	09/12/2018	5	2018 -2019
10	January	10/12/2018	06/01/2019	4	2018 -2019
11	February	07/01/2019	03/02/2019	4	2018 -2019
12	March	04/02/2019	10/03/2019	5	2018 -2019
2019-20					
01	April	11/03/2019	07/04/2019	4	2019 -2020
02	May	08/04/2019	12/05/2019	5	2019 -2020
03	June	13/05/2019	16/06/2019	5	2019 -2020
04	July	17/06/2019	14/07/2019	4	2019 -2020
05	August	15/07/2019	11/08/2019	4	2019 -2020
06	September	12/08/2019	15/09/2019	5	2019 -2020
07	October	16/09/2019	13/10/2019	4	2019 -2020
08	November	14/10/2019	10/11/2019	4	2019 -2020
09	December	11/11/2019	15/12/2019	5	2019 -2020
10	January	16/12/2019	12/01/2020	4	2019 -2020
11	February	13/01/2020	09/02/2020	4	2019 -2020
12	March	10/02/2020	15/03/2020	5	2019 -2020

Period	Month	Start	End	Weeks	Reporting Year
2020-21					
01	April	16/03/2020	12/04/2020	4	2020-2021
02	May	13/04/2020	10/05/2020	4	2020-2021
03	June	11/05/2020	14/06/2020	5	2020-2021
04	July	15/06/2020	12/07/2020	4	2020-2021
05	August	13/07/2020	09/08/2020	4	2020-2021
06	September	10/08/2020	13/09/2020	5	2020-2021
07	October	14/09/2020	11/10/2020	4	2020-2021
08	November	12/10/2020	08/11/2020	4	2020-2021
09	December	09/11/2020	13/12/2020	5	2020-2021
10	January	14/12/2020	10/01/2021	4	2020-2021
11	February	11/01/2021	07/02/2021	4	2020-2021
12	March	08/02/2021	14/03/2021	5	2020-2021
2021-22					
01	April	15/03/2021	11/04/2021	4	2021-2022
02	May	12/04/2021	09/05/2021	4	2021-2022
03	June	10/05/2021	13/06/2021	5	2021-2022
04	July	14/06/2021	11/07/2021	4	2021-2022
05	August	12/07/2021	08/08/2021	4	2021-2022
06	September	09/08/2021	12/09/2021	5	2021-2022
07	October	13/09/2021	10/10/2021	4	2021-2022
08	November	11/10/2021	07/11/2021	4	2021-2022
09	December	08/11/2021	12/12/2021	5	2021-2022
10	January	13/12/2021	09/01/2022	4	2021-2022
11	February	10/01/2022	06/02/2022	4	2021-2022
12	March	07/02/2022	13/03/2022	5	2021-2022

ANNEX 7

Rate card Role Description

Grade	Project Definition	Complexity/ Ambiguity	Client Relationship	Leadership	Business Impact	Accreditation/Domain Experience
Programme Manager / Director	<p>Managing delivery of large-scale projects / business solutions.</p> <p>Projects involve a large number of dependent variables, large-scale resources and have large-scale risk.</p> <p>Several very large projects to deliver agreed business benefits to client companies or own business area. Typically scoping of the proposition, winning support for implementation strategy across client and own organisation and ownership of all elements to deliver the benefit.</p> <p>Relationships will be longer term and partnership based.</p>	<p>Demonstrable, clear and immediate capability to manage most complex projects in ever changing environments.</p> <p>Balancing technical, organisational, logistic and commercial complexity.</p> <p>Bespoke solution has new elements, new suppliers to be selected.</p>	<p>Fully client visible - proven good customer management skills, ability to build medium term relationships at all levels.</p> <p>Not necessarily building relationships at board level but expected to where appropriate.</p> <p>Aligning delivery with client's business objectives but not defining agreeing.</p>	<p>Extensive delivery team leadership, (role model).</p> <p>Expected to guide and mentor Senior Project Managers (SPM) and oversee delivery of all projects undertaken by SPMs.</p> <p>Working typically at board level, more likely IT Director level one-to-one in a major multi-national company. Seen by that company as the single authoritative face of Contractor for the delivery of a determined business benefit. Team builder at a more formal level, working across disciplines and interest groups.</p> <p>Comfortable where the desired outcome is understood but the route to get there is less certain.</p>	<p>Strategic impact to client.</p> <p>Project contains new technical / commercial elements.</p> <p>Individual would have an impact not at the pan-Contractor level but at line of business level. Individual would have some influence on the implementation of strategies.</p>	<p>Recognised expert in project</p> <p>delivery outside Contractor.</p> <p>Experience of major delivery related to the domain e.g. IT.</p> <p>Prince Practitioner, Membership of APM, IPM or similar organisation with strong project management credentials.</p> <p>Degree or MBA, or equivalent.</p> <p>Experience of creation and presentation of complex project plans to win client confidence.</p> <p>Innovates early in the cycle to avoid rather than solve problems.</p>

Grade	Project Definition	Complexity/ Ambiguity	Client Relationship	Leadership	Business Impact	Accreditation/Domain Experience
Project Manager	<p>Delivery of medium scale projects.</p> <p>Where it would be deemed that a higher level PM is required due to the higher risk.</p> <p>Impact at sector level, failure to deliver likely to lead to high degree of client dissatisfaction.</p> <p>Responsibility for defined business benefit.</p> <p>Relationships medium term and Supplier based.</p>	<p>Demonstrable experience and capability to manage projects of medium complexity.</p> <p>Accountability for project.</p> <p>Solution may have new elements but unless exceptional unlikely to be totally bespoke, new suppliers may have to be selected and managed.</p>	<p>Fully client visible</p> <p>Proven ability to apply customer management skills.</p> <p>Growing ability to build and develop customer relationships at a senior level but often at peer level.</p>	<p>Co-ordinates and leads on all elements of.</p> <p>Typically working to Communications or IT director outside of a Boardroom environment. Generally seen as a key Supplier in delivery of a client or internal business benefit.</p> <p>Could lead a team on a portfolio of projects.</p> <p>Prefers to use recognised methods and processes.</p>		<p>Prince Practitioner, APMP, or ITIL qualification, Risk Management Qualification, 6 Sigma.</p> <p>Experience of medium scale delivery related to the domain e.g. IT.</p> <p>Has typically worked on a range of projects with different complexities, technologies, lengths and client relationships.</p> <p>Good all rounder with experience of delivering to clients directly and significant product to major programmes. Record of innovating to resolve problems.</p>
Service Desk Delivery Implementation Manager	<p>Delivery of small or medium scale tasks within larger scale projects.</p> <p>Responsibility for a well defined existing contractual service line.</p> <p>Responsible for financials for own task,</p>	<p>Demonstrable experience and capability to manage low risk project tasks – the technical solution will be well defined.</p> <p>Not fully</p>	<p>Client visibility predominately at peer level.</p> <p>Developing ability to engage and inspire clients.</p>	<p>Co-ordinates and leads primarily on a particular task within a larger project or delivers well defined existing small scale contractual services.</p> <p>Operates in a learning context with guidance but requires minimal supervision.</p>	<p>Business as usual change impact to the client.</p> <p>Commercial awareness of the client's business drivers.</p> <p>Impact at</p>	<p>Prince Foundation</p> <p>Limited experience of small-scale delivery related to the contract and Schedule 2.1 (Services Description) services.</p> <p>Typically has experience of owning a few smaller projects over a number of</p>

Grade	Project Definition	Complexity/ Ambiguity	Client Relationship	Leadership	Business Impact	Accreditation/Domain Experience
	ownership of project suppliers. Relationships short term and supplier-based and typically reporting to an overall project manager.	accountable.		Could act as a mentor for a project leader. Works best where outcomes and methods are agreed and understood by both sides.	business unit level.	years. Good record of delivering against pre-determined requirements, within contractual timescales.
Business Analyst	Input into requirements capture using tools techniques e.g. Waterfall, RAD, OO. Ability to document/define solutions to relevant methodology standards and experience of a range of CASE tools. Experience of estimating.	Experienced in modelling/analysis/design techniques covering data, process, event, requirements and testing.	Will have worked with customers and been involved in building and maintaining customer relationships.	Provides a role for prospective and less experienced business analysts and acts as a skill mentor.	Will be able to demonstrate to clients sufficient understanding to gain technical credibility.	Has active qualifications / accreditations in more than one design method (e.g. SSADM, DSDM, BCS).
Technical Specialist / Designer / Architect	Owns, designs e.g. documentation, diagrams, software & hardware components and management of change control.	Ability to solve pre defined problems, ability to work on segmented problems and to produce designs for components or sub sets of larger solutions.	Can present complex technical solution or issue to senior customer representatives.	Works as part of an integrated team.	Ability to take the role of technical authority with customer.	Will be sought out by projects and will have supplied consultancy on specialist subject. Will be able to demonstrate the presentation of alternative solutions for major project with justification for each Approach.

Grade	Project Definition	Complexity/ Ambiguity	Client Relationship	Leadership	Business Impact	Accreditation/Domain Experience
Technical Implementer	Specialist technician operating as part of the analysis / delivery team.	Can manage own time and workload. Can grasp and apply new concepts quickly.	Has the ability to liaise with customer over simple issues.	Can convey guidance where appropriate to those less experienced.	Can demonstrate an understanding of own business area to others.	Will be able to demonstrate an ability to make configuration changes through the use of established company tools and systems.
Service Management ITIL Function owner / Team Manager	Management of ITIL function in Service Organisation. Potentially responsible for a number of varied business benefits across a contract. Relationships medium term and professionally based – e.g. typically involved for the duration of deliverable / project.	Clear demonstrable and immediate ability to manage ITIL function (e.g. Problem) within Service organisation. Ability to manage in a complex changing environment.	Fully client visible - proven good customer management skills, ability to build medium term relationships with counterparts in Customer Authority and other towers. Able to deliver presentations at board level. More often working with client Programme Boards, IT or communications managers. Comfortable with ownership of key client relationship within specific ITIL function.	Expected to mentor and guide Service Manager (SM) 2 and 3s.	Typically has overall responsibility for an ITIL area and responsibility for maintaining service standards/levels and contractual obligations. A higher level of commercial awareness and sensitivity than those at SM2 & 3.	Some experience of large-scale delivery related to the domain e.g. IT. Prince Practitioner, APMP, or ITIL qualification, Risk Management Qualification, 6 Sigma. Typically experience of creation of complex plans and management of teams to deliver against them. Innovates to resolve major problems and has a record of getting buy-in to radical solutions.

Grade	Project Definition	Complexity/ Ambiguity	Client Relationship	Leadership	Business Impact	Accreditation/Domain Experience
Security Specialist	Design, analyse, and update / establish network security technology to meet a company's evolving security needs in relation to the department and suppliers	Ability to manage in a complex changing environment.	Able to deliver presentations at board level. More often working with client Programme Boards & suppliers	Strong leader skills	High	Security accredited and relevant security qualifications
Test Manager	Specialist technician operating as part of the delivery team, but has test technical and data experience to ensure the end to end process is seamless and has key stakeholder engagement to ensure the testing certification is signed off with relevant approvals	Ability to manage in a complex changing environment, understandings where the faults lay and how they can be prioritised for fixes	Able to deliver results at board level. More often working with client , suppliers and end user, IT or communications managers. Comfortable with ownership of key client relationship within specific ITIL function.	Proven experience in leading and managing a team of people Strong facilitation skills	Ability to interact with the technical authority with the customer & suppliers	ITIL qualification, Risk Management Qualification with the ability to problem fix and prioritise
Training & Communication Lead	Provides training at a Customer Authority site, for one or more services. (Note: training off site or at Contractor site is at the same rate but subject to Reimbursable Expenses)	Has a strong sense of purpose and high standards with respect to train. Typically knows more about the subject than the		Proven experience in leading and managing training classes. Strong facilitation skills.	Awareness of the client's business drivers. Can demonstrate an understanding of the Customer Authority contact centre operating	Holds the relevant product training qualifications relevant to the training being provided. Proven track record in delivering training. Has understanding of Contact Centre operating

Grade	Project Definition	Complexity/ Ambiguity	Client Relationship	Leadership	Business Impact	Accreditation/Domain Experience
	<p>Training requested may either be role based or technology service based.</p> <p>Adapts training content and delivery to reflect the Services used by the Customer Authority including how they are generally deployed and setup.</p>	delegates.			model.	<p>environments.</p> <p>Familiar with how the Customer Authority services are generally deployed and setup.</p>
Admin / Risk / PMO	Provision of administrative support to sales, technical and commercial delivery teams.	<p>Ability to analyse and redefine processes and procedures.</p> <p>Ability to produce reasoned document in support of a business or personal requirement (e.g. requirement for additional equipment, resource, training etc)</p>	<p>Expected to represent own area at customer meetings.</p> <p>Good customer relations and an understanding of customer business.</p>	Able to organise and prioritise own and others workload, ability to multi task.	Will be able to articulate an understanding of client's relationship with the business.	<p>Will have demonstrated an ability to enhance existing procedures / processes.</p> <p>Will have shown an ability to manage a variety of tasks many of which require networking across the business to complete.</p>

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 7.2

PAYMENTS ON TERMINATION

Payments on Termination

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Applicable Supplier Personnel”

any Supplier Personnel who:

- (a) at the Termination Date:
 - (i) are employees of the Supplier;
 - (ii) are Dedicated Supplier Personnel;
 - (iii) have not transferred (and are not in scope to transfer at a later date) to the Authority or the Replacement Supplier by virtue of the Employment Regulations; and
- (b) are dismissed or given notice of dismissal by the Supplier within:
 - (i) 40 Working Days of the Termination Date; or
 - (ii) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and
- (c) have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and
- (d) the Supplier can demonstrate to the satisfaction of the Authority:
 - (i) are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other

customers;

- (ii) are genuinely being dismissed for reasons of redundancy; and
- (iii) have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier is entitled to reimbursement under this provision in respect of such employees;

“Breakage Costs Payment”

an amount equal to the Redundancy Costs and the Contract Breakage Costs as at the Termination Date as determined in accordance with Paragraph 3;

“Compensation Payment”

the payment calculated in accordance with Paragraph 6;

“Contract Breakage Costs”

the amounts payable by the Supplier to its Key Sub-contractors or other third parties (as applicable) for terminating all relevant Key Sub-contracts or Third Party Contracts as a direct result of the early termination of this Agreement;

“Dedicated Supplier Personnel”

all Supplier Personnel then assigned to the Services or any part of the Services. If the Supplier is unsure as to whether Supplier Personnel are or should be regarded as so assigned, it shall consult with the Authority whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Services;

“Profit Already Paid”

the Supplier Profit paid or payable to the Supplier under this Agreement for the period from the Effective Date up to (and including) the Termination Date;

“Redundancy Costs”

the total sum of any of the following sums paid to Applicable Supplier Personnel, each amount apportioned between the Supplier and the Authority based on the time spent by such employee on the Services as a proportion of the total Service duration:

- (a) any statutory redundancy payment; and
- (b) in respect of an employee who was a Transferring Former Supplier Employee or a

Transferring Authority Employee, any contractual redundancy payment (or where such a contractual benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the Supplier as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to his or her transfer to the Supplier under the Employment Regulations;

- “Request for Estimate”** a written request sent by the Authority to the Supplier, requiring that the Supplier provide it with an accurate estimate of the Termination Payment and Compensation Payment that would be payable if the Authority exercised its right under Clause 34.1(a) (*Termination by the Authority*) to terminate this Agreement for convenience on a specified Termination Date;
- “Shortfall Period”** has the meaning given in Paragraph 6.2;
- “Termination Estimate”** has the meaning given in Paragraph 11.2;
- “Third Party Contract”** a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the Services, as listed in Schedule 4.4 (*Third Party Contracts*);
- “Total Costs Incurred”** the Costs incurred by the Supplier up to the Termination Date in the performance of this Agreement and detailed in the Financial Model (but excluding Contract Breakage Costs, Redundancy Costs and any costs the Supplier would not otherwise be able to recover through the Charges) less any Deductions up to (and including) the Termination Date;
- “Unrecovered Costs”** the Costs incurred by the Supplier in the performance of this Agreement (as summarised in the Financial Model) to the extent that the same remain at the Termination Date to be recovered through Charges that but for the termination of this Agreement would have been payable by the Authority after the

Termination Date in accordance with Schedule 7.1 (*Charges and Invoicing*) as such Costs and Charges are forecast in the Financial Model;

“Unrecovered Payment”

an amount equal to the lower of:

- (a) the sum of the Unrecovered Costs and the Unrecovered Profit; and
- (b) the amount specified in Paragraph 4; and

“Unrecovered Profit”

(Total Costs Incurred x Anticipated Contract Life Profit Margin) - Profit Already Paid

2 TERMINATION PAYMENT

The Termination Payment payable pursuant to Clause 35.3(a) (*Payments by the Authority*) shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Payment.

3 BREAKAGE COSTS PAYMENT

3.1 The Supplier may recover through the Breakage Costs Payment only those costs incurred by the Supplier directly as a result of the termination of this Agreement which:

- (a) would not have been incurred had this Agreement continued until expiry of the Initial Term, or in the event that the Term has been extended, the expiry of the Extension Period;
- (b) are unavoidable, proven, reasonable, and not capable of recovery;
- (c) are incurred under arrangements or agreements that are directly associated with this Agreement;
- (d) are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Supplier;
- (e) relate directly to the termination of the Services; and
- (f) relate to asset costs directly charged and reflected in the Financial Model contained in the Contract Inception Report as updated and agreed with the Authority from time to time (for the avoidance of doubt, where the Supplier has priced the Agreement utilising assets with a useful economic life which extends beyond the Term, the excess value beyond the Term will not form part of the Breakage Cost Payment)

Limitation on Breakage Costs Payment

3.2 The Breakage Costs Payment shall not exceed the lower of:

- (a) the relevant limit set out in Annex 1; and
- (b) 120% of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

Redundancy Costs

- 3.3 The Authority shall not be liable under this Schedule for any costs associated with Supplier Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Costs.
- 3.4 Where the Supplier can demonstrate that a member of Supplier Personnel will be made redundant following termination of this Agreement, but redeployment of such person is possible and would offer value for money to the Authority when compared with redundancy, then the Authority shall pay the Supplier the actual direct costs incurred by the Supplier or its Sub-contractor arising out of the redeployment of such person (including retraining and relocation costs) subject to a maximum amount of £30,000 per relevant member of the Supplier Personnel.

Contract Breakage Costs

- 3.5 The Supplier shall be entitled to Contract Breakage Costs only in respect of Third Party Contracts or Sub-contracts which:
 - (a) are not assigned or novated to a Replacement Supplier at the request of the Authority in accordance with Schedule 8.5 (*Exit Management*); and
 - (b) the Supplier can demonstrate:
 - (i) are surplus to the Supplier's requirements after the Termination Date, in relation to use internally within its business in providing the Services to the Authority but not in providing services to any of its other customers; and
 - (ii) have been entered into by it in the ordinary course of business.
- 3.6 The Supplier shall seek to negotiate termination of any Third Party Contracts or Sub-contracts with the relevant third party or Sub-contractor (as the case may be) using all reasonable endeavours to minimise the cancellation or termination charges.
- 3.7 Except with the prior written agreement of the Authority, the Authority shall not be liable for any costs (including cancellation or termination charges) that the Supplier is obliged to pay in respect of:
 - (a) the termination of any contractual arrangements for occupation of, support of and/or services provided for Supplier premises which may arise as a consequence of the termination of this Agreement; and/or
 - (b) Assets not yet installed at the Termination Date.

4 UNRECOVERED PAYMENT

The Unrecovered Payment shall not exceed the lowest of:

- (a) the relevant limit set out in Annex 1;
- (b) 120% of the estimate for the Unrecovered Payment set out in any relevant Termination Estimate; and
- (c) the unrecovered Charges up to and including the Termination Date.

5 MITIGATION OF CONTRACT BREAKAGE COSTS, REDUNDANCY COSTS AND UNRECOVERED COSTS

- 5.1 The Supplier agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs, Redundancy Costs and Unrecovered Costs by:
- (a) the appropriation of Assets, employees and resources for other purposes;
 - (b) at the Authority's request, assigning any Third Party Contracts and Sub-contracts to the Authority or a third party acting on behalf of the Authority; and
 - (c) in relation Third Party Contracts and Sub-contract that are not to be assigned to the Authority or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.
- 5.2 If Assets, employees and resources can be used by the Supplier for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs, Redundancy Costs and Unrecovered Costs payable by the Authority or a third party to the Supplier. In the event of any Dispute arising over whether the Supplier can use any Assets, employees and/or resources for other purposes and/or over the amount of the relevant equitable reduction, the Dispute shall be referred to an Expert for determination in accordance with the procedure detailed in Schedule 8.3 (*Dispute Resolution Procedure*).

6 COMPENSATION PAYMENT

- 6.1 The Compensation Payment payable pursuant to Clause 35.3(b) (*Payments by the Authority*) shall be an amount equal to the total forecast Charges over the Shortfall Period (as stated in the Financial Model) multiplied by the Anticipated Contract Life Profit Margin percentage.
- 6.2 For the purposes of Paragraph 6.1, the “**Shortfall Period**” means:
- (a) where the Authority terminates this Agreement pursuant to Clause 34.1(a) (*Termination by the Authority*), a number of days equal to the number of days by which the notice given (or deemed given pursuant to Paragraph 2.1(a) of Part D of Schedule 7.1 (*Charges and Invoicing*)) falls short of 180 days; or
 - (b) where the Supplier terminates this Agreement pursuant to Clause 34.3(a) (*Termination by the Supplier*), no Compensation Payment will be made;

subject to the limit set out in Paragraph 6.3.

- 6.3 The Compensation Payment shall be no greater than the lower of:
- (a) the relevant limit set out in Annex 1; and
 - (b) 120% of the estimate for the Compensation Payment set out in the relevant Termination Estimate.

7 FULL AND FINAL SETTLEMENT

Any Termination Payment and/or Compensation Payment paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Authority pursuant to Clause 34.1(a) (*Termination by the Authority*) or termination by the Supplier pursuant to Clause 34.3(a) (*Termination by the Supplier*) (as applicable), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

8 INVOICING FOR THE PAYMENTS ON TERMINATION

All sums due under this Schedule shall be payable by the Authority to the Supplier in accordance with the payment terms set out in Schedule 7.1 (*Charges and Invoicing*).

9 SET OFF

The Authority shall be entitled to set off any outstanding liabilities of the Supplier against any amounts that are payable by it pursuant to this Schedule.

10 NO DOUBLE RECOVERY

- 10.1 If any amount payable under this Schedule (in whole or in part) relates to or arises from any Transferring Assets then, to the extent that the Authority makes any payments pursuant to Schedule 8.5 (*Exit Management*) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.

- 10.2 The value of the Termination Payment and/or the Compensation Payment shall be reduced or extinguished to the extent that the Supplier has already received the Charges or the financial benefit of any other rights or remedy given under this Agreement so that there is no double counting in calculating the relevant payment. For the avoidance of doubt, no double recovery will exist in the calculation of the Unrecovered Payment, Breakage Costs and the calculation of any Compensation Payment or any other payment made and/or to be made by the Authority.

- 10.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

11 ESTIMATE OF TERMINATION PAYMENT AND COMPENSATION PAYMENT

- 11.1 The Authority may issue a Request for Estimate at any time during the Term provided that no more than 2 Requests for Estimate may be issued in any 6 month period.
- 11.2 The Supplier shall within 20 Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written

estimate of the Termination Payment and the Compensation Payment that would be payable by the Authority based on a postulated Termination Date specified in the Request for Estimate (such estimate being the “**Termination Estimate**”). The Termination Estimate shall:

- (a) be based on the relevant amounts set out in the Financial Model;
- (b) include:
 - (i) details of the mechanism by which the Termination Payment is calculated;
 - (ii) full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract or Third Party Contract and appropriate supporting documentation; and
 - (iii) such information as the Authority may reasonably require; and
- (c) state the period for which that Termination Estimate remains valid, which shall be not less than 20 Working Days.

11.3 The Supplier acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Authority to terminate this Agreement.

11.4 If the Authority issues a Termination Notice to the Supplier within the stated period for which a Termination Estimate remains valid, the Supplier shall use the same mechanism to calculate the Termination Payment as was detailed in the Termination Estimate unless otherwise agreed in writing between the Supplier and the Authority.

ANNEX 1

Maximum Payments on Termination

The table below sets out, by Contract Year, the maximum amount of the Unrecovered Payment, Breakage Costs Payment and Compensation Payment that the Authority shall be liable to pay to the Supplier pursuant to this Agreement:

Termination Date	Maximum Unrecovered Payment	Maximum Breakage Costs Payment	Maximum Compensation Payment
Anytime in the first Contract Year	Based on actual Services provided at the Termination Date	Actual breakage costs to the extent they have not been recovered in any other payment or Charge	180 days Anticipated Contract Life Profit Margin
Anytime in the second Contract Year	Based on actual Services provided at the Termination Date	Actual breakage costs to the extent they have not been recovered in any other payment or Charge	180 days Anticipated Contract Life Profit Margin
Anytime in Contract Years 3 – 4 <i>and in the event of any extension of the Term</i>	Based on actual Services provided at the Termination Date	Actual breakage costs to the extent they have not been recovered in any other payment or Charge	180 days Anticipated Contract Life Profit Margin

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 7.3

BENCHMARKING

Benchmarking

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Benchmarked Service”	a Service that the Authority elects to include in a Benchmark Review under Paragraph 2.3;
“Benchmarker”	the independent third party appointed under Paragraph 3.1;
“Benchmark Report”	the report produced by the Benchmarker following the Benchmark Review as further described in Paragraph 5;
“Benchmark Review”	a review of one or more of the Services carried out in accordance with Paragraph 4 to determine whether those Services represent Good Value;
“Comparable Service”	in relation to a Benchmarked Service, a service that is identical or materially similar to the Benchmarked Service (including in terms of scope, specification, roles, volume and quality of performance);
“Comparison Group”	in relation to a Comparable Service, a sample group of organisations providing the Comparable Service identified by the Benchmarker under Paragraph 4.8 which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker’s professional opinion) fair comparators with the Supplier or which, in the professional opinion of the Benchmarker, are best practice organisations and, where there are a reasonable number of such organisations, referencing only those organisations that are carrying on at least a significant part of their business within the United Kingdom;
“Equivalent Services Data”	in relation to a Comparable Service, data derived from an analysis of the Comparable Service provided by the Comparison Group as adjusted in accordance with Paragraphs 4.8(a) and

4.9 provided that the Benchmarker shall not use any such data that relates to a period which ended more than 36 months prior to the date of the appointment of the Benchmarker;

“Good Value”

in relation to a Benchmarked Service, that:

- (a) having taken into account the Performance Indicators and Target Service Levels, the value for money of the Charges attributable to that Benchmarked Service is at least as good as the value for money of the Upper Quartile; and
- (b) any Performance Indicators and Target Service Levels applicable to that Benchmarked Service are, having taken into account the Charges, equal to or better than the median service levels for the Comparable Service using Equivalent Services Data; and

“Upper Quartile”

the top 25% of instances of provision of a Comparable Service by members of the Comparison Group ranked by best value for money to the recipients of that Comparable Service.

2 FREQUENCY, PURPOSE AND SCOPE OF BENCHMARK REVIEW

- 2.1 The Authority may, by written notice to the Supplier, require a Benchmark Review of any or all of the Services in order to establish whether a Benchmarked Service is, and/or the Benchmarked Services as a whole are, Good Value.
- 2.2 The Authority shall not be entitled to carry out a Benchmark Review of any Services during the 12 month period from the Operational Service Commencement Date for those Services, nor at intervals of less than 12 months after any previous Benchmark Review relating to the same Services.
- 2.3 The Services that are to be the Benchmarked Services shall be identified by the Authority in the notice given under Paragraph 2.1.

3 APPOINTMENT OF BENCHMARKER

- 3.1 The Authority shall appoint as the Benchmarker to carry out the Benchmark Review either an organisation on the list of organisations set out in Annex 1 or such other organisation as may be agreed in writing between the Parties.

- 3.2 The Authority shall, at the written request of the Supplier, require the Benchmarker to enter into a confidentiality agreement with the Supplier in, or substantially in, the form set out in Annex 2.
- 3.3 The costs and expenses of the Benchmarker and the Benchmark Review shall be shared equally between both Parties provided that each Party shall bear its own internal costs of the Benchmark Review. The Benchmarker shall not be compensated on a contingency fee or incentive basis.
- 3.4 The Authority shall be entitled to pay the Benchmarker's costs and expenses in full and to recover the Supplier's share (being 50% of the total cost including VAT) from the Supplier.

4 BENCHMARK REVIEW

- 4.1 The Authority shall require the Benchmarker to produce, and to send to each Party for approval, a draft plan for the Benchmark Review within 10 Working Days after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker shall reasonably request in all the circumstances. The plan must include:
- (a) a proposed timetable for the Benchmark Review;
 - (b) a description of the information that the Benchmarker requires each Party to provide;
 - (c) a description of the benchmarking methodology to be used;
 - (d) a description that clearly illustrates that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives under Paragraph 2.1;
 - (e) an estimate of the resources required from each Party to underpin the delivery of the plan;
 - (f) a description of how the Benchmarker will scope and identify the Comparison Group;
 - (g) details of any entities which the Benchmarker proposes to include within the Comparison Group; and
 - (h) if in the Benchmarker's professional opinion there are no Comparable Services or the number of entities carrying out Comparable Services is insufficient to create a Comparison Group, a detailed approach for meeting the relevant benchmarking objective(s) under Paragraph 2.1 using a proxy for the Comparison Services and/or Comparison Group as applicable.
- 4.2 The Parties acknowledge that the selection and or use of proxies for the Comparison Group (both in terms of number and identity of entities) and

Comparable Services shall be a matter for the Benchmarker's professional judgment.

- 4.3 Each Party shall give notice in writing to the Benchmarker and to the other Party within 10 Working Days after receiving the draft plan either approving the draft plan or suggesting amendments to that plan which must be reasonable. Where a Party suggests amendments to the draft plan pursuant to this Paragraph 4.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 4.1 and this Paragraph 4.3 shall apply to any amended draft plan.
- 4.4 Failure by a Party to give notice under Paragraph 4.3 shall be treated as approval of the draft plan by that Party. If the Parties fail to approve the draft plan within 30 Working Days of its first being sent to them pursuant to Paragraph 4.1 then the Benchmarker shall prescribe the plan.
- 4.5 Once the plan is approved by both Parties or prescribed by the Benchmarker, the Benchmarker shall carry out the Benchmark Review in accordance with the plan. Each Party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the Supplier fails to provide any information requested from it by the Benchmarker and described in the plan, such failure shall constitute a material Default for the purposes of Clause 28.1(c) (*Rectification Plan Process*).
- 4.6 Each Party shall co-operate fully with the Benchmarker, including by providing access to records (including financial reports and source data), technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the Services.
- 4.7 Either Party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
- 4.8 Once it has received the information it requires, the Benchmarker shall:
 - (a) finalise the sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The final selection of the Comparison Group (both in terms of number and identity of entities) and of the Comparable Services shall be a matter for the Benchmarker's professional judgment;
 - (b) derive the Equivalent Services Data by applying the adjustment factors listed in Paragraph 4.9 and from an analysis of the Comparable Services;
 - (c) derive the relative value for money of the charges payable for the Comparable Services using the Equivalent Services Data and from that derive the Upper Quartile;

- (d) derive the median service levels relating to the Comparable Services using the Equivalent Services Data;
- (e) compare the value for money of the Charges attributable to the Benchmarked Services (having regard in particular to the applicable Performance Indicators and Target Service Levels) to the value for money of the Upper Quartile;
- (f) compare the Performance Indicators and Target Service Levels attributable to the Benchmarked Services (having regard to the Charges and Service Credits) with the median service levels using the Equivalent Services Data; and
- (g) determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.

4.9 The Benchmarker shall have regard to the following matters when performing a comparative assessment of a Benchmarked Service and a Comparable Service in order to derive Equivalent Services Data:

- (a) the contractual and business environment under which the Services are being provided (including the scope, scale, complexity and geographical spread of the Services);
- (b) any front-end investment and development costs of the Supplier;
- (c) the Supplier's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;
- (d) the extent of the Supplier's management and contract governance responsibilities;
- (e) any other reasonable factors demonstrated by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive (such as erroneous costing, non-sustainable behaviour including excessive consumption of energy or over-aggressive pricing).

5 **BENCHMARK REPORT**

5.1 The Benchmarker shall be required to prepare a Benchmark Report and deliver it simultaneously to both Parties, at the time specified in the plan approved under Paragraph 4, setting out its findings. The Benchmark Report shall:

- (a) include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;

- (b) include other findings (if any) regarding the quality and competitiveness or otherwise of those Services;
- (c) if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Charges, Performance Indicators and/or Target Performance Levels, that would be required to make that Benchmarked Service or those Benchmarked Services as a whole Good Value; and
- (d) illustrate the method used for any normalisation of the Equivalent Services Data

5.2 The Benchmarker shall act as an expert and not as an arbitrator.

5.3 If the Benchmark Report states that any Benchmarked Service is not Good Value or that the Benchmarked Services as a whole are not Good Value, then the Supplier shall (subject to Paragraphs 5.5 and 5.6) implement the changes set out in the Benchmark Report as soon as reasonably practicable within timescales agreed with the Authority but in any event within no more than 3 months. Any associated changes to the Charges shall take effect only from the same date and shall not be retrospective.

5.4 The Supplier acknowledges and agrees that Benchmark Reviews shall not result in any increase to the Charges, disapplication of the Performance Indicators or any reduction in the Target Performance Levels.

5.5 The Supplier shall be entitled to reject any Benchmark Report if the Supplier reasonably considers that the Benchmarker has not followed the procedure for the related Benchmark Review as set out in this Schedule in any material respect.

5.6 The Supplier shall not be obliged to implement any Benchmark Report to the extent this would cause the Supplier to provide the Services at a loss (as determined, by reference to the Financial Model), or to the extent the Supplier cannot technically implement the recommended changes.

5.7 In the event of any Dispute arising over whether the Benchmarker has followed the procedure for the related Benchmark Review under Paragraph 5.5 and/or any matter referred to in Paragraph 5.6, the Dispute shall be referred to Expert Determination. For the avoidance of doubt in the event of a Dispute between the Parties, the Authority shall continue to pay the Charges to the Supplier in accordance with the terms of this Agreement and the Performance Indicators and Target Performance Levels shall remain unchanged pending the conclusion of the Expert Determination.

5.8 On conclusion of the Expert Determination:

- (a) if the Expert determines that all or any part of the Benchmark Report recommendations regarding any reduction in the Charges shall be

implemented by the Supplier, the Supplier shall immediately repay to the Authority the difference between the Charges paid by the Authority up to and including the date of the Expert's determination and the date upon which the recommended reduction in Charges should have originally taken effect pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and

(b) if the Expert determines that all or any part of the Benchmark Report recommendations regarding any changes to the Performance Indicators and/or Target Performance Levels shall be implemented by the Supplier:

(i) the Supplier shall immediately implement the relevant changes;

(ii) the Supplier shall immediately pay an amount equal to any Service Credits which would have accrued up to and including the date of the Expert's determination if the relevant changes had taken effect on the date determined pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and

(iii) the relevant changes shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Agreement.

5.9 Any failure by the Supplier to implement the changes as set out in the Benchmark Report in accordance with the relevant timescales determined in accordance with Paragraph 5.3 (unless the provisions of Paragraph 5.6 and/or Paragraph 5.7 apply) or in accordance with Paragraph 5.8 shall, without prejudice to any other rights or remedies of the Authority, constitute a Supplier Termination Event.

ANNEX 1

Approved Benchmarkers

1. Compass
2. Gartner
3. Forrester
4. ISG
5. Ovum

ANNEX 2
Confidentiality Agreement
CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [date]

BETWEEN:

- (3) [insert name] of [insert address] (the “Supplier”); and
- (4) [insert name] of [insert address] (the “Benchmarker” and together with the Supplier, the “Parties”).

WHEREAS:

- (D) [insert name of Authority] (the “Authority”) and the Supplier are party to a contract dated [insert date] (the “Contract”) for the provision by the Supplier of [insert brief description of services] to the Authority.
- (E) The Benchmarker is to receive Confidential Information from the Supplier for the purpose of carrying out a benchmarking review for the Authority of one or more of such services pursuant to the terms of the Contract (the “Permitted Purpose”).

IT IS AGREED as follows:

7 Interpretation

7.1 In this Agreement, unless the context otherwise requires:

“Confidential Information”

8. MEANS:

(a) Information, including all personal data within the meaning of the Data Protection Act 1998, and however it is conveyed, provided by the Supplier to the Benchmarker pursuant to this Agreement that relates to:

(i) the Supplier; or

(ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;

(b) other Information provided by the Supplier

pursuant to this Agreement to the Benchmarkers that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Benchmarkers' attention or into the Benchmarkers' possession in connection with the Permitted Purpose;

(c) discussions, negotiations, and correspondence between the Supplier or any of its directors, officers, employees, consultants or professional advisers and the Benchmarkers or any of its directors, officers, employees, consultants and professional advisers in connection with the Permitted Purpose and all matters arising therefrom; and

(d) Information derived from any of the above,

but not including any Information that:

- (i) was in the possession of the Benchmarkers without obligation of confidentiality prior to its disclosure by the Supplier;
- (ii) the Benchmarkers obtained on a non-confidential basis from a third party who is not, to the Benchmarkers' knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Benchmarkers;
- (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of

confidentiality; or

- (iv) was independently developed without access to the Confidential Information;

“Information” means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

“Permitted Purpose” has the meaning given to that expression in recital (B) to this Agreement.

7.2 In this Agreement:

7.2.1 a reference to any gender includes a reference to other genders;

7.2.2 the singular includes the plural and vice versa;

7.2.3 the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;

7.2.4 references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;

7.2.5 headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and

7.2.6 references to Clauses are to clauses of this Agreement.

8 Confidentiality Obligations

8.1 In consideration of the Supplier providing Confidential Information to the Benchmark, the Benchmark shall:

8.1.1 treat all Confidential Information as secret and confidential;

- 8.1.2 have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- 8.1.3 not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or, if relevant, other owner or except as expressly set out in this Agreement;
- 8.1.4 not transfer any of the Confidential Information outside the United Kingdom;
- 8.1.5 not use or exploit any of the Confidential Information for any purpose whatsoever other than the Permitted Purpose;
- 8.1.6 immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- 8.1.7 once the Permitted Purpose has been fulfilled:
 - (a) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
 - (b) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Benchmarker) from any computer, word processor, voicemail system or any other device; and
 - (c) make no further use of any Confidential Information.

9 Permitted Disclosures

- 9.1 The Benchmarker may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:
 - 9.1.1 reasonably need to receive the Confidential Information in connection with the Permitted Purpose; and
 - 9.1.2 have been informed by the Benchmarker of the confidential nature of the Confidential Information; and
 - 9.1.3 have agreed to terms similar to those in this Agreement.
- 9.2 The Benchmarker shall be entitled to disclose Confidential Information to the Authority for the Permitted Purpose and to any Expert appointed in

relation to a Dispute as referred to in paragraph 5.7 of schedule 7.3 (*Benchmarking*) to the Contract.

- 9.3 The Benchmarker shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Benchmarker.
- 9.4 Before making a disclosure pursuant to Clause 3.3, the Benchmarker shall, if the circumstances permit:
 - 9.4.1 notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
 - 9.4.2 ask the court or other public body to treat the Confidential Information as confidential.

10 General

- 10.1 The Benchmarker acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 10.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
 - 10.2.1 to grant the Benchmarker any licence or rights other than as may be expressly stated in this Agreement;
 - 10.2.2 to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
 - 10.2.3 as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of this Agreement.
- 10.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 10.4 Without prejudice to any other rights or remedies that the Supplier may have, the Benchmarker acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Benchmarker of any of the provisions of this Agreement. Accordingly, the Benchmarker acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no

proof of special damages shall be necessary for the enforcement of such remedies.

- 10.5 The maximum liability of the Benchmarker to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).
- 10.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 10.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 10.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

11 Notices

- 11.1 Any notice to be given under this Agreement (each a “**Notice**”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.

- 11.2 Any Notice:

11.2.1 if to be given to the Supplier shall be sent to:

[Address]

Attention: [*Contact name and/or position, e.g. “The Finance Director”*]

11.2.2 if to be given to the Benchmarker shall be sent to:

[Name of Organisation]

[Address]

Attention: []

12 Governing law

- 12.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.
- 12.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

IN WITNESS of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of [*name of Supplier*]

Signature:

Date:

—

Name:

Position:

For and on behalf of [*name of Benchmark*er]

Signature:

Date:

—

Name:

Position:

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 7.4

FINANCIAL DISTRESS

1. DEFINITIONS

“Credit Rating Agencies”	the credit rating agencies listed in Annex 1 to Schedule 7.4 (Financial Distress);
“Credit Rating”	the long term credit ratings issued by the Credit Rating Agencies;
“Credit Rating Threshold”	the credit rating thresholds as set out in Annex2 to Schedule 7.4 (Financial Distress);
“Financial Distress Escrow Account”	an escrow account established in accordance with Schedule 7.4 (Financial Distress) in the joint names of the Supplier and the Authority with a bank approved by the Authority;
“Financial Distress Event”	the occurrence of one or more of the events listed in Paragraphs 4.1, 5.1 and/or 6.1 of Schedule 7.4 (Financial Distress);
“Financial Distress Service Continuity Plan”	a plan setting out how the Supplier (together with the Guarantor and/or Key Sub-contractors, where appropriate) will ensure the continued performance and delivery of the services in accordance with this Agreement in the event that the Supplier, the Guarantor and/or a Key Sub-contractor suffers a Financial Distress Event;
“Level 1 Credit Rating Threshold”	the Credit Rating Threshold described as such and set out in Annex 2 to Schedule 7.4 (Financial Distress);
“Level 2 Credit Rating Threshold”	the Credit Rating Threshold described as such and set out in ANNEX 2 to Schedule 7.4 (financial distress)“Level 3 Credit Rating Threshold” the credit rating threshold described as such and set out in Annex 2 to Schedule 7.4 (Financial Distress);
“Shadow Credit Rating”	the long term Credit Rating calculated using the ratios contained in Annex 3 to Schedule 7.4 (Financial Distress);
“Sub-Contractor Credit Rating Threshold”	the Credit Rating Thresholds in respect of the key Sub-contractor(s) as set out in Annex 2 to Schedule 7.4 (Financial Distress);

“Sub-Contractor Financial Distress Event” the occurrence of one or more of the events referred to in Paragraph 10.1 of Schedule 7.4 (Financial Distress) in respect of a Key Sub-contractor;

2. BACKGROUND

2.1. This schedule provides for the assessment of the financial standing of the Guarantor and Key Sub-contractor(s) and the establishment of trigger events relating to changes in such financial standing which, if breached, will have specified consequences.

3. CREDIT RATING AND DUTY TO NOTIFY

3.1. The Supplier warrants and represents to the Authority for the benefit of the Authority as at the Effective Date, at least one of the following long term Credit Ratings issued for the Guarantor and the Key Sub-contractors by the Credit Rating Agencies:

3.1.1. in respect of the Guarantor:

- i. Moody's: A2,
- ii. Standard & Poor's: A or ,
- iii. Fitch: A;

3.1.2. in respect of the Key Sub-contractors as set out in Schedule 4.3 (Notified Sub-contractors).

- i. Moody's: A2;
- ii. Standard & Poor's: A; or,
- iii. Fitch: A;

3.1A Where either the Guarantor or Key Supplier does not hold a credit rating provided by any one of the Credit Rating Agencies specified at Annex 1, then the Supplier warrants and represents to the Authority for the benefit of the Authority that as at the Effective Date the Guarantor and/or Key Subcontractor hold a Shadow Credit Rating of minimum rating of AA. "

3.2. In the event that the Guarantor or a Key Sub-contractor ceases to have a Credit Rating the Supplier shall:

3.2.1. promptly (and in any event within ten (10) Working Days of ceasing to have such Credit Rating) notify (or shall procure that its auditors promptly notify) the Authority in writing; and

3.2.2. ensure that its or the relevant Key Sub-contractor's auditors calculate a Shadow Credit Rating assessment either at the end of each Contract Year or for the last Contract Year in which a Credit Rating was available.

3.3. The Supplier shall:

3.3.1. regularly monitor the Guarantor's and the Key Sub-contractor's Credit Ratings with the Credit Rating Agencies;

3.3.2. regularly monitor its own financial position and provide updates to the Authority in relation to:

- i. payments in dispute with Sub-contractors under the Sub-contracts or Affiliates in relation to the Services which exceed £250,000 in the aggregate; or
- ii. any delays in undisputed payments to Sub-contractors;
- iii. any material changes in the Supplier's group corporate structure; and
- iv. any material changes in the reduction of the number of Supplier Personnel engaged in the delivery of the Services.

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

- 3.4. Where the Guarantor's and/or a Key Sub-contractor's Credit Ratings provided by the Credit Rating Agencies differ, for the purposes of the Financial Distress Events or the Sub-Contractor Financial Distress Events, the relevant Credit Rating Threshold for each of Guarantor or Key Sub-contractor (as appropriate) shall be determined by reference to the lower Credit Rating attributed to that party by the Credit Rating Agencies.
- 3.5. The Supplier shall provide a copy of its statutory accounts to the Authority no later than five Working Days following the date of filing at Companies House or the applicable body with which the Supplier is required to file its statutory accounts.

4. LEVEL 1 - CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

4.1. If the Financial Distress Event consists of:

- 4.1.1. the Guarantor's Credit Ratings dropping to or below the Level 1 Credit Rating Threshold;
- 4.1.2. the Guarantor issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;
- 4.1.3. there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier or the Guarantor,

then, immediately upon notification of the Financial Distress Event (or if the Authority becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and Authority shall have the rights and remedies as set out in paragraphs 4.2 to 4.6 (inclusive).

4.2. The Supplier shall (and shall procure that the Guarantor shall):

- 4.2.1. at the request of the Authority, meet with the Authority as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Agreement; and
 - 4.2.2. where the Authority reasonably believes (taking into account the discussions and any representations made under paragraph 4.2.1) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement, submit to the Authority for its approval a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing).
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- 4.3. The Authority shall not unreasonably withhold its approval of a draft Financial Distress Service Continuity Plan. If the Authority does not approve the draft Financial Distress Service Continuity Plan it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Authority within five (5) Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by the Authority or dealt with under the Dispute Resolution Process, pursuant to Schedule 8.3.
- 4.4. If the Authority considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or resolve any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Process.
- 4.5. Following approval of the Financial Distress Service Continuity Plan by the Authority, the Supplier shall:
 - 4.5.1. on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Agreement;
 - 4.5.2. where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with paragraph 4.5.1, submit an updated Financial Distress Service Continuity Plan to the Authority for its approval, and the provisions of paragraphs 4.3 and 4.4 shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and
 - 4.5.3. implement (and comply with) the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 4.6. Where the Supplier reasonably believes that the relevant Financial Distress Event under paragraph 4.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and the Parties may agree (such agreement not to be unreasonably withheld or delayed in cases where the circumstances can be demonstrated to have ceased to exist) that the Supplier shall be relieved of its obligations under paragraph 4.5.

5. LEVEL 2 - CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

- 5.1. If the Financial Distress Event consists of:
 - 5.1.1. the Guarantor's Credit Rating dropping to or below the Level 2 Credit Rating Threshold;
 - 5.1.2. a Key Sub-contractor notifying the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; or
 - 5.1.3. the Supplier failing to notify the Authority of a Financial Distress Event that falls within paragraph 4,
-

- 5.1.4. then, subject to paragraph 5.2, immediately upon notification of the Financial Distress Event (or if the Authority becomes aware of the Financial Distress Event without notification and brings the Financial Distress Event to the attention of the Supplier), the provisions of paragraphs 4.2 to 4.6 (inclusive) shall have effect (so that such provisions shall be applicable to a Financial Distress Event under this paragraph 5.1 and shall be interpreted as such), and the Supplier shall have the obligations and the Authority shall also have the rights and remedies set out in paragraphs 5.3.1 to 5.6 (inclusive).
- 5.2. In the event of a late or non-payment of a Key Sub-contractor pursuant to paragraph 5.1.2, the Authority shall not exercise any of its rights or remedies under paragraph 5.3.1 without first giving the Supplier ten (10) Working Days to:
- 5.2.1. rectify such late or non-payment; or
- 5.2.2. demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.
- 5.3. NOT USED.
- 5.3.1. **The Authority may:**
- 5.3.2. require the Supplier to establish a Financial Distress Escrow Account, whereupon the Supplier shall (without cost to the Authority):
- i. establish a Financial Distress Escrow Account on such terms as the Authority may reasonably require; and
 - ii. consent to such actions as may be required to give effect to the provisions of this paragraph 5;
- 5.3.3. pay any undisputed Charges (less any deductions made in accordance with this Agreement) which are due to the Supplier in respect of each month during which Services have been received after notification (or awareness) of the relevant Financial Distress Event into the Financial Distress Escrow Account provided that the maximum amount that shall be held in the Financial Distress Escrow Account at any time shall not exceed three (3) months rolling Charges provided that if the amount held in the Financial Distress Escrow Account at any time falls below the amount necessary to pay all amounts within the meaning of Paragraphs 5.4.1 to 5.4.3 (inclusive) falling due within a period of one (1) month, then the Authority shall be entitled to: (i) pay further undisputed Charges into the Financial Distress Escrow Account as necessary to meet the shortfall; and/or (ii) if the amounts paid in accordance with sub-paragraph (i) would be inadequate to meet that shortfall, require the Supplier to pay additional funds into the Financial Distress Escrow Account in sufficient time to allow the payments to be made on time;
- 5.3.4. require the Supplier to provide such financial information relating to the Guarantor as the Authority may reasonably require, whereupon the Supplier
-

shall provide (and shall procure the provision of) such financial information;
and

- 5.3.5. require any sums properly due to the Key Sub-contractors to be paid (without set-off or deduction) directly from the Financial Distress Escrow Account to the relevant Key Sub-contractors in accordance with paragraph 5.4, whereupon the Supplier shall provide its consent to, and carry out such other actions as may be necessary to enable such payments.

5.4. Monies paid into the Financial Distress Escrow Account by the Authority shall be held on trust by the bank where the Financial Distress Escrow Account is held and shall be paid out on the joint instructions of the Parties in the following order:

- 5.4.1. the payment in full of any Key Sub-contractors;
 - 5.4.2. the payment in full of any other Sub-contractors;
 - 5.4.3. the payment of any other liabilities of the Supplier that have a direct impact on the performance of this Agreement; and
 - 5.4.4. subject to paragraphs 5.5 and 5.6, repayment of the balance to the Supplier.
- 5.5. The Supplier shall demonstrate its compliance with paragraphs 5.4.1, 5.4.2 and 5.4.3:
- 5.5.1. by the production of valid invoices against which payments from the Financial Distress Escrow Account have been made to the relevant Sub-Contractors; or
 - 5.5.2. at the Authority's sole discretion and notified in writing to the Supplier, by the certification by the Supplier Representative that the Sub-Contractors have been paid from the Supplier's general account.
- 5.6. Subject to paragraph 5.3.3, the Parties shall instruct the bank to withhold an amount in the Financial Distress Escrow Account in respect of:
- 5.6.1. any amount invoiced by a Sub-Contractor under its Sub-Contract that is subject to a dispute between the Sub-Contractor and the Supplier until the resolution of that dispute; and
 - 5.6.2. which the Authority requires further details of the satisfaction of any relevant Sub-Contractor's invoice and/or any other liability.

6. LEVEL 3 - CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

- 6.1. If the Financial Distress Event consists of:
- 6.1.1. the Guarantor's Credit Rating dropping to or below the Level 3 Credit Rating Threshold;
 - 6.1.2. the Guarantor no longer having a Credit Rating issued by one of the Credit Rating Agencies, and/or there is further adverse decline in financial ratios against the applicable Shadow Credit Rating which will directly impact upon the Supplier's ability to deliver the Services;
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6.1.3. any of the following:

- i. adverse judgment resulting from litigation against the Guarantor with respect to financial indebtedness;
- ii. non payment in breach by the Guarantor of any financial indebtedness;
- iii. any financial indebtedness of the Guarantor becoming due as a result of an event of Default; or
- iv. the cancellation or suspension of any financial indebtedness in respect of the Guarantor otherwise than in accordance with the terms of that financial indebtedness,

which the Authority reasonably believes could directly impact on the continued performance and delivery of the Services in accordance with this Agreement; or

6.1.4. the Supplier failing to notify the Authority of a Financial Distress Event that falls within paragraph 5,

then, subject to paragraph 6.3, immediately upon notification of the Financial Distress Event (or if the Authority becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the provisions of paragraphs 4.2 to 4.6 (inclusive) and 5.3.1 to 5.6 (inclusive) shall have effect (so that such provisions shall be applicable to a Financial Distress Event under this paragraph 6.1 and shall be interpreted as such), and the Supplier shall have the obligations and the Authority shall also have the rights and remedies as set out in paragraph 6.2.

6.2. The Authority may:

- 6.2.1. require the Supplier to update the Authority as to the Supplier's or the Guarantor's financial standing, whereupon the Supplier shall procure such information as the Authority may reasonably require and ensure that its chief financial officer provides an update on a monthly basis;
- 6.2.2. require the Supplier to provide the Authority with a draft Financial Distress Service Continuity Plan setting out how the Supplier will ensure the continuity of the provision of the Services in the event that the Supplier (or the Guarantor or a Key Sub-contractor (as appropriate)) becomes subject to the occurrence of an Insolvency Event; and
- 6.2.3. instruct the bank where the Financial Distress Escrow Account is held to retain in that Financial Distress Escrow Account for the benefit of the Authority such part of the Charges as the Authority shall specify up to a maximum amount of three (3) months rolling Charges for up to six (6) consecutive months after notification (or awareness) of the relevant Financial Distress Event.

6.3. The Authority shall not exercise its right under paragraph 6.2.3 without first:

- 6.3.1. notifying the Supplier in writing of its intention to do so; and
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- 6.3.2. where requested by the Supplier within three (3) Working Days of the date of the Authority's notification under paragraph 6.3.1, meeting with and considering any representations made by the Supplier.

7. TERMINATION RIGHTS

- 7.1. The Authority shall be entitled to terminate this Agreement under clause 34.1(b) (Termination for Cause by the Authority) if:
- 7.1.1. the Supplier fails to notify the Authority of a Financial Distress Event under paragraphs 5 or 6 in accordance with paragraph 3.3; and/or
 - 7.1.2. the Parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraphs 4.2 to 4.4;
 - 7.1.3. the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraphs 4.5.3 and/or 10.2.4;
 - 7.1.4. the Supplier fails to terminate the Key Sub-contract in accordance with paragraph 10.4; and/or
 - 7.1.5. the Supplier fails to establish the Financial Distress Escrow Account and/or otherwise comply with its obligations in accordance with paragraph 5 or 6.

8. PRIMACY OF CREDIT RATINGS

- 8.1. Without prejudice to the Supplier's obligations and the Authority's rights and remedies under paragraphs 4, 5, 6 or 10 if, following the occurrence of a Financial Distress Event pursuant to paragraphs 4.1.2 to 4.1.3, 5.1.2, 5.1.3, 6.1.2 or 6.1.3 (or a Sub-Contractor Financial Distress Event pursuant to paragraphs 10.1.2 to 10.1.4 the Credit Rating Agencies review and report subsequently that the Credit Ratings do not drop below the relevant Credit Rating Threshold, then as applicable:
- 8.1.1. the Supplier shall be relieved automatically of its obligations under paragraphs 4.2 to **Error! Reference source not found.** and/or 10.2;
 - 8.1.2. the Supplier may:
 - i. request that the Authority pay the Charges direct to the Supplier and give its consent to the closure of the Financial Distress Escrow Account; and
 - ii. withdraw any sums standing to the credit of that account;
 - 8.1.3. the Authority shall not be entitled to require the Supplier to provide financial information in accordance with paragraphs 5.3.4, 6.2.1 or 10.2.5;
 - 8.1.4. the Authority shall not be entitled to require the payment of Key Sub-contractors in accordance with paragraphs 5.3.5 and 5.4; and/or
-

- 8.1.5. the Supplier may request that the Authority pay the Charges direct to the Supplier and release any monies contained in the Financial Distress Escrow Account in accordance with paragraph 5.4.

9. CONSEQUENCES OF AN IMPROVEMENT IN FINANCIAL DISTRESS

- 9.1. Following the occurrence of a Financial Distress Event pursuant to paragraphs 5.1.1 or 5.1.2, then as applicable:
- 9.2. if the Supplier's or the Guarantor's (as appropriate) Credit Rating subsequently rises to the Level 2 Credit Rating Threshold; and/or
- 9.3. the relevant Key Sub-contractor withdraws its claim that the Supplier has not satisfied any material sums properly due and invoiced or the Supplier demonstrates to the Authority's reasonable satisfaction that there is a valid reason for non-payment,

then, subject to any subsequent Financial Distress Event, the Supplier may:

- i) request that the Authority pay the Charges direct to the Supplier and give its consent to the closure of the Financial Distress Escrow Account; and
- ii) withdraw any sums standing to the credit of that account.

10. SUB-CONTRACTOR FINANCIAL DISTRESS

10.1. In the event of:

10.1.1. either of a Key Sub-contractor's Credit Ratings or Shadow Credit Rating dropping to the Sub-Contractor Credit Rating Threshold shown in ANNEX 2 of this Schedule 7.4;

10.1.2. a Key Sub-contractor issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;

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

10.1.4. any of the following:

- i. commencement of any litigation against the Key Sub-contractor with respect to financial indebtedness or obligation under a service Agreement;
 - ii. non-payment by the Key Sub-contractor of any financial indebtedness;
 - iii. any financial indebtedness of the Key Sub-contractor becoming due as a result of an event of Default; or
 - iv. the cancellation or suspension of any financial indebtedness in respect of the Key Sub-contractor,
-

which the Authority reasonably believes could directly impact on the continued performance and delivery of the Services in accordance with this Agreement,

then immediately upon notification of the Sub-Contractor Financial Distress Event (or if the Authority becomes aware of the Sub-Contractor Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Authority shall have the rights and remedies set out in paragraph 10.2.

10.2. The Supplier shall (and shall procure that the relevant Key Sub-contractor shall):

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

10.2.2. where the Authority reasonably believes (taking into account the discussions and any Supplier and Key Sub-contractor representations made under paragraph 10.2.1) that the Sub-Contractor Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement, submit to the Authority for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Sub-Contractor Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing), which shall be reviewed and approved in accordance with the provisions of paragraphs 4.3 and 4.4;

10.2.3. review and update the Financial Distress Service Continuity Plan in accordance with paragraphs 4.5.1 and 4.5.2;

10.2.4. comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan); and

10.2.5. provide such financial information relating to the Key Sub-contractor as the Authority may reasonably require.

10.3. Where the Supplier reasonably believes that the relevant Sub-Contractor Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and the Parties may agree that the Supplier shall be relieved of its obligations under paragraphs 10.2.3 and 10.2.4.

10.4. If:

10.4.1. the parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph 10.2.2; or

- 10.4.2.if the Key Sub-contractor fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph10.2.4,
- 10.4.3.then the Supplier shall, within 90 days of the Authority's request, terminate and replace the Key Sub-contractor (at the Supplier's sole cost and expense and without any liability to the Authority)
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ANNEX 1

RATING AGENCIES

Standard and Poor

Moody's

Fitch

ANNEX 2
CREDIT RATING THRESHOLDS

	Guarantor
Level 1 Credit Rating Threshold	
Standard and Poor/Fitch	BBB-
Moody's	Baa3
Shadow Credit Rating	BBB (but with the consideration of additional market intelligence described in ANNEX 3)
Level 2 Credit Rating Threshold	
Standard and Poor/Fitch	BB
Moody's	Ba2
Shadow Credit Rating	BB
Level 3 Credit Rating Threshold	
Standard and Poor/Fitch	CCC+
Moody's	Caa1
Shadow Credit Rating (ratio)	B (but with the consideration of additional market intelligence described in ANNEX 3)

Key Sub-contractor Credit Rating Threshold	
Standard and Poor/Fitch	BB
Moody's	Ba2
Shadow Credit Rating	BB

ANNEX 3
SHADOW CREDIT RATING ASSESSMENT

The Guarantor's (or Key Sub-contractor's)'s most recently published consolidated financial statements (most recently published financial statements in the case of Key Sub-contractors) should be used to perform the shadow credit rating assessment.

Ratio	Definition	Last Year of Audited Accounts	Prior Year	Prior Year -1
EBIT interest coverage	Earnings from continuing operations* before interest and taxes (Gross interest incurred before subtracting (1) capitalized interest and (2) interest income)			
EBITDA interest coverage	Earnings from continuing operations* before interest, taxes, depreciation, and amortization Gross interest incurred before subtracting (1) capitalized interest and (2) interest income			

Ratio	Definition	Last Year of Audited Accounts	Prior Year	Prior Year -1
Funds from operations/total debt	Net income from continuing operations plus depreciation, amortisation, deferred income taxes, and other noncash items			
	Long-term debt** plus current maturities, commercial paper, and other short-term borrowings			
Free operating cash flow/total debt	Funds from operations minus capital expenditures, minus (plus) the increase (decrease) in working capital (excluding changes in cash, marketable securities, and short-term debt)			
	Long-term debt** plus current maturities, commercial paper, and other short-term borrowings			

Ratio	Definition	Last Year of Audited Accounts	Prior Year	Prior Year -1
Return on capital	EBIT			
	(Average of beginning of year and end of year capital, including short-term debt, current maturities, long-term debt**, non-current deferred taxes, and equity)			
Operating income/sales	(Sales minus cost of goods manufactured (before depreciation and amortization), selling, general and administrative, and research and development costs)			
	Sales			
Long-term debt/capital	Long-term debt**			
	Long-term debt + shareholders' equity (including preferred stock) plus minority interest			

Ratio	Definition	Last Year of Audited Accounts	Prior Year	Prior Year -1
Total debt/capital	Long-term debt** plus current maturities, commercial paper, and other short-term borrowings			
	Long-term debt plus current maturities, commercial paper, and other short-term borrowings+ shareholders' equity (including preferred stock) plus minority interest			

*Including interest income and equity earnings; excluding nonrecurring items.

**Including amount for operating lease debt equivalent.

The Guarantor's (or Key Sub-contractor's) most recently published consolidated financial statements (most recently published financial statements in the case of Key Sub-contractors) should be used to perform the shadow credit rating assessment.

In order to convert product of the above ratios into a shadow credit rating assessment, the following mapping should be applied:

	AAA	AA	A	BBB	BB	B	CCC	<u>Exceptions</u>
EBIT / Interest	Above 15	15-7.5	7.49-4.5	4.49-2.5	2.49-1.5	1.49-0.5	Below 0.5	if Interest < 0 then AAA
EBITDA / interest coverage	Above 20	20-10	9.99-7.5	7.49-5	4.99-2.5	2.49-1.5	Below 1.5	if Interest < 0 then AAA
Funds from operations / total debt (%)	Above 65%	65%-45%	44.99%-35%	34.99%-25%	24.99%-15%	14.99%-5%	Below 5%	If Debt = 0 then AAA
Free operations cash flow / total debt (%)	Above 30%	30%-20%	19.99%-10%	9.99%-5%	4.99%-0%	-0.01%--6%	Below -6%	If Debt = 0 then AAA
Return on capital (%)	Above 25%	25%-20%	19.99%-15%	14.99%-12.5%	12.49%-7.5%	7.49%-3%	Below 3%	n/a
Operating income / sales (%)	Above 25%	25%-20%	19.99%-15%	14.99%-10%	9.99%-7.5%	7.49%-5%	Below 5%	n/a
Long term debt / capital (%)	Below 15%	15%-29.9%	30%-39.9%	40%-49.9%	50%-59.9%	60%-69.9%	Above 70%	n/a
Total debt / capital (%)	Below 35%	35%-44.9%	45%-49.9%	50%-54.9%	55%-64.9%	65%-74.9%	Above 75%	n/a

Each of the individual ratio assessments should then be allocated a ratio score in accordance with table 1.1.

Table 1.1

Ratio Score	Shadow Rating
7	AAA
6	AA
5	A
4	BBB
3	BB
2	B
1	CCC

A mean average ratio score should then be calculated and then reapplied to table 1.1 to determine the overall shadow credit rating. If in the Authority's opinion significant one off item(s) are influencing the Shadow Credit Rating, Assessment, the Authority (as confirmed in writing) may elect to revise the Shadow Credit Rating by performing the Shadow Credit Rating Assessment as set out in this Annex 3 but using previously published financial statements.

In determining the financial health of a company it is necessary to supplement such ratio analysis with assessments of additional market intelligence such as but not limited to :

- Failure to meet regulation 23 of the Public Contracts Regulations 2006
 - Accounts qualified on going concern basis (parent or supplier)
 - Administration, receivership or liquidation
 - Ongoing financial restructuring issues
 - Evidence of insolvent trading
 - Qualified accounts
 - Material issues raised in press
 - Regulatory body investigations
 - Profit warnings and trading updates
 - Recent management changes
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MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 7.5

FINANCIAL REPORTS AND AUDIT RIGHTS

Financial Reports and Audit Rights

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Annual Contract Report”	the annual contract report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
“Audit Agents”	(a) the Authority’s internal and external auditors; (b) the Authority’s statutory or regulatory auditors; (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; (d) HM Treasury or the Cabinet Office; (e) any party formally appointed by the Authority to carry out audit or similar review functions; and (f) successors or assignees of any of the above;
“Contract Amendment Report”	the contract amendment report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
“Final Reconciliation Report”;	the final reconciliation report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
“Financial Model”	the Contract Inception Report, the latest Quarterly Contract Report, the latest Annual Contract Report or the latest Contract Amendment Report, whichever has been most recently approved by the Authority in accordance with Paragraph 2 of Part B;
“Financial Reports”	the Contract Inception Report and the reports listed in the table in Paragraph 1.1 of Part B;
“Financial Representative”	a reasonably skilled and experienced member of the Supplier’s staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports;
“Financial Transparency	has the meaning given in Paragraph 1 of Part A;

Objectives”

“Material Change”

a Change which:

- (a) materially changes the profile of the Charges;
or
- (b) varies the total annual Charges payable during the Term (as forecast in the latest Financial Model) by:
 - (i) 5% or more; or
 - (ii) £250k or more.

“Open Book Data”

complete and accurate financial and non-financial information which is sufficient to enable the Authority to benchmark (Charges and/or Costs for the Services in accordance with Schedule 7.3) and verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:

- (a) the Supplier’s Costs broken down against each Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware (making clear whether the Assets are Exclusive Assets or Non-Exclusive Assets) and Software (including volumetric data where licences are included);
 - (b) operating expenditure relating to the provision of the Services including an analysis showing:
 - (i) the unit costs and quantity of 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
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grade;

(iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin; and

(iv) Reimbursable Expenses;

(c) Overhead, including the calculation and content;

(d) all interest, expenses and any other third party financing costs incurred directly in relation to the provision of the Services;

(e) the Supplier Profit achieved over the Term 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, Allowable Assumptions and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency (aligned to Schedule 7.1 Annex 4); and

(h) the actual Costs profile for each Service Measurement Period.

PART A

Financial Transparency Objectives and Open Book Data

1 FINANCIAL TRANSPARENCY OBJECTIVES

The Supplier acknowledges that the provisions of this Schedule are designed (inter alia) to facilitate, and the Supplier shall co-operate with the Authority in order to achieve, the following objectives:

Understanding the Charges

- (a) for the Authority to understand any payment sought from it by the Supplier including an analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Personnel in providing the Services and the Supplier Profit Margin;
- (b) for both Parties to be able to understand the Financial Model and Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;
- (c) to facilitate the use of Guaranteed Maximum Price with Target Cost pricing mechanisms (where relevant as referred to in Schedule 7.1 (*Charges and Invoicing*));

Agreeing the impact of Change

- (d) for both Parties to agree the quantitative impact of any Changes that affect on-going costs and to identify how these could be mitigated and/or reflected in the Supplier's Charges;
- (e) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

Continuous improvement

- (f) for the Parties to challenge each other with ideas for efficiency and improvements; and
- (g) to enable the Authority to demonstrate that it is achieving value for money for the tax payer relative to current market prices,

(together the "Financial Transparency Objectives").

2 OPEN BOOK DATA

- 2.1 The Supplier acknowledges the importance to the Authority of the Financial Transparency Objectives and the Authority's need for complete transparency in the way in which the Charges are calculated.
 - 2.2 During the Term, and for a period of 7 years following the end of the Term, the Supplier shall:
 - (a) maintain and retain the Open Book Data; and
 - (b) disclose and allow the Authority and/or the Audit Agents access to the Open Book Data.
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PART B
Financial Reports

1 PROVISION OF THE FINANCIAL REPORTS

1.1 The Supplier shall provide:

- (A) the Contract Inception Report before the Effective Date which will be the formally submitted ITT Financial Model as agreed by the Authority; and
- (B) during the Term the following financial reports to the Authority, in the frequency specified below:

Financial Report	When to be provided
Contract Amendment Report	Within 1 month of a Material Change being agreed between the Supplier and the Authority
Quarterly Contract Report	Within 1 month of the end of each Quarter
Annual Contract Report	Within 1 month of the end of the Contract Year to which that report relates
Final Reconciliation Report	Within 6 months after the end of the Term

1.2 The Supplier shall provide to the Authority the Financial Reports in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Authority to the Supplier as part of the ITT before the Effective Date for the purposes of this Agreement. The Authority shall be entitled to modify the template for any Financial Report by giving written notice to the Supplier, including a copy of the updated template.

1.3 A copy of each Financial Report shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, in accordance with paragraph 2.2 of this Schedule 7.5, the Authority's copy of the relevant Financial Report shall be authoritative.

1.4 Each Financial Report shall:

- (a) be completed by the Supplier using reasonable skill and care;
 - (b) incorporate and use the same defined terms as are used in this Agreement;
 - (c) incorporate all Open Book Data
 - (d) quote all monetary values in pounds sterling;
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- (e) quote all monetary values as exclusive of any VAT;
- (f) quote all Costs and Charges based on current prices; and
- (g) include the asset register updated to the period under review.

1.5 Each of the Financial Reports set out in Paragraph 1.1 (b) to this schedule 7.5 Part B shall be certified (in accordance with Schedule 7.1 Annex 3A) by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Financial Report), acting with express authority, as:

- (a) being accurate and not misleading;
- (b) having been prepared in conformity with generally accepted accounting principles within the United Kingdom;
- (c) being a true and fair reflection of the information included within the Supplier's management and statutory accounts;
- (d) compliant with the requirements of Paragraph 1.6.
- (e) reflecting actual costs and revenues for elapsed Service Management Periods from the Effective Date and updated future forecasts (as required);
- (f) updating the actual incurred risk and Allowable Assumptions;
- (g) being capable of audit to source data; and
- (h) reflecting the updated Supplier Anticipated Contract Life Profit Margin.

1.6 The Supplier shall:

- (a) prepare each Financial Report using the same methodology as that used for the Contract Inception Report;
- (b) ensure that each Financial Report is a true and fair reflection of the Costs, Open Book Data and Supplier Profit Margin forecast by the Supplier;
- (c) ensure that the Final Reconciliation Report is a true and fair reflection of the Costs and Open Book Data; and
- (d) not have any other internal financial model in relation to the Services inconsistent with the Financial Model.

1.7 During the Term, and for a period of 18 months following the end of the Term, the Supplier shall at no additional cost to the Authority make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Authority may have on any

of the Financial Reports and/or Open Book Data.

1.8 If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:

- (a) the Costs incurred (or those forecast to be incurred) by the Supplier; and/or
- (b) the forecast Charges for the remainder of the Term,

the Supplier shall, as soon as practicable, notify the Authority in writing of the event in question detailing the actual or anticipated effect. For the avoidance of doubt, notifications provided in accordance with this Paragraph 1.8 shall not have the effect of amending any provisions of this Agreement.

2 FINANCIAL MODEL

2.1 Following the delivery by the Supplier of each Quarterly Contract Report, Annual Contract Report and any Contract Amendment Report:

- (a) the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;
- (b) the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant Financial Report and the Contract Inception Report or immediately preceding Quarterly Contract Report, Annual Contract Report or Contract Amendment Report (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of the Authority; and
- (c) the Authority shall either within 10 Working Days of the meeting referred to in Paragraph 2.1(a) notify the Supplier that:
 - (i) the relevant Financial Report contains errors or omissions or that further explanations or supporting information is required, in which event the Supplier shall make any necessary modifications to the Financial Report and/or supply the Authority with such supporting evidence as is required to address the Authority's concerns within 10 Working Days of such notification and the Authority shall following receipt of such amended Financial Report and/or supporting information, approve or reject such Financial Report; or
 - (ii) the Authority has approved the relevant Financial Report.

2.2 Following approval by the Authority of the relevant Financial Report in accordance with Paragraph 2.1(c), that version shall become, with effect from the date of such approval, the current approved version of the

Financial Model for the purposes of this Agreement, a version of which shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's governed copy (being formally submitted by the Supplier on a quarterly basis as set out in Section 1 of Part B of this schedule 7.5 and Section 5 of Schedule 8.1 (Governance)) of the relevant Financial Report shall be authoritative.

- 2.3 If the Parties are unable to reach agreement on any Financial Report within 30 Working Days of its receipt by the Authority, the matter shall be referred for determination in accordance with Schedule 8.3 (Dispute Resolution Procedure).
- 2.4 Where the Supplier fails to deliver any Financial Report in accordance with Part B, paragraph 1.1 of this schedule 7.5 (or fails to deliver Key Sub-contractor information pursuant to Schedule 7.5, Part B paragraphs 4.1 to 4.3), the Authority will at its absolute discretion have the right to invoke an Audit to satisfy an Authority request or establish the data required for and to complete the Financial Report. The costs of such Audit shall be borne by the Supplier.

3 DISCUSSION OF the FINAL RECONCILIATION REPORT

- 3.1 Following the delivery by the Supplier of the Final Reconciliation Report, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

4 KEY SUB-CONTRACTORS

- 4.1 The Supplier shall, if requested by the Authority, provide (or procure the provision of) a report or reports including the level of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Key Sub-contractors.
- 4.2 Without prejudice to Paragraph 2.1 of Part C, the Supplier shall:
- (a) be responsible for auditing the financial models/reports of its Key Sub-contractors and for any associated costs and expenses incurred or forecast to be incurred; and
 - (b) on written request by the Authority, provide the Authority or procure that the Authority is provided with:
 - (i) full copies of audit reports for the Key Sub-contractors. The Authority shall be entitled to rely on such audit reports; and
 - (ii) further explanation of, and supporting information in relation to, any audit reports provided.

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4.3 The Supplier shall, if requested by the Authority, provide copies of Sub-contracts with Key Sub-contractors and financial models relating to such Sub-contracts.

PART C
Audit Rights

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“ISAE3402”	means the International Standard on Assurance Engagements no. 3402, Assurance Reports on Controls at a Services Organization, issued in December 2009 by the International Auditing and Assurance Standards Board, part of the International Federation of Accountants;
“Type 2 Report”	has the meaning given in ISAE 3402; and
“Accounting Year”	Means the 12 month period from 1 April to 31 March;

2 AUDIT RIGHTS

- 2.1 The Authority, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of 18 months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier’s obligations under this Agreement, including for the following purposes:
- (a) to verify the integrity and content of any Financial Report;
 - (b) to verify the accuracy of the Charges and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges and payments);
 - (c) to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
 - (d) to verify the Certificate of Costs and/or the Open Book Data;
 - (e) to verify the Supplier’s and each Key Sub-contractor’s compliance with this Agreement and applicable Law;
 - (f) to identify or investigate actual or suspected fraud, 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;
 - (g) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Key Sub-contractors or their ability to perform the Services;
 - (h) to 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;

- (i) to review any books of account (including contents of electronic accounting systems) and the internal contract management accounts kept by the Supplier in connection with this Agreement;
- (j) to 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;
- (k) to 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;
- (l) to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
- (m) to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
- (n) to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
- (o) to review the accuracy and completeness of the Registers;
- (p) to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
- (q) to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
- (r) to review the Supplier's compliance with the Standards;
- (s) to 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
- (t) to review the integrity, confidentiality and security of the Authority Data.

2.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Agreement, the Authority may not conduct an Audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.

- 2.3 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.

3 CONDUCT OF AUDITS

- 3.1 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 3.2 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:
- (a) all information requested by the Authority within the permitted scope of the audit;
 - (b) reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - (c) access to the Supplier System; and
 - (d) access to Supplier Personnel.
- 3.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.
- 3.4 The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an audit.
- 3.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 3, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

4 USE OF SUPPLIER'S INTERNAL AUDIT TEAM

- 4.1 As an alternative to the Authority's right pursuant to Paragraph 2.1 to exercise an audit either itself or through its Audit Agents, the Authority may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Paragraph 2.1.
- 4.2 Following the receipt of a request from the Authority under Paragraph 4.1
-

above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:

- (a) the resultant audit reports; and
- (b) all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

5 RESPONSE TO AUDITS

5.1 If an audit undertaken pursuant to Paragraphs 2 or 4 identifies that:

- (a) the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
- (b) there is an error in a Financial Report, the Supplier shall promptly rectify the error;
- (c) the Authority has overpaid any Charges, the Supplier shall pay to the Authority:
 - (i) the amount overpaid;
 - (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and
 - (iii) the reasonable costs incurred by the Authority in undertaking the audit,

the Authority may exercise its right to deduct such amount from the Charges if it prefers; and

- (d) the Authority has underpaid any Charges, the Authority shall pay to the Supplier, within 20 Working Days, the amount of the underpayment less the cost of audit incurred by the Authority if this was due to a Default by the Supplier. In these circumstances, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority.
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6 Not Used.

6.1 Not used.

6.2 Not used

6.3 Not used

6.4 Not used

6.5 Not used

7 EXCEPTIONAL AUDITS

7.1 The Supplier shall permit the Authority and/or its Audit Agents access to conduct an immediate audit (an "Exceptional Audit") of the Supplier in any of the following circumstances:

actual or suspected impropriety or Fraud;

there are reasonable grounds to suspect that

- (i) the Supplier is in Default under the Contract;
 - (ii) the Guarantor may be in default of the Guarantee;
 - (iii) the Supplier is in financial distress or at risk of insolvency or bankruptcy, or any fact, circumstance or matter which is reasonably likely to cause the Supplier financial distress and result in a risk of the Supplier becoming insolvent or bankrupt has occurred; or
 - (iv) a Security Breach has occurred under the Contract,
- (each an "Exceptional Circumstance").

7.2 If the Authority notifies the Supplier of an Exceptional Circumstance and that it wishes to conduct an Exceptional Audit, the Supplier shall provide access in accordance with Clause 2.2 as soon as reasonably practicable after such request and in any event within forty eight (48) hours.

8 AUDIT COSTS

8.1 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under Paragraphs 2, 5 and 7, unless an audit identifies a material Default by the Supplier or the audit is invoked as a result of failure by the Supplier to provide Financial Reports or Key Sub-contractor information in which case the Supplier shall reimburse:

- (a) the Authority for all the Authority's identifiable, reasonable costs and expenses properly incurred in the course of the audit; and
 - (b) where the Authority, a Regulatory Body, or the Comptroller and Auditor General appoint another Contracting Body to conduct an audit under this Clause, the Authority shall be able to recover on demand from the Supplier
-

the identifiable, reasonable and properly incurred costs and expenses of the relevant Contracting Body.

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 7.6

ANTICIPATED SAVINGS

NOT USED

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8.1

GOVERNANCE



0

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Board Member”	the initial persons appointed by the Authority and Supplier to the Boards as set out in Annex 1 and any replacements from time to time agreed by the Parties in accordance with Paragraph 3.3;
“Boards”	the Service Performance Board, Service Management Board, Programme Board, any other boards established from time to time and “Board” shall mean any of them;
“Programme Board”	the body described in Paragraph 7 and held every six SMPs;
“Project Managers”	the individuals appointed as such by the Authority and the Supplier in accordance with Paragraph 2;
“Service Performance Board”	the body described in Paragraph 5 and held every SMP;
“Service Management Board”	the body described in Paragraph 6 and held every three SMPs;
“Service Measurement Period”	has the meaning given in Schedule 1 <i>Definitions</i> ; and
“SMP”	refers to Service Measurement Period.

2 MANAGEMENT OF THE SERVICES

- 2.1 The Supplier and the Authority shall each appoint a Project Manager for the purposes of this Agreement through whom the Services shall be managed on a day-to-day basis.
- 2.2 Both Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Agreement can be fully realised.

3 BOARDS

1. Establishment and structure of the Boards

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- 3.1 The Boards shall be established by the Authority for the purposes of this Agreement on which both the Supplier and the Authority shall be represented.
- 3.2 In relation to each Board, the:
- a) Authority Board Members;
 - b) Supplier Board Members;

- c) frequency that the Board shall meet (unless otherwise agreed between the Parties);
 - d) location of the Board's meetings; and
 - e) planned start date by which the Board shall be established,shall be as set out in Annex 1.
- 3.3 In the event that either Party wishes to replace any of its appointed Board Members, that Party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority Board Member has at all times a counterpart Supplier Board Member of equivalent seniority and expertise.

4. BOARD MEETINGS

4

- 4.1 Each Party shall ensure that its Board Members shall make all reasonable efforts to attend Board meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Board meeting, that person shall use all reasonable endeavours to ensure that:
 - a) a delegate attends the relevant Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and
 - b) that he/she is debriefed by such delegate after the Board Meeting.
- 4.2 A chairperson shall be appointed by the Authority for each Board as identified in Annex 1. The chairperson shall be responsible for:
 - a) scheduling Board meetings;
 - b) setting the agenda for Board meetings and circulating to all attendees in advance of such meeting;
 - c) chairing the Board meetings;
 - d) monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings;
 - e) ensuring that minutes for Board meetings are recorded and disseminated electronically to the appropriate persons and to all Board meeting participants within seven Working Days after the Board meeting; and
 - f) facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.
- 4.3 Board meetings shall be quorate as long as at least two representatives from each Party are present.
- 4.4 The Parties shall ensure, as far as reasonably practicable, that all Boards shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

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5 ROLE OF THE SERVICE PERFORMANCE BOARD

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- 5.1 The Service Performance Board shall be responsible for the executive management of the Services and shall include the Performance Review Meeting as set out in Schedule 2.2 *Performance Measures*. Additionally, it shall;

- a) review the Performance Monitoring Report each SMP, identifying any Performance Failures and agreeing any related Service Points and Service Credits, as set out in Schedule 2.2 (*Performance Measures*);
- b) be accountable to the Service Management Board for a comprehensive quarterly oversight of the Services and for the senior management of the operational relationship between the Parties;
- c) report to the Service Management Board on significant issues requiring decision and resolution by the Service Management Board and on progress against the high level Implementation Plan;
- d) receive reports from the Project Managers on matters such as issues relating to delivery of existing Services and performance against Performance Indicators, progress against the Implementation Plan and possible future developments;
- e) review and report to the Service Management Board on service management, co-ordination of individual projects and any integration issues;
- f) deal with the prioritisation of resources and the appointment of Project Managers on behalf of the Parties;
- g) consider and resolve Disputes (including Disputes as to the cause of a Delay or the performance of the Services) in the first instance and if necessary escalate the Dispute to the Service Management Board;
- h) develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same;
- i) review and agree the Supplier's Sustainable Development Policy Statement and Sustainable Development Plan, as set out in Schedule 4.5 (*Sustainable Development Requirements*);
- j) review and agree the Diversity and Equality Delivery Plan, as set out in Schedule 4.6 (*Diversity and Equality*);
- k) review and agree the Supplier's Apprenticeships and Skills Report, as set out in Schedule 4.7 (*Apprenticeships and Skills*); and
- l) any further activities as outlined in Annex 1.

6 ROLE OF THE SERVICE MANAGEMENT BOARD

6

- 6.1 The Service Management Board shall be responsible for the executive management of the Services and shall:
- a) review the Quarterly Contract Report and Achieved Profit Margin, as set out in Schedule 7.1 (*Charges and Invoicing*);
 - b) be accountable to the Programme Board for comprehensive oversight of the Services and for the senior management of the operational relationship between the Parties;
 - c) report to the Programme Board on significant issues requiring decision and resolution by the Programme Board and on progress against the high level Implementation Plan;
 - d) consider and resolve Disputes (including Disputes as to the cause of a Delay or the performance of the Services) in the first instance and if necessary escalate the Dispute to the Programme Board;
 - e) develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same;
 - f) monitor the alignment of the Authority and Supplier objectives;
 - g) serve as an executive escalation forum to resolve issues which have not been resolved at the Service Performance Board;
 - h) carry out activities in relation to audit reviews carried out in accordance with this Agreement as appropriate; and
 - i) any further activities as outlined in Annex 1.

7 ROLE OF THE PROGRAMME BOARD

7

7.1 The Programme Board shall:

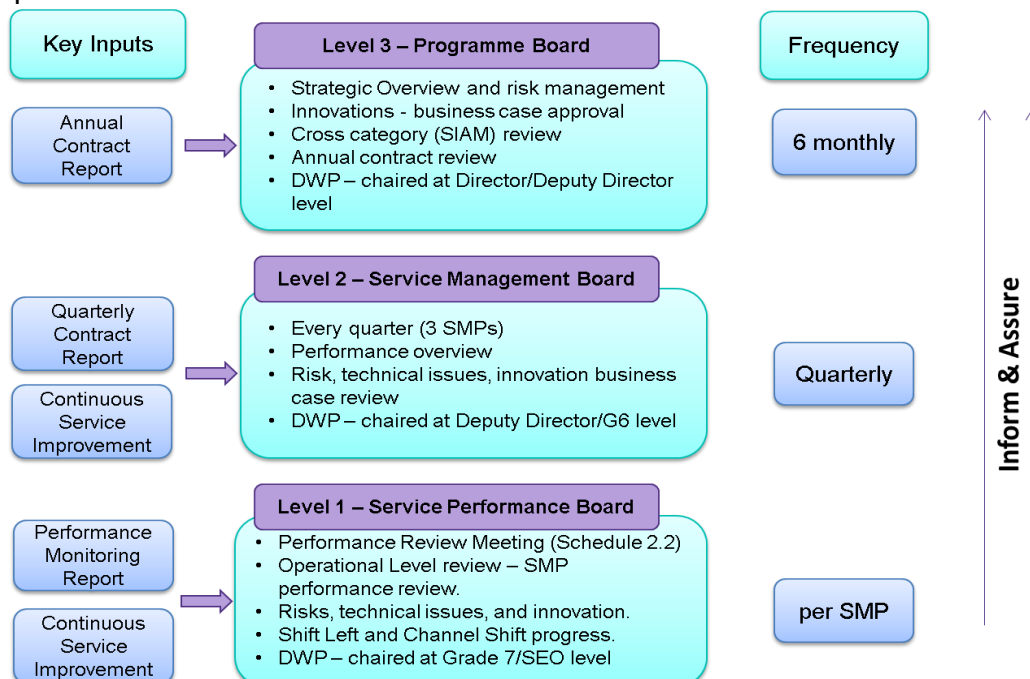
- a) provide senior level guidance, leadership and strategy for the overall delivery of the Services across the Authority's IT estate;
- b) be the point of escalation from the Service Management Board and the Service Performance Board; and
- c) carry out the specific obligations attributed to it in Paragraph 6.2

7.2 The Programme Board shall:

- a) ensure that this Agreement is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by the Authority and the commercial benefit derived by the Supplier;
- b) receive and review reports from the Service Management Board and review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving, in particular value for money;
- c) determine business strategy and provide guidance on policy matters which may impact on the implementation of the Services or on any Optional Services;
- d) authorise the commissioning and initiation of, and assess opportunities for, Optional Services; and
- e) act as the governance forum for the Annual Contract Report, as detailed in Schedule 7.5 (*Financial Reports and Audit Rights*).

GOVERNANCE STRUCTURE DIAGRAM

7.3 The diagram below is a high level overview of how the governance structure will operate as outlined in this Schedule 8.1:



CONTRACT MANAGEMENT MECHANISMS

- 7.4 Both Parties shall pro-actively manage risks attributed to them under the terms of this Agreement.
- 7.5 The Supplier shall develop, operate, maintain and amend, as agreed with the Authority, processes for:
 - a) the identification and management of risks;
 - b) the identification and management of issues; and
 - c) monitoring and controlling project plans.
- 7.6 The Risk Register shall be updated by the Supplier and submitted for review by the Service Performance Board.
- 7.7 During the Term there may be a requirement to form additional governance boards, for example cross IT supplier boards, or working groups that feed into the Boards outlined within this Schedule 8.1.
- 7.8 The Supplier shall ensure that all reasonable efforts are made to attend any additional Boards or working groups.
- 7.9 The Parties shall ensure, as far as reasonably practicable, that all additional Boards shall as soon as reasonably practicable resolve all issues and achieve all objectives placed before them.

ANNUAL REVIEW

- 7.10 An annual review meeting shall be held throughout the Term and will take place at the Programme Board.

ANNEX 1

Service Performance Board Representation and Structure

Authority members of the Service	Chair: Grade 7 / Senior Executive Officer level
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Performance Board:	Representatives: End User Computing and Support Commercial Directorate Additional representatives as required.
Supplier members of the Service Performance Board	[To Be Agreed]
Start date for the Service Performance Board meetings	[To Be Agreed]
Frequency of the Service Performance Board meetings	Per SMP (Service Measurement Period)
Location of the Service Performance Board meetings	Face to Face: DWP Birchwood Park, Birchwood or DWP Quarry House, Leeds. Other locations by exception and agreement.
Key reports and Management Information:	Performance Monitoring Reports Balanced Scorecard Report

Key Activities of the Service Performance Board

The Service Performance Board will:

- a) manage day-to-day overall delivery of services in relation to this Agreement including, wherever possible, identification and resolution of any operational issues as well as developing the service portfolio to reflect changing business requirements;
- b) monitor Schedule 2.1 (Services Description) obligation adherence and take necessary actions where appropriate to ensure they continue to be met;
- c) resolve wherever possible all major Supplier and Authority performance issues and service issues relating to this Agreement, and if these cannot be resolved, escalate to the Service Management Board;
- d) ensure continuous provision of the Services in accordance with this Agreement across the Authority's estate;
- e) assess and manage the impact of any approved or planned changes to the terms of this Agreement including in relation to the Services;
- f) review and resolve issues relating to charges and invoicing;
- g) monitor the overall progress of implementation and performance by the Supplier;
- h) act as an escalation point for any sub-groups governing lower level activities;
- i) resolve all escalations brought and escalate only under exceptional circumstances;
- j) identify risks relating to or arising out of the performance of the Services and allocate provisional owners for these risks;
- k) subject to the Change Control Procedure, accept or reject new risks proposed for inclusion in the Risk Register;
- l) ratify or refuse requests to close risks on the Risk Register;

- m) request reports from the Exit Manager on each Party's compliance with Schedule 8.5 (*Exit Management*), particularly in relation to the production and updating of the Exit Plan and the provision of any Termination Services; and
- n) in the event of any termination or expiry of this Agreement, manage performance by the Supplier and the Authority of their respective obligations in relation to Schedule 8.5 (*Exit Management*).

Service Management Board Representation and Structure

Authority members of the Service Management Board:	Chair: Deputy Director / Grade 6 level Representatives: End User Computing and Support Commercial Directorate Finance Business Partner Additional representatives as required.
Supplier members of the Service Performance Board:	[To Be Agreed]
Start date for the Service Performance Board meetings:	[To Be Agreed]
Frequency of the Service Performance Board meetings:	Every 3 SMPs (approximately 3 months)
Location of the Service Performance Board meetings:	Face to Face: DWP Birchwood Park, Birchwood or DWP Quarry House, Leeds. Other locations by exception and agreement.
Key reports and Management Information:	Quarterly Contract Report SMP quarterly report

Key Activities of the Service Management Board:

The Service Management Board will:

- a) provide focus and further strengthen supplier performance management;
- b) monitor potential changes to Service Levels in accordance with Schedule 2.2 (Performance Levels);
- c) review and set strategy for performance related commercial redress issues;
- d) review audit results and associated management action plans;
- e) review the outcome of any benchmarking exercise carried out in accordance with Schedule 7.3 (Benchmarking);
- f) review and consider executive sponsored improvement activities; and

- g) provide assurance to the Programme Board that risks are being effectively managed across the Services, including reporting the 'top 5' risks to the Programme Board on a regular basis.

Programme Board Representation and Structure

Authority members of the Programme Board:	Chair: Director / Deputy Director level Representatives: End User Computing and Support Commercial Directorate Finance Business Partner Additional representatives as required.
Supplier members of Programme Board:	[To Be Agreed]
Start date the Programme Board meetings:	[To Be Agreed]
Frequency of the Programme Board meetings:	Every 6 SMPs
Location of the Programme Board meetings:	Face to Face: DWP Birchwood Park, Birchwood or DWP Quarry House, Leeds. Other locations by exception and agreement.
Key reports and Management Information:	Annual Contract Report

MODEL AGREEMENT FOR SERVICES SCHEDULE

SCHEDULE 8.2

CHANGE CONTROL PROCEDURE

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Authority Change Manager”	the person appointed to that position by the Authority from time to time and notified in writing to the Supplier or, if no person is notified, the Authority Representative;
“Change Request”	a written request for a Contract Change which shall be substantially in the form of Annex 1;
“Change Communication”	any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;
“Fast-track Change”	any Contract Change which the Parties agree to expedite in accordance with Paragraph 8;
“Impact Assessment”	an assessment of a Change Request in accordance with Paragraph 5;
“Impact Assessment Estimate”	Not Used
“Receiving Party”	the Party which receives a proposed Contract Change; and
“Supplier Change Manager”	the person appointed to that position by the Supplier from time to time and notified in writing to the Authority or, if no person is notified, the Supplier Representative.

2 GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

- 2.1 This Schedule sets out the procedure for dealing with Contract Changes.
- 2.2 Operational Changes shall be processed in accordance with Paragraph 9. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.
- 2.3 The Parties shall deal with Contract Change as follows :
 - (a) either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;
 - (b) unless this Agreement otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 5 before the Contract Change can be either approved or implemented;
 - (c) the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;

- (d) the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;
 - (e) save as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2; and
 - (f) where a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.
- 2.4 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in Schedule 6.2 (*Testing Procedures*), and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify Milestones and/or a Key Milestone and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.
- 2.5 Until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2, then:
- (a) unless the Authority expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and
 - (b) any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Agreement.
- 2.6 The Supplier shall:
- (a) within 10 Working Days of the Authority's signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
 - (b) thereafter provide to the Authority such further copies of the updated Agreement as the Authority may from time to time request.

3 COSTS

3.1 Subject to Paragraph 3.3:

- (i) the costs of preparing each Change Request shall be borne by the Party making the Change Request;

3.2 Subject to Paragraph 5, the cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Schedule 7.1 (*Charges and Invoicing*). The Supplier shall be entitled to

increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.

- 3.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.

4 CHANGE REQUEST

- 4.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Annex 1 and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.
- 4.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within 10 Working Days of the date of issuing the Change Request.
- 4.3 If the Authority issues the Change Request, then subject to Paragraph 4.4 the Supplier shall provide an Impact Assessment to the Authority as soon as reasonably practical and in any event within 10 working days of the date of receiving the Change Request.
- 4.4 If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Authority and provided that sufficient information is received by the Authority to fully understand:
- (a) The nature of the request for clarification; and
 - (b) The reasonable justification for the request;

the time period to complete the Impact Assessment shall be extended by the time taken by the Authority to provide that clarification. The Authority shall respond to the request for clarification as soon as is reasonably practicable.

5 IMPACT ASSESSMENT

- 5.1 Each Impact Assessment shall be completed in good faith and shall include:
- (a) details of the proposed Contract Change including the reason for the Contract Change; and
 - (b) details of the impact of the proposed Contract Change on the Services, and the Supplier's ability to meet its other obligations under this Agreement;
 - (c) any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:
 - (i) the Services Description, the Service Levels and/or Key Performance Indicators ;

- (ii) the format of Authority Data, as set out in the Services Description;
 - (iii) the Milestones, Implementation Plan and any other timetable previously agreed by the Parties;
 - (iv) other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority's IT infrastructure;
 - (d) details of the cost of implementing the proposed Contract Change;
 - (e) details of the on-going costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
 - (f) a timetable for the implementation, together with any proposals for the testing of the Contract Change;
 - (g) details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
 - (h) such other information as the Authority may reasonably request in (or in response to) the Change Request.
- 5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Clause 23 (*Protection of Personal Data*) and Clause 24 (*Offshoring*).
- 5.3 Subject to the provisions of Paragraph 5.4, the Authority shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Impact Assessment.
- 5.4 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within 5 Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Authority within 10 Working Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this Paragraph 5.4 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.
- 5.5 The calculation of costs for the purposes of Paragraphs 5.1(d) and (e) shall:
- (a) be based on the Financial Model;
 - (b) facilitate the Financial Transparency Objectives and include Open Book Data;
 - (c) include estimated volumes of each type of resource to be employed and the applicable rate card;

- (d) include full disclosure of any assumptions underlying such Impact Assessment;
- (e) include evidence of the cost of any assets required for the Change;
- (f) include details of any new Sub-contracts necessary to accomplish the Change;
- (g) apply no more than the Anticipated Contract Life Profit Margin as detailed in the Contract Inception Report, as agreed with the Authority through pricing discussions; and
- (h) where the Supplier proposes to charge overhead and risk premiums, give full transparency and justification for the charge.

5.6 The Supplier shall not be entitled to request costs for undertaking an Impact Assessment unless it can demonstrate (by reference to the Financial Model) that those costs are materially in excess of the reasonable costs expected to be borne by the Supplier over the Term.

6 AUTHORITY'S RIGHT OF APPROVAL

6.1 Within 15 Working Days of receiving the Impact Assessment from the Supplier or within 10 Working Days of receiving the further information that it may request pursuant to Paragraph 5.4, the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:

- (a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;
- (b) in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
- (c) in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within 5 Working Days of such request. Subject to Paragraph 5.4, on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract Change within 10 Working Days.

6.2 If the Authority approves the proposed Contract Change pursuant to Paragraph 6.1 and it has not been rejected by the Supplier in accordance with Paragraph 7, then it shall inform the Supplier and the Supplier shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Authority's signature the Change Authorisation Note shall constitute (or, where the Authority has agreed to

or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Agreement.

- 6.3 If the Authority does not sign the Change Authorisation Note within 10 Working Days, then the Supplier shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within 5 Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

7 SUPPLIER'S RIGHT OF APPROVAL

Following an Impact Assessment, if:

- (a) the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:
 - (i) materially and adversely affect the risks to the health and safety of any person; and/or
 - (ii) require the Services to be performed in a way that infringes any Law; and/or
- (b) the Supplier demonstrates to the Authority's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within 5 Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraphs 4.2, 4.3 and 4.4. as appropriate.

8 FAST-TRACK CHANGES

- 8.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.

8.2 If:

- (a) the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed 4 in any 12 month period; and
- (b) both Parties agree on a case by case basis, the Contract Change can be subject to the Fast-track Change procedure,

then the Parties shall confirm to each other in writing that they shall use the process set out in Paragraphs 4, 5, 6 and 7 but with reduced timescales, such that any period of 15 Working Days is reduced to 5 Working Days, any period of 10 Working Days is reduced to 2 Working Days and any period of 5 Working Days is reduced to 1 Working Day.

9 OPERATIONAL CHANGE PROCEDURE

- 9.1 Any Operational Changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:
- (a) have an impact on the business of the Authority;
 - (b) require a change to this Agreement;
 - (c) have a direct impact on use of the Services; or
 - (d) involve the Authority in paying any additional Charges or other costs.
- 9.2 The Authority may request an Operational Change a written request for Operational Change to the Supplier Representative.
- 9.3 The request shall include the following details:
- (a) the proposed Operational Change; and
 - (b) the time-scale for completion of the Operational Change.
- 9.4 The Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.
- 9.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change as set out in the Operational Change Control procedure, and shall promptly notify the Authority when the Operational Change is completed.
- 9.6 Any changes to the Standards as set out in Schedule 2.3 shall be subject to the agreed change processes as set out in this Schedule. This includes, but is not limited to, the Service Management policies, processes and procedures which shall be subject to the Service Management operational change request process contained in the Generic Service Obligations.

10 COMMUNICATIONS

For any Change Communication to be valid under this Schedule, it must be sent to either the Authority Change Manager or the Supplier Change Manager, as applicable. The provisions of Clause 44 (*Notices*) shall apply to a Change Communication as if it were a notice.

ANNEX 1
Change Request Form

CR NO.:	TITLE:	TYPE OF CHANGE:
CONTRACT:		REQUIRED BY DATE:
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED (<i>OPTIONAL FIELD</i>):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
SUPPLIER REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT):		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

ANNEX 2
Change Authorisation Note

CR NO.:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF CHANGE:	REQUIRED BY DATE:
[KEY MILESTONE DATE: <i>[if any]</i>]		
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE BASIS):		
SIGNED ON BEHALF OF THE AUTHORITY:		SIGNED ON BEHALF OF THE SUPPLIER:
Signature:_____		Signature:_____
Name:_____		Name:_____
Position:_____		Position:_____
Date:_____		Date:_____

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8.3

DISPUTE RESOLUTION PROCEDURE

Dispute Resolution Procedure

1 DEFINITIONS

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 in Paragraph 7.2;
“Expert”	in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 to act as an expert in relation to that Dispute;
“Expert Determination”	determination by an Expert in accordance with Paragraph 6;
“Mediation Notice”	has the meaning given in Paragraph 4.2;
“Mediator”	the independent third party appointed in accordance with Paragraph 5.2 to mediate a Dispute;
“Multi-Party Dispute”	a Dispute which involves the Parties and one or more Related Third Parties;
“Multi-Party Dispute Representatives”	has the meaning given in Paragraph 9.6;
“Multi-Party Dispute Resolution Board”	has the meaning given in Paragraph 9.6;
“Related Third Party”	a party to: (a) another contract with the Authority or the Supplier which is relevant to this Agreement; or (b) a Sub-contract; and
“Supplier Request”	a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

2 DISPUTE NOTICES

2.1 If a Dispute arises then:

- (a) the Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and

- (b) if such attempts are not successful within a reasonable period, not being longer than 20 Working Days, either Party may issue to the other a Dispute Notice.

2.2 A Dispute Notice:

- (a) shall set out:
 - (i) the material particulars of the Dispute;
 - (ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
 - (iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and
- (b) may specify in accordance with the requirements of Paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority) or considers (in the case of the Supplier) that the Dispute is a Multi-Party Dispute, in which case Paragraph 2.3 shall apply.

2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to Paragraph 2.2(b), then:

- (a) if it is served by the Authority it shall be treated as a Multi-Party Procedure Initiation Notice; and
- (b) if it is served by the Supplier it shall be treated as a Supplier Request,

and in each case the provisions of Paragraph 9 shall apply.

2.4 Subject to Paragraphs 2.5 and 3.2 and so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:

- (a) first by commercial negotiation (as prescribed in Paragraph 4);
- (b) then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5); and
- (c) lastly by recourse to arbitration (as prescribed in Paragraph 7) or litigation (in accordance with Clause 46 (*Governing Law and Jurisdiction*)).

2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.

- 2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice.

3 EXPEDITED DISPUTE TIMETABLE

- 3.1 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 the Expedited Dispute Timetable within 5 Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
- (a) in Paragraph 4.2(c), 10 Working Days;
 - (b) in Paragraph 5.2, 10 Working Days;
 - (c) in Paragraph 6.2, 5 Working Days; and
 - (d) in Paragraph 7.2, 10 Working Days.
- 3.3 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.

4 COMMERCIAL NEGOTIATION

- 4.1 Following the service of a Dispute Notice, then, so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Authority and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Authority's representative and the Supplier's representative .
- 4.2 If:
- (a) either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;

- (b) 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 negotiation in accordance with this Paragraph 4; or
- (c) the Parties have not settled the Dispute in accordance with Paragraph 4.1 within 30 Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation in accordance with Paragraph 5 (a “Mediation Notice”).

5 MEDIATION

- 5.1 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 Agreement.
- 5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within 20 Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.
- 5.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both 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.
- 5.4 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 Change Control Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

6 EXPERT DETERMINATION

- 6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a matter of an IT technical, financial technical or other technical nature (as the Parties may agree) and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 or, if applicable, mediation in accordance with Paragraph 5, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.
- 6.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 10 Working Days of the relevant request made pursuant to Paragraph 6.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:

- (a) if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);
- (b) if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
- (c) if the Dispute relates to a matter of a technical nature not falling within Paragraphs 6.2(a) or (b), on the instructions of the president (or equivalent) of:
 - (i) an appropriate body agreed between the Parties; or
 - (ii) if the Parties do not reach agreement on the relevant body within 15 Working Days of the relevant request made pursuant to Paragraph 6.1, such body as may be specified by the President of the Law Society on application by either Party.

6.3 The Expert shall act on the following basis:

- (a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- (b) the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- (c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 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;
- (d) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within 20 Working Days of the Expert's determination being notified to the Parties;
- (e) the process shall be conducted in private and shall be confidential; and
- (f) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

7 **ARBITRATION**

- 7.1 Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 6, the Authority may at any time before court

proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 7.5.

- 7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have 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 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such 15 Working Day period.
- 7.3 If the Authority serves a Counter Notice, then:
- (a) if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 7.5 shall apply; or
 - (b) if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.
- 7.4 If the Authority does not serve a Counter Notice within the 15 Working Day period referred to in Paragraph 7.2, the Supplier may either commence arbitration proceedings in accordance with Paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.
- 7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 7.1 to 7.4:
- (a) the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“LCIA”) (subject to Paragraphs 7.5(e), (f) and (g));
 - (b) the arbitration shall be administered by the LCIA;
 - (c) 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 Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
 - (d) if the Parties fail to agree the appointment of the arbitrator within 10 Working 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;
 - (e) the chair of the arbitral tribunal shall be British;

- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the seat of the arbitration shall be London.

8 URGENT RELIEF

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

- (a) for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or
- (b) where compliance with Paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

9 MULTI-PARTY DISPUTES

- 9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 9 (the "**Multi-Party Dispute Resolution Procedure**").
- 9.2 If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Supplier which sets out the Authority's determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice a "**Multi-Party Procedure Initiation Notice**".
- 9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with Paragraph 7, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority.
- 9.4 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within 5 Working Days whether the Dispute is:
 - (a) a Multi-Party Dispute, in which case the Authority shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
 - (b) not a Multi-Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 8.

- 9.5 If the Authority has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.
- 9.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the “**Multi-Party Dispute Resolution Board**”) comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:
- (a) the Authority;
 - (b) the Supplier;
 - (c) each Related Third Party involved in the Multi-Party Dispute; and
 - (d) any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,
- (together “**Multi-Party Dispute Representatives**”).
- 9.7 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:
- (a) the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall endeavour to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
 - (b) the Multi-Party Dispute Resolution Board shall first meet within 10 Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within 5 Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
 - (c) in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.
- 9.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within 25 Working Days of the issue of the Multi-Party

Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:

- (a) either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case Paragraph 5 shall apply;
- (b) either Party may request that the Multi-Party Dispute is referred to an expert in which case Paragraph 6 shall apply; and/or
- (c) subject to Paragraph 9.9, Paragraph 7 shall apply to the Multi-Party Dispute,

and in each case references to the “Supplier” or the “Parties” in such provisions shall include a reference to all Related Third Parties.

- 9.9 If a Multi-Party Dispute is referred to arbitration in accordance with Paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub-Contractor, by the Supplier.

MODEL AGREEMENT FOR SERVICE DESK SCHEDULES

SCHEDULE 8.4

RECORDS PROVISION

Records Provisions

1 REPORTS

For the avoidance of doubt the Authority shall require the reports as set out in the Agreement not limited to any or all of the following reports:

- (a) delay reports;
- (b) reports relating to Testing and tests carried out under Schedule 2.4 (*Security Management*) and Schedule 8.6 (*Business Continuity and Disaster Recovery*);
- (c) reports which the Supplier is required to supply as part of the Management Information;
- (d) annual reports on the Insurances;
- (e) security reports; and
- (f) Force Majeure Event reports.

2 RECORDS

- 2.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 1 and Annex 1 (together “**Records**”):
 - (a) in accordance with the requirements of the Public Records Office (PRO) and Good Industry Practice;
 - (b) in chronological order;
 - (c) in a form that is capable of audit; and
 - (d) at its own expense.
- 2.2 The Supplier shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.
- 2.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.
- 2.4 The Supplier shall, during the Term and a period of at least 7 years following the expiry or termination of this Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.

- 2.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least 7 years after the expiry or termination of this Agreement.
- 2.6 Without prejudice to the foregoing, the Supplier shall provide the Authority:
- (a) as soon as they are available, and in any event within 60 Working Days after the end of the first 6 months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its audited interim accounts and, if applicable, of consolidated audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such 6 month period; and
 - (b) as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than the due date in accordance with applicable law for each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.

ANNEX 1

Records to be kept by the Supplier

The records to be kept by the Supplier are:

1. This Agreement, its Schedules and all amendments to such documents.
2. All other documents which this Agreement expressly requires to be prepared.
3. Records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel.
4. Notices, reports and other documentation submitted by any Expert.
5. All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and the underlying IT Environment and Supplier Equipment.
6. Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
7. All formal notices, reports or submissions made by the Supplier to the Authority Representative in connection with the provision of the Services.
8. All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.
9. Documents prepared by the Supplier in support of claims for the Charges.
10. Documents submitted by the Supplier pursuant to the Change Control Procedure.
11. Documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure.
12. Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and/or the Guarantor, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.
13. Invoices and records related to VAT sought to be recovered by the Supplier.
14. Financial records, including audited accounts of the Guarantor and the Supplier.
15. Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
16. All documents relating to the insurances to be maintained under this Agreement and any claims made in respect of them.
17. All journals and audit trail data referred to in Schedule 2.4 (*Security Management Plan*).

18. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement.

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8.5

EXIT MANAGEMENT

Exit Management

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Emergency Exit”	<p>any termination of this Agreement which is a:</p> <ul style="list-style-type: none">(a) termination of the whole or part of this Agreement in accordance with Clause 34 (<i>Termination Rights</i>), except where the period of notice given under that Clause is greater than or equal to 6 months;(b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 34 (<i>Termination Rights</i>); or(c) wrongful termination or repudiation of this Agreement by either Party;
“Exclusive Assets”	those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;
“Exit Information”	has the meaning given in Paragraph 3.1;
“Exit Information Delay Payment”	the amounts payable by the Supplier to the Authority in respect of a delay in providing Exit Information to the Authority as set out in Schedule 8.5 and as calculated in accordance with the Exit Information Delay Payment Calculation;
“Exit Information Delay Payment Calculation”	has the meaning given in Paragraph 3.1C;

“Exit Manager”	the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties' respective obligations under this Schedule;
“Net Book Value”	the net book value of the relevant 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 Authority of the same date as this Agreement;
“Non-Exclusive Assets”	those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Services but which are also used by the Supplier or Key Sub-contractor for other purposes of material value;
“Ordinary Exit”	<p>any termination of this Agreement which occurs:</p> <p>(a) pursuant to Clause 34 (<i>Termination Rights</i>) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or</p> <p>(b) as a result of the expiry of the Initial Term or any Extension Period;</p>
“Registers”	the register and configuration database referred to in Paragraphs 2.1(a) and 2.1(b);
“Replacement Supplier Service Commencement Date”	the date on which Replacement Services (whether performed by a Replacement Supplier or by the Authority) are to commence as set out in the Exit Plan (or as amended in the Exit Plan via approved Change Control Procedure during the Termination Assistance Period;

**“Request For Exit Information
Deadline Date”**

The date which falls exactly 15 Working Days after an Authority request for Exit Information.

“Transferable Assets”

those of the Exclusive Assets which are capable of legal transfer to the Authority;

“Transferable Contracts”

the Sub-contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Authority or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation; and

“Transferring Contracts”

has the meaning given in Paragraph 6.2(c).

2 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

2.1 During the Term, the Supplier shall:

- (a) create and maintain a register of all:
 - (i) Assets, detailing their:
 - (A) make, model and asset number;
 - (B) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
 - (C) Net Book Value;
 - (D) condition and physical location;
 - (E) use (including technical specifications and relevant service(s) to which it supports); and
 - (ii) Sub-contracts and other relevant agreements (including relevant

software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services which as a minimum will include; supplier name, contact and address, name of products and/or service, contract agreement number, contract start and end date, contract value, payment dates, conditions for novation, conditions for termination, IPR considerations and location of the original contract. There will be a statement of any resolved or current disputes with any third party product or service providers. The register will identify which area of the Services the information is relevant to;

- (iii) application software and IPR. There will be a register of the application software and IPR (whether Authority, Supplier, Third party and/or Specially Written Software) by category or service. The register will indicate which of these assets can be transferred from the Supplier and under what commercial conditions. The register will identify which area of the services the information is relevant to;
- (b) create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption. This will include a full list (including content) of the standards, policies and all training materials supporting the Services;
- (c) provide resource details in accordance with Annex 4 to this Schedule 8.5, supplemented by a full work breakdown structure (hierarchical mapping and reporting lines) to include leveraged resources that deliver the Services and support functions. The information supplied to the Authority must be accurate and enable a thorough understanding of how the Services are delivered, managed and organised. This will include but not limited to, the senior operational structure that interfaces with the Supplier's corporate function and the Authority;
- (d) create and maintain a full copy of the Authority Data;
- (e) provide information required as set out at Annex 2 to this Schedule 8.5 and any other additional information that the Supplier identifies that the Authority reasonably requires for the purposes of exit;
- (f) agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and
- (g) at all times keep the Registers up to date, in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.

2.2 The Supplier shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement.

- 2.2A The Authority may request in writing at its discretion and at any time during the Term all data in this section 2, limited to 2 requests in any contract year. Where the request has been made in writing the Supplier should provide the information within 15 Working Days of the request. The Supplier will as a minimum provide all data required in this section 2 annually, being 12 months following contract signature and annually at 12 month intervals.
- 2.3 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 2 months of the Effective 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 Agreement and all matters connected with this Schedule and each Party's compliance with it.

3 OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

- 3.1 On reasonable notice (not being less than 15 Working Days) at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information (accurate and complete) 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:
- (a) details of the Service(s) (including but not restricted to processes, scripts, documents, data and other information);
 - (b) a copy of the Registers and data (such data as outlined in Paragraphs 2.1 (a) to (f) of this Schedule 8.5 and such data updated in accordance with Paragraph 2.1(g)) updated by the Supplier up to the date of delivery of such Registers;
 - (c) an inventory and copies of Authority Data in the Supplier's possession or control;
 - (d) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - (e) a list of on-going and/or threatened disputes in relation to the provision of the Services;
 - (f) to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Agreement; and
 - (g) such other material and information as the Authority shall reasonably require,

(together, the “Exit Information”).

- 3.1A The Supplier shall (and shall procure that any Key Sub-contractors shall) at the Authority’s request for Exit Information deliver the Exit Information as soon as reasonably practicable and in any event by the Request For Exit Information Deadline Date.
- 3.1B If the Exit Information has not been received by the Authority on or before the Request For Exit Information Deadline Date, the Supplier shall pay Exit Information Delay Payment to the Authority in respect of the failure to deliver the Exit Information by the Request For Information Deadline Date. The Exit Information Delay Payment shall accrue:
- (a) from (but excluding) the Request For Information Deadline Date to (and including) the date that the Supplier provides the Exit Information which is agreed by the Authority as being accurate and to its satisfaction;
 - (b) on a daily basis, with any part day’s delay counting as a day.
- 3.1C Where an Exit Information Delay Payment is payable in respect of a request for Exit Information, the Exit Information Delay Payment Calculation, at the Authority’s discretion shall be:
- (a) all reasonable and demonstrable costs and expenses incurred by the Authority arising from the Suppliers delay in providing the Exit Information;
 - (b) all reasonable and demonstrable costs and expenses incurred by the Authority as a result of procuring the services of a third party specifically engaged to obtain or audit the Exit Information, which in the reasonable opinion of the Authority, is necessary to ensure that Exit Information is received complete and accurate; and
 - (c) any other consequential losses that the Authority may incur which may include but are not limited to losses resulting from a delay in issuing an invitation to tender for the procurement of the Replacement Services.
- 3.2 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 3.2 disclose any Supplier’s Confidential Information which is information relating to the Supplier’s or its Sub-contractors’ prices or costs).
- 3.3 The Supplier shall:
- (a) notify the Authority within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and
 - (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 15Working Days of a request in writing from the Authority.

- 3.3A The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than 4 updates in any 12 month period. The Supplier is not entitled to charge for updating Exit Information.
- 3.4 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:
- (a) prepare an informed offer for those Services; and
 - (b) not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

4 EXIT PLAN

- 4.1 The Supplier shall, within 3 months after the Effective Date, deliver to the Authority an Exit Plan which:
- (a) sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Authority and/or its Replacement Supplier on the expiry or termination of this Agreement;
 - (b) complies with the requirements set out in Paragraph 4.2;
 - (c) is costed using the rates specified in the Supplier Personnel Rate Card in Schedule 7.1 Annex 1 Table 1; and
 - (d) is otherwise reasonably satisfactory to the Authority.
- 4.2 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 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Should any element of such Dispute relate to Exit Information then delay payments shall apply in line with this Schedule 8.5.
- 4.3 The Exit Plan shall set out, as a minimum:
- (a) how the Exit Information is obtained;
 - (b) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;
 - (c) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;

- (d) the management structure to be employed during the Termination Assistance Period;
- (e) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
- (f) how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
- (g) the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in Annex 1 as are applicable);
- (h) a timetable, resource plan and critical issues for providing the Termination Services;
- (i) any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change and/or by reference to the Financial Model), together with a capped estimate of such charges. The Authority will not be liable for any such charges as stated in Annex 3 of this Schedule 8.5;
- (j) how the Termination Services would be provided (if required) during the Termination Assistance Period;
- (k) procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 9.1 (*Staff Transfer*);
- (l) how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period; and
- (m) (as a an appendix to the Exit Plan) all updated and current registers as set out in Annex 2 of this Schedule 8.5.

4.4 The Parties acknowledge that the migration of the Services from the Supplier to the Authority and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.

4.5 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Supplier shall submit the revised Exit Plan to the Authority for review. Within 10 Working Days following submission of the revised Exit Plan, the

Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 10 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

Finalisation of the Exit Plan

- 4.6 Within 15 Working Days after service of a Termination Notice by either Party or 6 months prior to the expiry of this Agreement, the Supplier will submit for the Authority's approval the Exit Information and the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- 4.7 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 10 Working Days following its delivery to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant)

5 TERMINATION SERVICES

Notification of Requirements for Termination Services

- 5.1 The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least 4 months prior to the date of termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- (a) the date from which Termination Services are required;
 - (b) the nature of the Termination Services required; and
 - (c) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the date that the Supplier ceases to provide the Services.
- 5.2 The Authority shall have an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than 6 months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire. The Authority shall have the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Supplier to such effect.

Termination Assistance Period

- 5.3 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:
- (a) continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 5.1, provide the Termination Services;
 - (b) in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
 - (c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 5.3(b) without additional costs to the Authority;
 - (d) provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the Parties agree otherwise in accordance with Paragraph 5.5; and
 - (e) at the Authority's request deliver up-to-date Exit Information to the Authority as soon as possible and in any event with 15 Working Days of such request;
 - (f) provide progress reports to the Authority (at frequencies agreed and set out in the Exit Plan or, where not set out in the Exit Plan, at frequencies reasonably requested by the Authority) detailing progress (or any lack of progress, dependencies and issues) towards completion of all tasks referred to in the Exit Plan, by reference to any agreed timescales and/or milestones.
- 5.4 Without prejudice to the Supplier's obligations under Paragraph 5.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 5.3(b) 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 Services or the Exit Plan shall be subject to the Change Control Procedure and the rates set out in the Supplier Personnel Rate Card in Schedule 7.1 Annex 1 Table 1 shall apply.
- 5.5 If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) and/or the applicable Service Credits to take account of such adverse effect.

Termination Obligations

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

5.6A Delays during the Termination Assistance Period:

If the Supplier fails to meet any of:

- a) its obligations or fails to provide any required deliverable (including the delivery of the Exit Plan and Exit Information as set out in Paragraphs 3 and 4 of this Schedule 8.5) to the Authority on or before the date specified in the final form of the Exit Plan;
- b) any other related activity for which the Supplier is responsible during the Termination Assistance Period;

and if in the Authority's reasonable opinion, such failures result either directly or indirectly, in a delay to the transition of services (including a delay to the Replacement Supplier Service Commencement Date) or causes the Authority demonstrable incremental cost then the Supplier shall compensate the Authority for:

- i) all reasonable and demonstrable costs and expenses incurred by the Authority arising from the Supplier's failures as set out in Paragraphs 5.6A (a) and 5.6A (b);
- ii) all reasonable and demonstrable costs and expenses incurred by the Authority as a result of procuring services of a third party specifically engaged to mitigate any impact of any delay or incremental costs incurred by the Authority as a result of the failures set out in Paragraphs 5.6A (a) and 5.6A (b), which in the reasonable opinion of the Authority, are necessary to ensure timely transition; and
- iii) other consequential losses that the Authority may incur which may include but are not limited to losses resulting from a delay in issuing an invitation to tender for the procurement of the Replacement Services.

5.6B Compensation payments referred to in Paragraph 5.6A will apply to the extent that these have not been recovered in accordance with any other provision in this Schedule 8.5 and shall accrue:

- (a) at the rates determined in accordance with Paragraph 5.6A
- (b) from (but excluding) the Replacement Supplier Service Commencement Date (and including) the date on which live services are finally transferred to the Authority and/or Replacement Supplier
- (c) on a daily basis, with any part day's delay counting as a day.

Remediation

5.6C The Supplier shall not be required to pay such compensation to the Authority (as provided for in this Section 5.6C of Schedule 8.5) where the Supplier is able to fully remediate the impact of delay such that there is no delay to the transition of services and there is no incremental costs to the Authority (as confirmed in writing by the Authority) and/or Replacement Supplier..

- 5.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), the Supplier shall:
- (a) cease to use the Authority Data;
 - (b) 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);
 - (c) 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;
 - (d) return to the Authority such of the following as is in the Supplier's possession or control:
 - (i) all copies of the Authority Software and any other software licensed by the Authority to the Supplier under this Agreement;
 - (ii) all materials created by the Supplier under this Agreement in which the IPRs are owned by the Authority;
 - (iii) any parts of the IT Environment and any other equipment which belongs to the Authority; and
 - (iv) any items that have been on-charged to the Authority, such as consumables;
 - (e) vacate any Authority Premises;
 - (f) transfer to the Authority and/or Replacement Supplier all Authority Assets that are used in the provision of the Services;
 - (g) provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after expiry or termination to:
 - (i) such information relating to the Services as remains in the possession or control of the Supplier; and
 - (ii) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 5.7(f)(ii) and calculated using the rates set out in the Supplier Personnel Rate Card in Schedule 7.1 Annex 1 Table 1.

- 5.8 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services 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 and all Authority Data save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.
- 5.9 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

6 ASSETS, SUB-CONTRACTS AND SOFTWARE

- 6.1 Following notice of termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, without the Authority's prior written consent:
- (a) terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;
 - (b) (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets;
 - (c) change or otherwise alter the categorisation, classification or status of any transferable, non-transferable, exclusive and/or non-exclusive assets as set out in the Registers;
 - (d) terminate, enter into or vary any licence for software in connection with the Services.
- 6.2 Within 15 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 5.3(e), the Authority shall provide written notice to the Supplier setting out:
- (a) which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier ("Transferring Assets");
 - (b) which, if any, of:
 - (i) the Exclusive Assets that are not Transferable Assets; and
 - (ii) the Non-Exclusive Assets,the Authority and/or the Replacement Supplier requires the continued use of; and

- (c) which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the **“Transferring Contracts”**),

in order for the Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Services or Replacement Services.

- 6.3 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:
 - (a) a Termination Payment is payable by the Authority to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or
 - (b) the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Agreement, in which case the Authority shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.
- 6.4 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.
- 6.5 Where the Supplier is notified in accordance with Paragraph 6.2(b) 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:
 - (a) 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
 - (b) procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 6.6 The Supplier shall as soon as reasonably practicable and at no costs or expense to the Authority assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 6.7 The Authority shall:
 - (a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and

- (b) once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 6.8 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.
- 6.9 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 6.6 in relation to any matters arising prior to the date of assignment or novation of such Sub-contract.

7 SUPPLIER PERSONNEL

- 7.1 The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 9.1 (*Staff Transfer*) shall apply.
- 7.2 The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier.
- 7.3 During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Transferring Supplier Employees to present the case for transferring their employment to the Authority and/or the Replacement Supplier.
- 7.4 The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 7.5 The Supplier shall not for a period of 12 months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Authority and/or the Replacement Supplier. Provided that this section shall not operate to prevent the re-employment or re-engagement by the Supplier of those individuals who have responded to any public advertisement advertising the relevant roles.

8 CHARGES

- 8.1 During the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services), the Authority shall pay the Charges as provided for in the Financial Model or via Change Control Procedure to the Supplier in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of

the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.

- 8.2 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
- 8.3 Except as otherwise expressly specified in this Agreement, 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 and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

9 APPORTIONMENTS

- 9.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring 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:
 - (a) the amounts shall be annualised and divided by 365 to reach a daily rate;
 - (b) 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
 - (c) the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 9.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 9.1 as soon as reasonably practicable.

ANNEX 1

Scope of the Termination Services

- 1.1 The Termination Services to be provided by the Supplier shall include such of the following services as the Authority may specify:
- (a) ceasing all non-critical Software changes (except where agreed in writing with the Authority);
 - (b) notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
 - (c) upon request by the Authority will provide assistance and expertise as necessary to ensure all current business and operational processes are captured and recorded such that they are appropriate and available for use by the Authority and/or the Replacement Supplier;
 - (d) delivering to the Authority the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the 12 month period immediately prior to the commencement of the Termination Services);
 - (e) providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
 - (f) with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
 - (g) providing the Authority with any problem logs which have not previously been provided to the Authority;
 - (h) providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of 12 months after the Termination Assistance Period;

- (i) upon request by the Authority will provide assistance and expertise as necessary to ensure all current business and operational processes are captured and recorded such that they are appropriate and available for use by the Authority and/or the Replacement Supplier;
- (j) reviewing all Software libraries used in connection with the Services and providing details of these to the Authority and/or the Replacement Supplier;
- (k) making available to the Authority and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Authority (acting reasonably) at the time of termination or expiry;
- (l) assisting in establishing naming conventions for any new production site;
- (m) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- (n) NOT USED;
- (o) agreeing with the Authority a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
- (p) delivering copies of the production databases (with content listings) to the Authority's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by the Authority;
- (q) assisting with the loading, testing and implementation of the production databases;
- (r) assisting in the execution of a parallel operation until the effective date of expiry or termination of this Agreement;
- (s) NOT USED
- (t) assisting in the execution of a parallel operation of the maintenance and support of the Supplier System until the end of the Termination Assistance Period or as otherwise specified by the Authority (provided that these

Services shall end on a date no later than the end of the Termination Assistance Period);

- (u) providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;
- (v) answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;
- (w) agreeing with the Authority and/or the Replacement Supplier a plan for the migration of the Authority Data to the Authority and/or the Replacement Supplier;
- (x) providing access to the Authority and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding 6 months afterwards for the purpose of the smooth transfer of the Services to the Authority and/or the Replacement Supplier:
 - (i) to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its Sub-contractors (and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
 - (ii) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
- (y) knowledge transfer services, including:
 - (i) transferring all training material and providing appropriate training to those Authority and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;
 - (ii) providing for transfer to the Authority and/or the Replacement Supplier of all knowledge reasonably required for the provision of the

Services which may, as appropriate, include information, records and documents; and

- (iii) providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors.

1.2 The Supplier shall:

- (a) provide a documented plan relating to the training matters referred to in Paragraph 1.1(k) for agreement by the Authority at the time of termination or expiry of this Agreement;
- (b) co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1(o), providing skills and expertise of a suitable standard; and
- (c) fully co-operate in the execution of the Authority Database migration plan agreed pursuant to Paragraph 1.1(w), providing skills and expertise of a reasonably acceptable standard.

1.3 To facilitate the transfer of knowledge from the Supplier to the Authority and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Authority and/or the Replacement Supplier.

1.4 The information which the Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to Paragraph 1.1(y) shall include:

- (a) copies of up-to-date procedures and operations manuals;
- (b) product information;
- (c) agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier;

- (d) key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule;
- (e) information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
- (f) details of physical and logical security processes and tools which will be available to the Authority; and
- (g) any relevant interface information.

1.5 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Supplier and/or the Authority access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:

- (a) any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 1.5 shall:
 - (i) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
 - (ii) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and
- (b) the Authority and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

ANNEX 2

Other information requirements pursuant to Paragraph 2.1(e)

Hardware	Software Licence
<ul style="list-style-type: none"> • Unique Asset Identification Number • Asset Name • Asset Description • Asset Model No • Asset Serial No • Asset Tag • Technical specification • Services Supported by Hardware Asset • Exclusive or non-exclusive Asset • Asset transferable at Exit • Method of Transfer • Asset Free From Encumbrance • Depreciation to Date (depreciation SMPs) • Total Asset value • Asset Installation Date (i.e. date first deployed) 	<ul style="list-style-type: none"> • Asset Name • Software Description • Software Version • Software Product Code • Name of License Provider/Vendor • Brief description of software licence purpose • Software licence category e.g. firmware, operating system, middleware etc • Software licence type (e.g. corporate licence, end-user licence, server licence) • Services Supported by License • Exclusive or non-exclusive Asset • Transferable at Exit • Method of Transfer • Asset Free From Encumbrance • Amortisation to Date (amortisation SMPs)

<ul style="list-style-type: none"> • Asset Ceased Date • Party that funded the asset • Authority Assets • Site Name (including Site Location Code) • Building Name • Address • Town • County • Post Code 	<ul style="list-style-type: none"> • Total Asset value • Asset Installation date (i.e. date first deployed) • Asset Ceased Date • Party that funded the asset • Authority Assets • Site Name (including Site Location Reference) • Building Name • Address • Town • County • Post Code • Volume of software licences, by type • Volume of software licenses utilised, plus volume of spare licenses available • Installed Upon which Hardware Asset
Systems Documentation <ul style="list-style-type: none"> • Document Name 	Infrastructure Management Facilities <ul style="list-style-type: none"> • Asset Name

<ul style="list-style-type: none"> • Document Description • Document Version • Document Code • Name of Author • Brief Description of the Document • Services Systems Documentation Covers • Exclusive or non-exclusive Asset • Transferable at Exit • Method of Transfer • Storage Location • Site Name (including Site Location Code) • Building Name • Address • Town • County • Post Code 	<ul style="list-style-type: none"> • Authority Assets • Site Name (incl Site Location Code) • Building Name • Address • Town • County • Post Code
Standalone Project <ul style="list-style-type: none"> • Project Reference No • Project Description 	Authority Data <ul style="list-style-type: none"> • Authority Data • Data Type

<ul style="list-style-type: none"> • Status • Authority Assets • Site Name (including Site Location Code) • Building Name • Address • Town • County • Post Code 	<ul style="list-style-type: none"> • Size of Data • Storage Medium • Data Being Transferred • Security Restrictions on Data • Authority Assets • Site Name (including Site Location Code) • Building Name • Address • Town • County • Post Code
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<p>Roles/People</p> <ul style="list-style-type: none"> • Operations and Implementation Sub Total • Role Transferring to New Contractor (Yes/No) 	<p>Intellectual Property Rights</p> <ul style="list-style-type: none"> • Type of intellectual property right (patent, TM, copyright) • Name/Title of intellectual property right • Brief description of intellectual property right • Intellectual property right transferable (Y/N) • Third Party interest in intellectual property right
	<p>Sub-contracts</p> <ul style="list-style-type: none"> • Agreement Type • Company Name • Name/Title of the Contract • Brief description of the purpose of the Contract • Charges & Payment Terms • Agreement Expiry Dates • Early Termination Provisions • Can Agreement Be Novated

ANNEX 3

{ TC "APPENDIX 4 - Non-chargeable items related to Exit"\l 4 \n }Non-chargeable items related to Exit

The Supplier shall not be entitled to claim any additional charges, costs or expenses in relation to the following:

- a) providing any information, documentation and reports for exit related purposes which the Supplier is under an obligation to provide under terms of this Agreement
- b) providing any information, documentation and reports for exit related purposes which can be produced without material incremental cost using information already held by the Supplier or any Sub-contractor;
- c) costs and expenses incurred by the Supplier as a result of its default or delay in performing its exit obligations save where such default or delay is caused by the default or delay of the Authority and/or the Replacement Supplier;
- d) making available access to the Supplier's and Supplier's Sub-contractors' premises for exit related purposes;
- e) where any such charges, costs or expenses have been or will be recovered pursuant to Schedule 7.2 (*Payments on Termination*); and
- f) to the extent that the Supplier has recovered or will recover such charges, costs or expenses pursuant to any other provision of this Agreement.

ANNEX 4
Resource information

Anonymised Staff Details

- Identification (ID) Key
- Business Area
- Employment Status - permanent, casual or fixed term
- Causal/FTA with start and End Dates
- Grade/Pay Span
- Location
- Job Title
- Current Job Description / Current Work Activities
- Number of Staff Managed
- Time on the DWP Account (start date)
- DWP Systems the employee has worked on and Duration
- IT Qualifications
- Whether a previous employee of DWP
- Basic Salary (including non-consolidated/consolidated pay elements)
- Weekly Paid Staff indicated by ID
- Work Patterns
- Seniority Dates
- Relevant pension/severance indicators e.g. Notional Reckonable Service Date/Civil Service Start date
- All allowances with start/End Dates and relevant amounts
- Advance recoveries start/End Dates and relevant amounts

- Special Leave/with/without pay - by staff ID with start/End Dates and reason
- Long term sick - by staff ID with absence start date, Half Pay Start Date, NIL Pay Start Date, Pension Rate start date, Nature of incapacity
- Maternity Leave - by staff ID start and End Dates
- Pay Bonuses over previous 12 months
- Overtime Usage over previous 12 months
- Staff within scope currently on loan/secondment - indicate start and End Dates of any secondment by relevant staff ID
- Nursery /Crèche users - by staff ID plus any associated costs to be incurred by supplier
- PUS Car Users - by staff ID, date car supplied, employee contribution, contract review date

At the Authority's discretion, a subset of the above information may be acceptable

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8.6

IT SERVICE CONTINUITY AND DISASTER RECOVERY

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Disaster”	“the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable ;
“Disaster Recovery Plan”	has the meaning given in Paragraph 2.2(a) (iii);
“Disaster Recovery Services”	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
“Disaster Recovery System”	the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
“IT Service Continuity Management Plan”	has the meaning given in Paragraph 2.2(a)(ii);
“IT Service Continuity Management Services”	has the meaning given in Paragraph 4.2(b);
“Related Service Provider”	any person who provides services to the Authority in relation to this Agreement from time to time

2. IT SERVICE CONTINUITY MANAGEMENT AND DISASTER RECOVERY PLAN

2.1 Within 40 Working Days from the Effective Date the Supplier shall prepare and deliver to the Authority for the Authority’s written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

- a) ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services;
and
- b) the recovery of the Services in the event of a Disaster.

The IT Service Continuity Management and Disaster Recovery Plan shall:

- a) be divided into three parts:
 - i) Part A which shall set out general principles applicable to the IT Service Continuity Management and Disaster Recovery Plan;

- ii) Part B which shall relate to IT Service Continuity (the “**IT Service Continuity Management Plan**”); and
 - iii) Part C which shall relate to disaster recovery (the “**Disaster Recovery Plan**”); and
- b) unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4 and 5.
- 2.3 Following receipt of the draft IT Service Continuity and Disaster Recovery Plan from the Supplier, the Authority shall:
 - a) review and comment on the draft IT Service Continuity and Disaster Recovery Plan as soon as reasonably practicable; and
 - b) notify the Supplier in writing that it approves or rejects the draft IT Service Continuity and Disaster Recovery Plan no later than 20 Working Days after the date on which the draft IT Service Continuity and Disaster Recovery Plan is first delivered to the Authority.
- 2.4 If the Authority rejects the draft IT Service Continuity and Disaster Recovery Plan:
 - a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
 - b) the Supplier shall then revise the draft IT Service Continuity and Disaster Recovery Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft IT Service Continuity and Disaster Recovery Plan to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 2.3 and this Paragraph 2.4 shall apply again to any resubmitted draft IT Service Continuity and Disaster Recovery Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3. **PART A OF THE IT SERVICE CONTINUITY AND DISASTER RECOVERY PLAN AND GENERAL PRINCIPLES AND REQUIREMENTS**

- 3.
- 3.1 Part A of the IT Service Continuity and Disaster Recovery Plan shall:
 - a) set out how the IT Service Continuity and disaster recovery elements of the Plan link to each other;
 - b) provide details of how the invocation of any element of the IT Service Continuity and Disaster Recovery Plan may impact upon the operation of the Services and any services provided to the Authority by a Related Service Provider;
 - c) contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Service Provider with respect to issues concerning IT Service Continuity and disaster recovery where applicable;
 - d) detail how the IT Service Continuity and Disaster Recovery Plan links and interoperates with any overarching and/or connected disaster recovery or IT Service Continuity Management Plan of the Authority and any of its other

Related Service Providers in each case as notified to the Supplier by the Authority from time to time;

- e) contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;
 - f) contain a risk analysis, including:
 - i) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - ii) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
 - iii) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider; and
 - iv) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
 - g) provide for documentation of processes, including business processes, and procedures;
 - h) set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Authority;
 - i) identify the procedures for reverting to “normal service”, including how the procedures are to be implemented;
 - j) set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
 - k) identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the IT Service Continuity and Disaster Recovery Plan; and (l) provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority’s IT Service Continuity Management Plans.
- 3.2 The IT Service Continuity and Disaster Recovery Plan shall be designed so as to ensure that:
- a) the Services are provided in accordance with this Agreement at all times during and after the invocation of the IT Service Continuity and Disaster Recovery Plan;
 - b) the adverse impact of any Disaster, service failure, or disruption on the operations of the Authority is minimal as far as reasonably possible;
 - c) it complies with the relevant provisions of ISO/IEC 27002 and all other industry standards from time to time in force; and

- d) there is a process for the management of disaster recovery testing detailed in the IT Service Continuity and Disaster Recovery Plan.
- 3.3 The IT Service Continuity and Disaster Recovery Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Agreement.

4. IT SERVICE CONTINUITY MANAGEMENT PLAN - PRINCIPLES AND CONTENTS

4.

- 4.1 The IT Service Continuity Management Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Authority expressly states otherwise in writing:
 - a) the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
 - b) the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 4.2 The IT Service Continuity Management Plan shall:
 - a) address the various possible levels of failures of or disruptions to the Services;
 - b) set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the “IT Service Continuity Services”);
 - c) specify any applicable Performance Indicators with respect to the provision of the IT Service Continuity Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the IT Service Continuity Management Plan; and
 - d) clearly set out the conditions and/or circumstances under which the IT Service Continuity Management Plan is invoked.

5. DISASTER RECOVERY PLAN - PRINCIPLES AND CONTENTS

5.

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Disaster Recovery Plan shall be invoked upon the occurrence of a Disaster and, when required, in other circumstances such as testing after routine maintenance and upgrades (see section 7).
- 5.3 The Disaster Recovery Plan shall include the following:
- a) the technical design and build specification of the Disaster Recovery System;
 - b) details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
 - i) data centre and disaster recovery site audits;
 - ii) backup methodology and details of the Supplier's approach to data back-up and data verification;
 - iii) identification of all potential disaster scenarios;
 - iv) risk analysis;
 - v) documentation of processes and procedures;
 - vi) (hardware configuration details;
 - vii) network planning including details of all relevant data networks and communication links;
 - viii) invocation rules;
 - ix) service recovery procedures; and
 - x) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
 - c) any applicable Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Disaster Recovery Plan;
 - d) details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
 - e) access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and

- f) testing and management arrangements.

6. REVIEW AND AMENDMENT OF THE IT SERVICE CONTINUITY AND DISASTER RECOVERY PLAN

5.

6.

6.1 The Supplier shall review the IT Service Continuity and Disaster Recovery Plan (and the risk analysis on which it is based):

- a) on a regular basis and as a minimum once every 6 months;
- b) within three calendar months of the IT Service Continuity and Disaster Recovery Plan (or any part) having been invoked pursuant to Paragraph 8; and
- c) where the Authority requests any additional reviews (over and above those provided for in Paragraphs 6.1(a) and 6.1(b)) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.

6.2 Each review of the IT Service Continuity and Disaster Recovery Plan pursuant to Paragraph 6.1 shall be a review of the procedures and methodologies set out in the IT Service Continuity and Disaster Recovery Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the IT Service Continuity and Disaster Recovery Plan or the last review of the IT Service Continuity and Disaster Recovery Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the IT Service Continuity and Disaster Recovery Plan. The review shall be completed by the Supplier within the period required by the IT Service Continuity and Disaster Recovery Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within 20 Working Days of the conclusion of each such review of the IT Service Continuity and Disaster Recovery Plan, provide to the Authority a report (a "Review Report") setting out:

- a) the findings of the review;
- b) any changes in the risk profile associated with the Services; and
- c) the Supplier's proposals (the "Supplier's Proposals") for addressing any changes in the risk profile and its proposals for amendments to the IT Service Continuity and Disaster Recovery Plan following the review

detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

6.3 Following receipt of the Review Report and the Supplier's Proposals, the Authority shall:

- a) review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
- b) notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than 20 Working Days after the date on which they are first delivered to the Authority.

6.4 If the Authority rejects the Review Report and/or the Supplier's Proposals:

- a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
- b) the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 6.3 and this Paragraph 6.4 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

6.5 The Supplier shall as soon as is reasonably practicable after receiving the Authority's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

7. TESTING OF THE IT SERVICE CONTINUITY AND DISASTER RECOVERY PLAN

7.

7.1 The Supplier shall test the IT Service Continuity and Disaster Recovery Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 7.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the IT Service Continuity and Disaster Recovery Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the IT Service Continuity and Disaster Recovery Plan.

- 7.2 If the Authority requires an additional test of the IT Service Continuity and Disaster Recovery Plan, it shall give the Supplier written notice of requirements and the Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the IT Service Continuity and Disaster Recovery Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the IT Service Continuity and Disaster Recovery Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 7.3 The Supplier shall undertake and manage testing of the IT Service Continuity and Disaster Recovery Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.
- 7.4 The Supplier shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
- 7.5 The Supplier shall, within 20 Working Days of the conclusion of each test, provide to the Authority a report setting out:
- a) the outcome of the test;
 - b) any failures in the IT Service Continuity and Disaster Recovery Plan (including the IT Service Continuity and Disaster Recovery Plan's procedures) revealed by the test; and
 - c) the Supplier's proposals for remedying any such failures.
- 7.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the IT Service Continuity and Disaster Recovery Plan) to remedy any failures in the IT Service Continuity and Disaster Recovery Plan identified during testing and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.
- 7.7 For the avoidance of doubt, the carrying out of a test of the IT Service Continuity and Disaster Recovery Plan (including a test of the IT Service Continuity and Disaster Recovery Plan's procedures) shall not relieve the Supplier of any of its obligations under this Agreement.
- 7.8 The Supplier shall also perform a test of the IT Service Continuity and Disaster Recovery Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

8. INVOCATION OF THE IT SERVICE CONTINUITY AND DISASTER RECOVERY PLAN

- 8.1 In the event of a complete loss of Suppliers service or in the event of a Disaster, the Supplier shall immediately invoke the IT Service Continuity and Disaster Recovery Plan (and shall inform the Authority immediately

of such invocation). In all other instances the Supplier shall invoke or test the IT Service Continuity and Disaster Recovery Plan only with the prior consent of the Authority.

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 8.7

CONDUCT OF CLAIMS

Conduct of Claims

1 INDEMNITIES

- 1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Agreement (the “Indemnifier”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “Beneficiary”).
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Agreement (a “Claim”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.
- 1.3 Subject to Paragraphs2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
 - (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
 - (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute;

- (c) the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (d) the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:
 - (a) the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
 - (b) the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or
 - (c) the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.
- 1.6 The Beneficiary shall conduct the Claim with all due diligence.

2 **SENSITIVE CLAIMS**

- 2.1 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a "**Sensitive Claim**"), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct

of any Claim, to which Paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

3 RECOVERY OF SUMS

3.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:

- (a) an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
- (b) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

4 MITIGATION

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

MODEL AGREEMENT SERVICES SCHEDULES

SCHEDULE 9.1

STAFF TRANSFER

Staff Transfer

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

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

	the 2015 New Scheme (with effect from a date to be notified to the Supplier by the Minister for the Cabinet Office);
“Service Transfer”	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;
“Service Transfer Date”	the date of a Service Transfer;
“Staffing Information”	<p>in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:</p> <ul style="list-style-type: none"> (a) their ages, dates of commencement of employment or engagement and gender; (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise; (c) the identity of the employer or relevant contracting Party; (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments; (e) their wages, salaries and profit sharing arrangements as applicable; (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them; (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);

- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

“Supplier’s Final Supplier Personnel List”	a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;
“Supplier’s Provisional Supplier Personnel List”	a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
“Transferring Authority Employees”	those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;
“Transferring Former Supplier Employees”	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and
“Transferring Supplier Employees”	those employees of the Supplier and/or the Supplier’s Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. INTERPRETATION

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

PART A

Transferring Authority Employees at commencement of Services - Not applicable

1. RELEVANT TRANSFERS

1.1 The Authority and the Supplier agree that:

- (a) the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Authority Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between the Authority and the Transferring Authority Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-contractor and each such Transferring Authority Employee.

1.2 The Authority shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Authority Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Authority; and (ii) the Supplier and/or any Notified Sub-contractor (as appropriate).

2. AUTHORITY INDEMNITIES

2.1 Subject to Paragraph 2.2, the Authority shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities in respect of any Transferring Authority Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission by the Authority occurring before the Relevant Transfer Date;
- (b) the breach or non-observance by the Authority before the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Authority Employees; and/or

- (ii) any custom or practice in respect of any Transferring Authority Employees which the Authority is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing the Transferring Authority Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Authority Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
- (e) a failure of the Authority to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees arising before the Relevant Transfer Date;
- (f) any claim made by or in respect of any person employed or formerly employed by the Authority other than a Transferring Authority Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Authority in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the

failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- (a) arising out of the resignation of any Transferring Authority Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
 - (b) arising from the failure by the Supplier or any Sub-contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Authority as a Transferring Authority Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Authority Employee, that his/her contract of employment has been transferred from the Authority to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- (a) the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority; and
 - (b) the Authority may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Supplier and/or any Notified Sub-contractor, or take such other reasonable steps as the Authority considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):
- (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Authority shall indemnify the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph :

(a) shall not apply to:

(i) any claim for:

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

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

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

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

(b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority within 6 months of the Effective Date.

2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Authority nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

3. **SUPPLIER INDEMNITIES AND OBLIGATIONS**

- 3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority against any Employee Liabilities in respect of any Transferring Authority Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- (a) any act or omission by the Supplier or any Sub-contractor whether occurring before, on or after the Relevant Transfer Date;
 - (b) the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Authority Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Authority Employees which the Supplier or any Sub-contractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Authority Employees arising from or connected with any failure by the Supplier or any Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
 - (d) any proposal by the Supplier or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Authority Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Authority Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
 - (e) any statement communicated to or action undertaken by the Supplier or any Sub-contractor to, or in respect of, any Transferring Authority Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority in writing;
 - (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions;

- (i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Authority Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
 - (g) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees in respect of the period from (and including) the Relevant Transfer Date; and
 - (h) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Authority's failure to comply with its obligations under regulation 13 of the Employment Regulations.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Authority whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Authority's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Authority Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Authority and the Supplier.

4. **INFORMATION**

The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority in writing such information as is necessary to enable the Authority to carry out its duties under regulation 13 of the Employment Regulations. The Authority shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5. **PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.

5.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Authority Employee as set down in:

- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
- (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
- (c) HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
- (d) the New Fair Deal.

5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Change Control Procedure.

6. **PENSIONS**

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

ANNEX TO PART A
PENSIONS

1 PARTICIPATION

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and the Authority undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees.
- 1.3 The Supplier shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes.

2 FUTURE SERVICE BENEFITS

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

3 FUNDING

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

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

4 PROVISION OF INFORMATION

The Supplier and the Authority respectively undertake to each other:

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

5 INDEMNITY

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

6 EMPLOYER OBLIGATION

The Supplier shall comply with the requirements of [Part 1 of] the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

7 SUBSEQUENT TRANSFERS

The Supplier shall:

- (a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
- (b) provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Authority may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
- (c) for the period either

- (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or
- (ii) after the date which is two (2) years prior to the date of expiry of this Agreement,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

PART B

Transferring Former Supplier Employees at commencement of Services

1 RELEVANT TRANSFERS

1.1 The Authority and the Supplier agree that:

- (a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-contractor and each such Transferring Former Supplier Employee.

1.2 The Authority shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall satisfy all its obligations at the Relevant Transfer Date with respect to all outgoings and accrued liabilities in respect of Transferring Former Supplier Employees including without limitation, wages, holiday pay, payment of PAYE, National Insurance contributions and pension contributions due to be paid on or before the Relevant Transfer Date, perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Authority shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

2 FORMER SUPPLIER INDEMNITIES

2.1 Subject to Paragraph 2.2 and 2.3, the Authority shall procure that each Former Supplier shall indemnify the Supplier keep the Supplier indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees) and demand arising out of or in connection with:

- (a) any claim by any Transferring Former Supplier Employee brought against the Supplier whether in contract or in tort or under statute (including the Employment Regulations) for any remedy including, without limitation, for unfair dismissal, wrongful dismissal,

redundancy, statutory redundancy and any other rights contained in the Employment Rights Act 1996, equal pay, sex, race or disability discrimination as a result of any act or omission by the Former Supplier after the date on which the Former Supplier commenced the provision of those services it provided to the Authority which are fundamentally the same as the Services and on or before the Relevant Transfer Date; and

- (b) any claim by any employees of the Former Supplier other than Transferring Former Supplier Employees who are affected by the transfer of such Transferring Former Supplier Employees brought against the Supplier whether in contract or in tort or under statute (including the Employment Regulations) for any remedy including, without limitation, for unfair dismissal, wrongful dismissal, redundancy, statutory redundancy and any other rights contained in the Employment Rights Act 1996 equal pay, sex, race or disability discrimination arising at any time after the date on which the Former Supplier commenced the provision of the Services and on or before the Relevant Transfer Date.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
 - (a) arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
 - (b) arising from the failure by the Supplier and/or any Sub-contractor to comply with its obligations under the Employment Regulations.
- 2.3 The Supplier shall not make any admissions which may be prejudicial to the defence of any claim, demand or action brought against the Supplier and/or Former Supplier to which Paragraph 2.1 may apply. The Supplier shall promptly notify the Authority and, where required by the Authority, the Former Supplier if any claim or demand is made or action brought against the Supplier to which Paragraph 2.1 may apply. The Former Supplier may at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith and the Supplier hereby agrees to grant the Former Supplier control of any such litigation or negotiations. The Supplier shall provide to the Authority, and if requested by the Authority the Former Supplier, as soon as practicable after any request therefore, all information which may reasonably be relevant to such claim and shall render such assistance and co-operations as shall reasonably be required in contesting, settling or dealing with any such claim.

3 **SUPPLIER INDEMNITIES AND OBLIGATIONS**

- 3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority and/or the Former Supplier against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- (a) any act or omission by the Supplier or any Sub-contractor whether occurring before, on or after the Relevant Transfer Date;
 - (b) the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
 - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
 - (d) any proposal by the Supplier or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
 - (e) any statement communicated to or action undertaken by the Supplier or a Sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Supplier in writing;
 - (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions;

- (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
 - (g) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date; and
 - (h) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date

4 **INFORMATION**

The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and/or at the Authority's direction, the Former Supplier, in writing such information as is necessary to enable the Authority and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5 **PROCUREMENT OBLIGATIONS**

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

6 **PENSIONS**

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

ANNEX TO PART B
PENSIONS

1 PROVISION OF INFORMATION

The Supplier and the Authority respectively undertake to each other to provide all information which the other Party may reasonably request concerning matters referred to in this Annex and to supply the information as expeditiously as possible.

2 EMPLOYER OBLIGATION

The Supplier shall comply with the requirements of [Part 1 of] the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

3 SUBSEQUENT TRANSFERS

The Supplier shall:

- (a) for the period either
 - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or
 - (ii) after the date which is two (2) years prior to the date of expiry of this Agreement,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

PART C

No transfer of employees at commencement of Services - Not applicable

1 PROCEDURE IN THE EVENT OF TRANSFER

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

the Supplier and/or the Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2 INDEMNITIES

- 2.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in

accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Authority shall:

- (a) indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- (b) procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.

2.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Authority and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.

2.4 The indemnities in Paragraph 2.1:

- (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

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

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

(b) shall apply only where the notification referred to in Paragraph 1.2(a) is made by the Supplier and/or any Sub-contractor to the Authority and, if applicable, Former Supplier within 6 months of the Effective Date.

3 **PROCUREMENT OBLIGATIONS**

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

PART D
EMPLOYMENT EXIT PROVISIONS

1 PRE-SERVICE TRANSFER OBLIGATIONS

- 1.1 The Supplier agrees that within 20 Working Days of the earliest of:
- (a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
 - (b) receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
 - (c) the date which is 12 months before the end of the Term; and
 - (d) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 month period),

it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.

- 1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:
- (a) the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
 - (b) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.
- 1.4 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1(a), 1.1(b) and 1.1(c), the Supplier agrees, that it shall not, and agrees to

procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- (b) make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

- 1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;

- (b) the percentage of time spent by each employee engaged in providing the Services; and
 - (c) a description of the nature of the work undertaken by each employee by location.
- 1.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
 - (a) the most recent month's copy pay slip data;
 - (b) details of cumulative pay for tax and pension purposes;
 - (c) details of cumulative tax paid;
 - (d) tax code;
 - (e) details of any voluntary deductions from pay; and
 - (f) bank/building society account details for payroll purposes.

2 EMPLOYMENT REGULATIONS EXIT PROVISIONS

- 2.1 The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made

between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.

- 2.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.
- 2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- (a) any act or omission of the Supplier or any Sub-contractor whether occurring before, on or after the Service Transfer Date;
 - (b) the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
 - (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions;

- (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- (f) any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or

- (b) arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
 - (a) the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
 - (b) the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the 15 Working Day period specified in Paragraph 2.5(b) has elapsed:
 - (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved

the Authority shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the

Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in Paragraph 2.8:

(a) shall not apply to:

(i) any claim for:

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

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

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

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

(b) shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date .

2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee and the Replacement Supplier and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.

2.11 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Supplier Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer

Date) and any necessary apportionments in respect of any periodic payments shall be made between:

- (a) the Supplier and/or any Sub-contractor; and
- (b) the Replacement Supplier and/or the Replacement Sub-contractor.

2.12 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

2.13 Subject to Paragraph 2.14, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:

- (a) any act or omission of the Replacement Supplier and/or Replacement Sub-contractor;
- (b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or

after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

- (e) any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Service Transfer Date; and
- (h) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the

Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 9.2

KEY PERSONNEL

Key Personnel

KEY ROLE	Name of KEY Personnel	Responsibilities /Authorities	Phase of the project during which they will be a Member of Key Personnel	MINIMUM PERIOD in Key Role
ACCOUNT GENERAL MANAGER	REDACTED	Accountable for understanding /Implementation of DWP's strategies, goals, services, business processes and outcomes	IMPLEMENTATION AND OPERATION	6 MONTHS
ACCOUNT SECURITY MANAGER	REDACTED	Implements security management and information assurance processes and procedures	IMPLEMENTATION AND OPERATION	6 MONTHS
SERVICE DELIVERY MANAGER	REDACTED	Works directly with the DWP stakeholders and users and implement the DWP service strategy.	OPERATION	3 MONTHS
TRANSITION MANAGER	REDACTED	Works with the DWP to deliver the Service Desk Transition Programme.	IMPLEMENTATION	3 MONTHS

MODEL AGREEMENT FOR SERVICES SCHEDULES

SCHEDULE 10

GUARANTEE

[Insert the name of the Guarantor]

- and -

THE SECRETARY OF STATE FOR WORK AND PENSIONS

DEED OF GUARANTEE

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 [] whose registered office is at [*insert details of the Guarantor's registered office here*]] [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 Secretary of State for Work and Pensions Commercial Directorate**, whose principal office is at Caxton House, Tothill Street, London SW19DA (“**Beneficiary**”)

WHEREAS:

- (A) It is a condition of the Beneficiary entering into the Guaranteed Agreement that the Guarantor executes and delivers this Deed of Guarantee to the Beneficiary.
- (B) 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.
- (C) It is the intention of the Parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

1 Definitions and Interpretation

In this Deed of Guarantee:

- 1.1 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;
- 1.2 the words and phrases below shall have the following meanings:
 - (a) “**Guaranteed Agreement**” means the IT Service Desk Contract made between the Beneficiary and the Supplier on [*insert date*]; and
 - (b) “**Guaranteed Obligations**” means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement 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.

- 1.3 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;
- 1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.6 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;
- 1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.8 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;
- 1.9 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;
- 1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
- 1.11 references to liability are to include any liability whether actual, contingent, present or future.

2 Guarantee and indemnity

- 2.1 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.
- 2.2 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.

2.3 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:

- (a) 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. Where the Guarantor does not have the ability to perform the Guaranteed Obligations itself, it shall procure the full, punctual and specific performance of the Guaranteed Obligations. For the avoidance of doubt the Guarantor shall remain responsible for all acts and omissions of the entity it procures to perform the Guaranteed Obligations and the acts and omissions of those employed or engaged by such entity as if they were the Guarantor's own; and
- (b) 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.

2.4 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.

3 Obligation to enter into a new contract

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.

4 Demands and Notices

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

(a) *[Address of the Guarantor in England and Wales]*

(b) *[Facsimile Number]*

(c) 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.

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

(a) if delivered by hand, at the time of delivery; or

(b) if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or

(c) 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.

4.3 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.

4.4 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.

5 Beneficiary's protections

5.1 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.

5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:

- (a) 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;
- (b) 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;
- (c) 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
- (d) 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.

5.3 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 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.

5.4 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.

- 5.5 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.
- 5.6 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.
- 5.7 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.

6 Guarantor intent

Without prejudice to the generality of Clause 5 (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.

7 Rights of subrogation

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:

- 7.1 of subrogation and indemnity;
- 7.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
- 7.3 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 up to such amount as the Beneficiary determines in its sole discretion represents the amount of the Guarantor's liabilities under this Deed of Guarantee (the "**Guarantee Estimate Amount**") on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor may retain for its own account or otherwise deal with any such amounts recovered in excess of the Guarantee Estimate Amount as the Guarantor may determine in its sole discretion. The Guarantor hereby confirms that it has not taken any security from the Supplier (other than cross-indemnities or other security taken in the ordinary course of its financial arrangements with its Affiliates) and agrees not to do take any further security until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

8 Deferral of rights

- 8.1 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:
- (a) claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement; or
 - (b) 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.
- 8.2 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 following the occurrence of a Financial Distress Event or Supplier Termination Event:
- (a) exercise any rights it may have to be indemnified by the Supplier;
 - (b) demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or
 - (c) claim any set-off or counterclaim against the Supplier.
- 8.3 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.

9 Representations and warranties

The Guarantor hereby represents and warrants to the Beneficiary that:

- 9.1 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;
- 9.2 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;
- 9.3 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;
- 9.4 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
- 9.5 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.

10 Payments and set-off

- 10.1 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.

- 10.2 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.
- 10.3 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.

11 Guarantor's acknowledgement

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.

12 Assignment

- 12.1 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.
- 12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

13 Severance

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.

14 Third party rights

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.

15 Governing Law

- 15.1 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.
- 15.2 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.

- 15.3 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).
- 15.4 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.
- 15.5 ***[Provision dealing with the appointment of English process agent by a non English incorporated Guarantor]*** [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