

AGREEMENT FOR THE SUPPLY OF SERVICES

AWARD LETTER

For the attention of:	
Supplier name:	B2i Healthcare Kft.
Registered company number:	01 09 930419 (registered in Hungary)
Supplier address:	Szent Istvan korut 18 Floor 1 Door 2 1137 Budapest, Hungary
By email-to-email address:	
Your reference:	
Our reference:	C111723
Award of agreement for the supply of:	Support, Maintenance and Development of SnowOwl and SnowRay
Customer:	Health and Social Care Information Centre (known as NHS Digital)

This Award Letter and its Annex(es) set out the terms of the Agreement between the Health and Social Care Information Centre (known as NHS Digital) as the 'Customer' and the Supplier for the provision of the Services. Unless the context otherwise requires, capitalised expressions used in this Award Letter have the same meanings as in the terms and conditions set out in Annex 1 to this Award Letter (the "**Conditions**"). In the event of any conflict between this Award Letter, the Conditions and Annexes 2 and 3, the following order of precedence shall apply:

- a) Award Letter;
- b) Conditions;
- c) Annex 2; and
- d) Annex 3.

Please do not attempt to attach any Supplier terms and conditions or amend this Agreement as these will not be accepted by the Customer and may delay processing of the Agreement.

For the purposes of the Agreement, the Customer and the Supplier agree as follows:

- 1) The Services shall be performed at:

Address:	N/A
Contact telephone number:	N/A

- 2) The Specification and Charges for the Services to be Delivered shall be as set out in Annexes 2 and 3 respectively.
- 3) The Term shall be the period from the start date to the Expiry Date as follows, and the following Extension Period(s) shall be applicable:

Start date	14/11/2022
Expiry Date	31/03/2026

- 4) The details and addresses for communications and service of notices on the Parties are:

Customer	
Supplier	

- 5) The following persons are Key Personnel for the purposes of the Agreement:

Name	Title

- 6) Processing of Personal Data by the Supplier for and on behalf of the Customer is occurring pursuant to this Agreement:

No

In the event that the answer is yes, or if this becomes the case during the term of this Agreement, the Parties shall complete the table below and clauses 12.2 to 12.10 shall apply in respect of such Processing.

The table below sets out the agreed description of the Processing being undertaken in connection with the exercise of the Parties' rights and obligations under the Agreement. The Supplier shall comply with any further written instructions with respect to Processing given by the Customer and any such further instructions shall be incorporated into this table:

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Laws, the Customer is the Controller and the Supplier is the Processor in accordance with clause 12.

Subject matter of the Processing	N/A
Duration of the Processing	Commence Processing the Personal Data from the Start Date, as required in order to provide the Services. Unless expressly agreed otherwise, cease Processing the Personal Data immediately upon the termination or expiry of the Agreement or, if sooner, the Service to which it relates.
Nature and purposes of Processing	N/A
Type of Personal Data being Processed	N/A
Categories of Data Subjects	N/A
Plan for return of the data once the Processing is complete unless requirement under union or member state law to preserve that type of data	N/A
Data Protection Officer of Supplier	N/A

7) The Liability Cap shall be a sum equal to 125% of the Charges paid or payable under the Agreement to the Supplier.

8) For the purposes of the Agreement the following Customer policies apply:

Staff Vetting Procedures
Data security requirements
Equality and diversity policy
Environmental policy
CSR Policies

9) The Supplier shall be required to ensure that any person potentially to be employed in the supply of the Services has undertaken a Disclosure and Barring Service check:

No

If 'Yes' the Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Agreement, relevant to the work of the Customer, or is of a type otherwise advised by the Customer (each such conviction a **"Relevant Conviction"**),

or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the supply of the Services.

- 10) The Supplier must be in Receipt of a valid Purchase Order Number before submitting an invoice. All invoices should be sent, quoting that number to the address given on the purchase order. To avoid delay in payment it is important that the invoice is compliant and that it includes an item number (if applicable) and the details (name and telephone number) of the Customer contact. Non-compliant invoices will be sent back to the Supplier, which may lead to a delay in payment.

Any queries regarding outstanding payments should be directed to NHS Digital's Accounts Payable section by email at financialaccounts@nhs.net.

Invoices should clearly quote the purchase order number, be addressed to NHS Digital, T56 Payables A125, Phoenix House, Topcliffe Lane, Wakefield, WF3 1WE and be sent as a PDF attachment by email to the following email address; sbs.apinvoicing@nhs.net (one invoice per PDF) and emails must not exceed 10Mb and quote, 'T56 Invoice Scanning' in subject line or alternatively invoices can be sent via post to the above address.

Please execute and return to NHS Digital a copy of this Agreement within 7 days of receipt. No other form of acknowledgement will be accepted. Please remember to quote the reference number above in any future communications relating to this Agreement.

Please direct all queries to the Customer contact. We thank you for your co-operation to date, and look forward to forging a successful working relationship resulting in a smooth and successful supply of the Services.

Execution of this Contract may be carried out in accordance with the Electronic Identification and Trust Services for Electronic Transactions Regulations 2016 (SI 2016/696) and the Electronic Communications Act 2000. In the event each Party agrees to sign this Contract by electronic signature (whatever form the electronic signature takes) it is confirmed that this method of signature is as conclusive of each Party's intention to be bound by this Contract as if signed by each Party's manuscript signature. In such situation, this Contract shall be formed on the date on which both Parties have electronically signed the Contract as recorded in the Customer's electronic contract management system.

For and on behalf of the Supplier:	For and on Behalf of the Customer:

Annex 1: Terms and Conditions of Agreement for Services

1. Interpretation

1.1. In these terms and conditions:

Agreement	means the contract between (i) the Customer and (ii) the Supplier comprising the Award Letter, these Conditions and Annexes 2 and 3;
Award Letter	means the letter from the Customer to the Supplier printed above this Annex 1 (Terms and Conditions of Agreement for Services);
Background IP	means any Intellectual Property Rights owned by or licensed to a Party that are not Foreground IP;
Central Government Body	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency; and to the extent not included in the above, the Department for Health and Social Care and NHS England;
Charges	means the charges for the Services as specified in the Award Letter and set out in Annex 3;
Conditions	means as defined in the Award Letter;
Contracting Authority	means as defined in the Public Contracts Regulations 2015;
Confidential Information	means any and all information of a technical, commercial, financial or sensitive nature (including without limitation data, know-how, formulae, processes, designs, photographs, audio or videotape, CD ROMs, drawings, specifications, samples, programmes, materials, records, business plans, consumer research, analysis or experience) in whatever medium which is disclosed by or on behalf of either Party (" Discloser ") to the other Party or to any person on behalf of that other Party (" Recipient ") orally, pictorially, electronically, in writing, by demonstration, by viewing in machine readable form, or by any other means. For the avoidance of doubt the Supplier's "Confidential Information" shall include information of a commercial, financial or sensitive nature that is disclosed, marked or stated to be 'confidential' by the Supplier or on the Supplier's behalf to the Customer or to any person on the Customer's behalf as part of the Supplier's involvement in the supply of the Services. Customer "Confidential Information" shall include the information set out within any documents issued by the Customer or on the Customer's behalf and marked or stated to be 'confidential', known by the Recipient to be confidential,

	or which ought reasonably to be considered by the Recipient to be confidential (including any data referred or attached thereto). Confidential Information shall not include information that: (i) was known by the Recipient without restriction as to use or disclosure prior to receiving such information from the Discloser; (ii) has become generally known or available to the public through no act or omission on the part of the Recipient; (iii) is rightfully acquired by the Recipient from a third party who has the right to disclose it and who provides it without restriction as to use or disclosure; or (iv) is independently developed by the Recipient without use of the Confidential Information of the Discloser;
Control	means the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;
Controller or Data Controller	has the meaning given to it in the Data Protection Laws;
CSR Policies	means the Customer's policies, including, without limitation, anti-bribery and corruption, health and safety, modern slavery, the environmental and sustainable development, equality and diversity, and any similar policy notified to the Supplier by the Customer from time to time, and "CSR Policy" shall mean any one of them;
CSR Laws	means Laws relating to corporate social responsibility issues (e.g. anti-bribery and corruption, health and safety, the environmental and sustainable development, equality and diversity), including but not limited to the Modern Slavery Act 2015, the Public Services (Social Value) Act 2012, the Public Contracts Regulations 2015 and Article 6 of the Energy Efficiency Directive 2012/27/EU, from time to time in force;
Customer	means the Health and Social Care Information Centre (known as NHS Digital);
Customer Data	means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Customer Confidential Information, and which: <ul style="list-style-type: none"> a) are supplied to the Supplier by or on behalf of the Customer; or b) the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or c) any Personal Data for which the Customer is the Controller;
Data Protection Laws	means applicable legislation protecting the fundamental rights and freedoms of individuals, in respect of their right to privacy and the processing of their personal data, as

	amended from time to time, including Regulation (EU)_2016/679 as transposed into the United Kingdom's national law by the operation of section 3 of the EU (Withdrawal) Act 2018 (and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019; 'the UK General Data Protection Regulation' ("UK GDPR") and the Data Protection Act 2018) and the Privacy and Electronic Communications Regulations 2003, togetherwith decisions, guidelines, guidance notes and codes of practice issued from time to time by courts, data protection authorities and other applicable Government authorities;
Data Protection Impact Assessment	an assessment by the Customer of the impact of the envisaged processing on the protection of Personal Data;
Data Subject	has the meaning given to it in the Data Protection Laws;
Data Subject Access Request	means a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to access his or her Personal Data;
Deliverables	means anything, including any and all works or materials, created or developed by or on behalf of the Supplier pursuant to the terms of this Agreement or otherwise arising out of or in connection with the provision of the Services;
Dispute Notice	means as defined in clause 21.1;
DSP Toolkit	means the data security and protection toolkit, an online self-assessment tool that allows organisations to measure their performance against the National Data Guardian's 10 data security standards and supports key requirements of the UK GDPR, which can be accessed from https://www.dsptoolkit.nhs.uk/ , as may be amended or replaced by the Customer or the Department of Health and Social Care from time to time;
EIRs	means the Environmental Information Regulations 2004 (SI 2004/3391);
Expiry Date	means the date for expiry of the Agreement as set out in the Award Letter;
Extension Period	means the period, if any, as specified in the Award Letter, by which the Term may be extended by the Customer; (not to exceed 24 months in total);
Exit Plan	means the plan produced and updated by the Supplier during the Term in accordance Annex 4 (Exit Management Requirements);
FOIA	means the Freedom of Information Act 2000;
Force Majeure Event	means any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happeningsbeyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take

	reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding, for the avoidance of doubt, (i) an epidemic or pandemic, (ii) any industrial dispute relating to the Supplier or Supplier Staff or any other failure in the Supplier's or a Sub-contractor's supply chain; and (iii) the withdrawal of the UK from the European Union and any related circumstances, events, changes or requirements;
Foreground IP	means any Intellectual Property Rights in the Deliverables;
Good Industry Practice	shall mean in relation to any undertaking and any circumstances and in particular the provision of services to UK Government bodies or organisation of similar standing, the exercise of that degree of professionalism, skill, diligence, prudence, care, efficiency, timeliness, judgement and foresight which would reasonably and ordinarily be expected from a leading and expert internationally recognised company engaged in the same type of activity under the same or similar circumstance seeking to comply with its contractual obligations in full and complying with applicable Laws;
Information	has the meaning given under section 84 of the FOIA;
Intellectual Property Rights	means patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world;
Key Personnel	means any persons specified as such in the Award Letter or otherwise notified as such by the Customer to the Supplier in writing;
Laws	means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye law, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply. For the avoidance of doubt, this shall include any Laws arising out of or in connection with any withdrawal of the United Kingdom from the European Union;
Liability Cap	means the aggregate liability of the Supplier which shall not exceed the greater of: i) a sum equal to 125% of the Charges paid or payable under the Agreement to the Supplier; or ii) the value specified in the Award Letter;

NIS Regulations	means The Network and Information Systems Regulations 2018 and any guidelines, guidance notes, codes of practice and codes of conduct issued from time to time by a competent authority;
Party	means the Supplier or the Customer (as appropriate) and "Parties" shall mean both of them;
Personal Data	has the meaning given to it in the Data Protection Laws, and applies to personal data which is Processed by the Supplier or any Sub-contractor on behalf of the Customer or a Central Government Body pursuant to or in connection with this Agreement;
Personal Data Breach	means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed;
Process	has the meaning given to it in the Data Protection Laws, and "Processed" and "Processing" shall be construed accordingly;
Processor or Data Processor	has the meaning given to it in the Data Protection Laws;
Purchase Order Number	means the Customer's unique number relating to the supply of the Services;
Receipt	means the physical or electronic arrival of the invoice at the address specified above under the heading "Payment" or at any other address given by the Customer to the Supplier for the submission of invoices from time to time;
Replacement Deliverables	any deliverables which are substantially similar to any of the Deliverables and which the Customer receives in substitution for any of the Deliverables following the Expiry Date, whether those services are provided by the Customer internally and/or by any third party;
Replacement Supplier	any third party provider of Replacement Deliverables appointed by or at the direction of the Customer from time to time or where the Customer is providing Replacement Deliverables for its own account, shall also include the Customer;
Request for Information	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply);
Restricted Country	means any country which is not subject of an adequacy decision, as set out in Part 3, Schedule 21 of the DPA 2018;
Services	means the services to be supplied by the Supplier to the Customer under the Agreement as set out in the Specification;

Specification	means the specification for the Services (including as to quantity, description and quality) as specified in the Award Letter and Annex 2;
Staff	means all persons employed or engaged by a Party to perform its obligations under this Agreement, including any contractors and subcontractors and persons employed or engaged by such contractor or subcontractors;
Staff Vetting Procedures	means vetting procedures that accord with Good Industry Practice and, where specified in the Award Letter or otherwise requested by the Customer, the Customer's procedures for the vetting of personnel as provided to the Supplier from time to time, which shall always include but not be limited to a check through the Disclosure and Barring Service (DBS);
Standards	means any standards reasonably applicable given the Supplier's expertise and the Services provided, which shall always include as a minimum the DSP Toolkit or any replacement of the same;
Standard Contractual Clauses	means the standard contractual clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of protection as set out in Commission Decision C (2010) 593 and reference to the standard contractual clauses shall be to the clauses as updated, amended, replaced or superseded from time to time by the Information Commissioner's Office;
Sub-contract	means any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
Sub-contractor	means any third party with whom: a) the Supplier enters into a Sub-contract; or b) a third party under limb (a) above enters into a Sub-contract, or the servants or agents of that third party;
Sub-Processor	has the meaning given to it in clause 12.4.7;
Supplier	means the person named as Supplier in the Award Letter;

Term	means as defined in clause 4.1;
Transparency Information	means as defined in clause 13.1;
Transparency Report	means as defined in clause 13.2;
VAT	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
Working Day	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

- 1.2. In this Agreement, unless the context otherwise requires:
 - 1.2.1. references to numbered clauses are references to the relevant clause in these Conditions;
 - 1.2.2. any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
 - 1.2.3. the headings to the clauses of this Agreement are for information only and do not affect the interpretation of the Agreement;
 - 1.2.4. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
 - 1.2.5. the word 'including' shall be understood as meaning 'including without limitation'.

2. Basis of Agreement

- 2.1. The return or submission by the Supplier of a validly executed Agreement constitutes an offer by the Supplier to provide the Services subject to and in accordance with this Agreement.
- 2.2. The offer detailed in clause 2.1 shall be deemed to be accepted by the Customer on valid execution by the Customer of the Agreement.

3. Supply of Services

- 3.1. In consideration of the Customer's agreement to pay the Charges, the Supplier shall supply the Services to the Customer for the Term subject to and in accordance with this Agreement.
- 3.2. In supplying the Services, the Supplier shall:
 - 3.2.1. co-operate with the Customer in all matters relating to the Services and comply with all the Customer's instructions;
 - 3.2.2. perform the Services with all reasonable care, skill and diligence in accordance with Good Industry Practice in the Supplier's industry, profession or trade;
 - 3.2.3. use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
 - 3.2.4. ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
 - 3.2.5. comply with all applicable Standards, Laws and guidance;

- 3.2.6. provide all equipment, tools and vehicles and other items as are required to provide the Services; and
- 3.2.7. perform the Services promptly and in any event within any time limits as may be set out in the Agreement.
- 3.3. The Customer may by written notice to the Supplier at any time request a variation to the Specification of the Services. In the event that the Supplier agrees to any variation to the Specification of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Supplier.

4. Term

- 4.1. The Agreement shall take effect on the date specified in Award Letter and shall expire on the later of:
 - 4.1.1. the Expiry Date; or
 - 4.1.2. the end date of any Extension Period applicable in accordance with clause 4.2; subject to any early termination in accordance with this Agreement (the “Term”).
- 4.2. The Customer may, if specified in the Award Letter, extend the Term of the Agreement for one or more Extension Periods (up to a maximum Term of 36 months) by giving not less than 10 Working Days’ notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

5. Charges, Payment and Recovery of Sums Due

- 5.1. The Charges for the Services shall be as set out in Annex 3 and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 5.2. The Supplier shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.3. In consideration of the supply of the Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days after Receipt of a valid and undisputed invoice which includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 5.4. All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the Receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
- 5.5. If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate this Agreement in accordance with clause 17.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 20.
- 5.6. If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.7. If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the

Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

6. Premises and Equipment

- 6.1. If necessary, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services, such access to be non-exclusive and revocable. All equipment, tools and vehicles brought onto the Customer's premises by the Supplier or the Staff shall be at the Supplier's risk.
- 6.2. If the Supplier supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Customer's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the Supplier or any Staff, other than fair wear and tear.
- 6.3. Any access to the Customer's premises and any labour and equipment that may be provided by the Customer in connection with provision of Services shall be provided without acceptance by the Customer of any liability in respect of any actions, claims, costs and expenses incurred by third parties for any loss or damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of the Customer or its servant or agent. The Supplier shall indemnify the Customer in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which the Customer may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of provision of Services to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-Suppliers.
- 6.4. If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.5. The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 6.6. Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 6.7. Without prejudice to clause 3.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.8. The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good

condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.

7. Staff and Key Personnel

- 7.1. The Supplier shall employ sufficient Staff to ensure that it complies with its obligations under this Agreement. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to provide the Services during Staff holidays or absence.
- 7.2. The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services. The redeployment and/or replacement of any Key Personnel by the Supplier shall be subject to the prior written approval of the Customer, such approval not to be unreasonably withheld or delayed. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 7.3. If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
 - 7.3.1. refuse admission to the relevant person(s) to the Customer's premises;
 - 7.3.2. direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
 - 7.3.3. require that the Supplier promptly replaces any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,and the Supplier shall comply with any such notice.
- 7.4. The Supplier shall:
 - 7.4.1. ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
 - 7.4.2. if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
 - 7.4.3. procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.
- 7.5. The Supplier shall agree on a case by case basis which Supplier Staff roles require specific government National Security Vetting clearances (such as 'SC') including system administrators with privileged access to IT systems which store or process Customer Data.

8. Assignment and sub-contracting

- 8.1. The Supplier shall not, without the written consent of the Customer, assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its Sub-contractors as though those acts and omissions were its own.
- 8.2. Where the Supplier enters into a Sub-contract for the purpose of performing its obligations under the Agreement, it shall ensure that provisions are included in such Sub-contract which:

- 8.2.1. contain at least equivalent obligations as set out in the Agreement in relation to the performance of the Services to the extent relevant to such Sub-contract;
 - 8.2.2. contain at least equivalent obligations as set out in the Agreement in respect of confidentiality, information security, data protection, Intellectual Property Rights and compliance with Laws;
 - 8.2.3. contain a prohibition on the Sub-contractor sub-contracting, assigning or novating any of its rights or obligations under such Sub-contract without the prior written approval of the Customer (such approval not to be unreasonably withheld or delayed);
 - 8.2.4. contain a right for the Customer to take an assignment or novation of the Sub-contract (or part of it) upon expiry or earlier termination of the Agreement; and
 - 8.2.5. require payment to be made of all sums due by the Supplier to the Sub-contractor within a specified period not exceeding 30 days from the Receipt of a valid invoice.
- 8.3. Any authority given by the Customer for the Supplier to Sub-contract any of its obligations under this Agreement shall not impose any duty on the Customer to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with the Agreement.
- 8.4. Where the Customer has consented to the placing of Sub-contracts, the Supplier shall, at the request of the Customer, send copies of each Sub-contract, to the Customer as soon as is reasonably practicable.
- 8.5. The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

9. Intellectual Property Rights

- 9.1. All Foreground IP shall vest in the Customer absolutely, and the Supplier hereby assigns to the Customer, absolutely with full title guarantee (and free from all third party rights), any and all of its rights, title and interest in and to all the existing and future Foreground IP, to the fullest extent permitted by law.
- 9.2. The Supplier hereby grants the Customer a perpetual, royalty-free, irrevocable, worldwide, non-exclusive licence (with a right freely to sub-license to any third party) to use:
- 9.2.1. all the present and future Background IP that is owned by the Supplier and/or the use of which the Supplier is able to license, including any modifications to or derivative versions of any such Background IP; and
 - 9.2.2. all other relevant Intellectual Property Rights owned by the Supplier and/or the use of which the Supplier is able to license;
- to the extent necessary to fulfil the Supplier's obligations under this Agreement and/or which the Customer reasonably requires in order to exercise its rights under and to take the full benefit of the Agreement including the Services provided, including, without limitation, to receive, use, re-use, adapt, modify, reproduce, exploit, produce derivative versions of, supply and/or publish (including as open source software) or deal in any other way with the Deliverables.

- 9.3. Each Party undertakes that it shall promptly execute all documents, make all applications, give all assistance and do or procure the doing of all acts and things as may be necessary or desirable to vest all the Foreground IP in, and to register it in, the name of the Customer and/or to give full effect to the licences granted under this clause 9.
- 9.4. The Supplier:
- 9.4.1. warrants that the receipt, use, re-use, reproduction, exploitation, supply and/or publication (including as open source software) of the Services or Deliverables by the Customer and its permitted sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
 - 9.4.2. shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including but not limited to any interest, penalties, and legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use, re-use, reproduction, exploitation, supply and/or publication (including as open source software) of the Services or Deliverables.
- 9.5. All Background IP is and shall remain the exclusive property of the Party owning it (or, where applicable, the third party from whom that Party's right to use the Background IP has derived) and nothing in this Agreement shall operate to transfer any Background IP of one Party to the other.
- 9.6. The Customer hereby grants to the Supplier, for the Term of this Agreement, a non-exclusive, royalty-free, non-transferable licence to use any Foreground IP or any Background IP that is owned by the Customer and/or the use of which the Customer is able to license, to the extent such use is necessary for the purpose of the Supplier performing its obligations under this Agreement and/or providing the Services and Deliverables.
- 9.7. The Supplier shall, unless otherwise stated in Annex 2:
- 9.7.1. identify any third-party licences for software or other Intellectual Property Rights which are required for the receipt and use of the Services or the Deliverables by the Customer;
 - 9.7.2. procure that the third party owner of such software or Intellectual Property Rights grants to the Customer a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Customer an authorised sub-licence, to use, reproduce, modify, develop and maintain the software and Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Customer to sub-license, transfer, novate or assign to any other Contracting Authority or to any other third party supplying goods and/or services to the Customer; and
 - 9.7.3. pay any applicable fees for any such licence.

10. Governance and Records

- 10.1. The Supplier shall:
- 10.1.1. attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and

- 10.1.2. submit progress reports to the Customer at the times and in the format specified by the Customer.
- 10.2. The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.
- 10.3. The Supplier shall not charge the Customer for any costs incurred complying with the governance requirements of this Agreement.

11. Confidentiality

- 11.1. Subject to clause 11.2, each Party shall:
 - 11.1.1. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
 - 11.1.2. not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.
- 11.2. Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:
 - 11.2.1. where disclosure is required by applicable law (including but not limited to FOIA and EIR) or by a court of competent jurisdiction;
 - 11.2.2. to its auditors or for the purposes of regulatory requirements;
 - 11.2.3. on a confidential basis, to its professional advisers;
 - 11.2.4. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
 - 11.2.5. where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and
 - 11.2.6. where the receiving Party is the Customer:
 - a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;
 - b) on a confidential basis to any other Central Government Body, any Contracting Authority, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;
 - c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
 - d) in accordance with clause 13,and for the purposes of the foregoing, references to disclosure "on a confidential basis" shall mean disclosure subject to a confidentiality agreement or arrangement.
- 11.3. The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

12. Protection of Personal Data and Security of Data

- 12.1. When handling Customer Data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Supplier from time to time.
- 12.2. Where any Personal Data are Processed in connection with the exercise of the Parties' rights and obligations under this Agreement, the Parties acknowledge that the Supplier shall be acting as a Processor on behalf of the Customer as the Controller. The only Processing that the Supplier is authorised to do is listed in the Award Letter and may not be determined by the Supplier.
- 12.3. The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Customer, include:
 - 12.3.1. a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - 12.3.2. an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
 - 12.3.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 12.3.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 12.4. The Supplier shall, and shall procure that its agents, Sub-Processors and employees shall:
 - 12.4.1. Process the Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in this Agreement, or as otherwise notified by the Customer to the Supplier in writing from time to time) and set out in the table in section 6 of the Award Letter, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Customer before Processing the Personal Data unless prohibited by Law;
 - 12.4.2. notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Laws;
 - 12.4.3. ensure that at all times it has in place appropriate technical and organisational measures (which are consistent with Article 32 of the UK GDPR) which the Customer may reasonably reject (but failure to reject shall not amount to approval by the Customer of the adequacy of the technical and organisational measures), to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data, such measures to ensure a level of security commensurate with the risks associated with the Processing having taken account of the:
 - a) nature of the data to be protected;
 - b) harm that might result from a Personal Data Breach;
 - c) state of technological development; and
 - d) cost of implementing any measures;
 - 12.4.4. notify the Customer immediately upon becoming aware of a Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the Customer with sufficient information to meet any obligations to report a Personal Data Breach under the Data Protection Laws. Such notification shall as a minimum:
 - describe the nature of the Personal Data Breach, the categories and numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned;

communicate the name and contact details of the data protection officer or other relevant contact from whom more information may be obtained;
describe the likely consequences of the Personal Data Breach; and
describe the measures taken or proposed to be taken to address the Personal Data Breach;

12.4.5. co-operate with the Customer and take such reasonable steps as are directed by the Customer to assist in the investigation, mitigation and remediation of a Personal Data Breach;

12.4.6. not disclose the Personal Data to any Supplier Staff unless necessary for the provision of the Services;

12.4.7. other than where specifically authorised under this Agreement, not appoint any third party sub-contractor to Process the Personal Data ("**Sub-Processor**") without the prior written consent of the Customer. In all cases where a Sub-Processor is appointed:

- 1) the contract between the Supplier and the Sub-Processor shall include terms which are substantially the same as those set out in this clause 12;
- 2) the Supplier shall provide the Customer with such information regarding the Sub-Processor as the Customer may reasonably require;
- 3) the Supplier shall remain fully liable to the Customer for any failure by a Sub-Processor to fulfil its obligations in relation to the Processing of any Personal Data; and
- 4) the use of the Sub-Processor shall be otherwise in accordance with clause 12.5;

12.4.8. take reasonable steps to ensure the reliability and integrity of any Supplier Staff who have access to the Personal Data, ensuring in each case that access is strictly limited to those individuals who need to access the relevant Personal Data, as strictly necessary to perform the Services in the context of that individual's duties to the Supplier, and ensure that the Supplier Staff:

- a) are aware of and comply with the Supplier's obligations under this clause 12 together with any obligations pertaining to confidentiality or data protection which are set out in this Agreement;
- b) are subject to confidentiality undertakings or other contractual or professional or statutory obligations of confidentiality;
- c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
- d) have undergone adequate training in the use, care, protection and handling of Personal Data;

12.4.9. notify the Customer immediately if it receives:

- a) from a Data Subject (or third party on their behalf);
- b) a Data Subject Access Request (or purported Data Subject Access Request);
- c) a request to rectify any inaccurate Personal Data;
- d) a request to have any Personal Data erased or blocked;
- e) a request to restrict the Processing of any Personal Data;
- f) a request to obtain a portable copy of Personal Data, or to transfer such a copy to any third party; or
- g) an objection to any Processing of Personal Data;

- h) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data under this Agreement;
- i) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- j) any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;

(each a "**Relevant Communication**").

- 12.4.10. taking into account the nature of the Processing, provide the Customer with full cooperation and assistance (within the timescales reasonably required by the Customer, and in any case within sufficient time for the Customer to comply with any relevant timescales prescribed by the Data Protection Laws) in relation to any Relevant Communications (whether received by the Supplier or by the Customer directly) including by implementing such technical and organisational measures as may be reasonably required by the Customer and by promptly providing:
- the Customer with full details and copies of the Relevant Communication (where received by the Supplier);
 - the Customer, on request by the Customer, with any Personal Data it holds in relation to a Data Subject; and
 - assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office;
- 12.4.11. allow for audits (including inspections) of its data Processing activity by the Customer or the Customer's mandated Auditor, and if requested by the Customer, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this clause 12 and provide to the Customer copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.
- 12.4.12. cease Processing the Personal Data immediately upon the earlier of the (i) termination or expiry of this Agreement, or (ii) the cessation of the Services, and as soon as reasonably practicable thereafter, at the Customer's option, either return, or securely and irrevocably delete from its systems (so that such Personal Data cannot be recovered or reconstructed), the Personal Data and any copies of it or of the information it contains; and
- 12.4.13. designate a data protection officer if required by the Data Protection Laws.
- 12.5. The Supplier shall not Process or otherwise transfer, or permit the transfer, of any Personal Data in or to any Restricted Country without obtaining the prior written consent of the Customer (unless the transfer is required by EU or member state law to which the Supplier is subject, and if this is the case then the Supplier shall inform the Customer of that requirement before Processing the Personal Data, unless a Law prohibits such information being provided on important grounds of public interest).
- 12.6. In respect of any Processing in, or transfer of Personal Data to, any Restricted Country permitted in accordance with clause 12.5, the Supplier shall, when requested by the Customer, promptly enter into an agreement with the Customer including or on such provisions as the Standard Contractual Clauses and/or such variation as a regulator or the Customer might require which terms shall, in the event of any conflict, take precedence over those in this clause 12, and the Supplier shall comply with any

reasonable instructions notified to it in advance by the Customer with respect to the transfer of the Personal Data;

- 12.7. Subject to the Customer providing the Supplier with all information reasonably required by the Supplier to comply with this clause 12.6, the Supplier shall create and maintain a register setting out:
 - 12.7.1. the types of Personal Data and categories of Data Subject whose Personal Data are Processed during the provision of the Services; and
 - 12.7.2. a general description of the technical and organisational security measures adopted by the Supplier to protect the Personal Data in accordance with clause 12.4.3.
- 12.8. The Supplier shall use its reasonable endeavours to assist the Customer to comply with any obligations under the Data Protection Laws and shall not perform its obligations under this Agreement in such a way as to cause the Customer to breach any of the Customer's obligations under the Data Protection Laws to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.
- 12.9. Both the Customer and the Supplier shall comply with their respective obligations under the UK GDPR in relation to this Agreement, including by adhering to any relevant codes of conduct published pursuant to Article 40 of the UK GDPR.
- 12.10. Notwithstanding clause 22.3 the Customer may, at anytime on not less than 30 Working Days' notice, revise this clause 12 by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 12.11. Both the Customer and the Supplier shall comply with their respective obligations under any relevant law implementing or otherwise giving effect to the NIS Regulations. In response to the obligations created by any law implementing or otherwise giving effect to the NIS Regulations, the Customer may elect to produce a report setting out the steps to be reasonably followed by both parties in relation to their compliance with the NIS Regulations in the context of the Services, and the Supplier shall comply with the terms of any such report.
- 12.12. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 12.13. If following the date of this Agreement:
 - 12.13.1. any codes of practice, codes of conduct, regulatory guidance, standard clauses and any other related laws arising from the UK GDPR or from the NIS Regulations are published; or
 - 12.13.2. the UK ceases to be a Member State of the European Union, then the Customer may require the Supplier to take such further reasonable actions, or enter into such further contractual terms, in each case as necessary to take account of these developments.
- 12.14. The Supplier shall at all times during and after the expiry of the Agreement, indemnify the Customer and keep the Customer indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Customer arising from any breach of the Supplier's obligations under this clause 12.

13. Transparency and Freedom of Information

- 13.1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, and which shall be determined by the Customer, the content of this Agreement, including any changes to this Agreement agreed from time to time, (the "**Transparency Information**") is not Confidential Information.
- 13.2. Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Customer to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) ("**Transparency Report**"). The Customer shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 13.3. The Supplier shall assist and co-operate with the Customer to enable the Customer to publish the Transparency Information, including the preparation of the Transparency Reports.
- 13.4. If the Customer believes that publication of any element of the Transparency Information would be contrary to the public interest, the Customer shall be entitled to exclude such information from publication. The Customer acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Customer acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- 13.5. The Customer shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 13.6. The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Customer on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Customer may disclose such information under the FOIA and the EIRs and may publish such Information. The Supplier shall provide to the Customer within 5 Working Days (or such other period as the Customer may reasonably specify) any such Information requested by the Customer.
- 13.7. The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
 - 13.7.1. provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;
 - 13.7.2. transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 13.7.3. provide the Customer with a copy of all Information held on behalf of the Customer which is requested in a Request for Information and which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
 - 13.7.4. not respond directly to a Request for Information addressed to the Customer unless authorised in writing to do so by the Customer.

- 13.8. The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Customer shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

14. Liability

- 14.1. The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.
- 14.2. Subject always to clauses 14.4 and 14.5:
- 14.2.1. the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed the Liability Cap; and
- 14.2.2. except in the case of claims arising under clauses 9.3, 12.14 and 19.3, in no event shall either Party be liable to the other Party for any:
- loss of profits;
 - loss of business;
 - loss of revenue;
 - loss of or damage to goodwill; and/or
 - any indirect, special or consequential loss or damage.
- 14.3. The Customer's maximum aggregate liability under this Agreement shall in no event exceed a sum equal to 100% of the Charges paid or payable under the Agreement to the Supplier.
- 14.4. Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
- death or personal injury caused by its negligence or that of its Staff;
 - fraud or fraudulent misrepresentation by it or that of its Staff; or
 - any other matter which, by law, may not be excluded or limited.
- 14.5. The Supplier's liability under the indemnities in clauses 9.3, 12.14 and 19.3 shall be unlimited.
- 14.6. Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to the Agreement.

15. Insurance

- 15.1. During the Term and for a period of 12 months thereafter, the Supplier shall maintain in force, and shall procure that any Sub-contractors maintain in force, with a reputable insurance company insurance sufficient to cover the liabilities that may arise under or in connection with this Agreement, and shall, on the Customer's request, produce both the insurance certificates giving details of cover and the receipts for the current year's premium in respect of each insurance.

16. Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from a Force Majeure Event. Each Party shall promptly notify the other Party in writing when a Force Majeure Event causes a delay or failure in performance and when it ceases to do so. If a Force Majeure Event continues for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

17. Termination

- 17.1. The Customer may terminate the Agreement at any time by providing notice in writing to the Supplier to take effect on any date falling at least 30 days (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.
- 17.2. Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:
 - 17.2.1. (without prejudice to clause 17.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
 - 17.2.2. repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
 - 17.2.3. is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
 - 17.2.4. undergoes a change of Control without the prior written consent of the Customer. The Customer shall be entitled to withhold such consent if, in the reasonable opinion of the Customer, the proposed change of Control will have a material impact on the performance of the Agreement or the reputation of the Customer;
 - 17.2.5. breaches any of the provisions of clauses 7.2, 11, 12, 13 and 18; or
 - 17.2.6. becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 17.2.6) in consequence of debt in any jurisdiction.
- 17.3. The Supplier shall notify the Customer as soon as practicable of any change of Control as referred to in clause 17.2.4 or any potential such change of Control.
- 17.4. The Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.
- 17.5. Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6, 6.2, 6.7, 6.8, 9, 10.2, 11, 12, 13, 17.6, 18.4.3, 19.3, 20 and 22.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 17.6. Upon termination or expiry of the Agreement, the Supplier shall:

- 17.6.1. give all reasonable assistance to the Customer and any incoming supplier of the Services; and
- 17.6.2. return all requested documents, information and data to the Customer as soon as reasonably practicable.

18. Compliance

- 18.1. The Supplier shall, and shall procure that its Sub-contractors and any person under its control, comply with all the Customer policies specified in the Award Letter.
- 18.2. The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 18.3. The Supplier shall:
 - 18.3.1. comply with all the Customer's health and safety measures while on the Customer's premises; and
 - 18.3.2. notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 18.4. The Supplier shall:
 - 18.4.1. comply, and procure that all Staff comply with all CSR Laws;
 - 18.4.2. require its Sub-contractors and any person under its control, to comply with all CSR Laws;
 - 18.4.3. adopt, and procure that its Sub-contractors and any person under its control adopt, written corporate and social responsibility policies that set out values for relevant activity and behaviour equivalent to those set out in the CSR Policies (including, without limitation, addressing the impact on employees, clients, stakeholders, communities and the environment of the Supplier's business activities); and
 - 18.4.4. notify the Customer in the event that the Supplier's or its Sub-contractors' corporate and social responsibility policies conflict with, or do not cover the same subject matter in an equivalent level of detail as is in, the CSR Policies.
- 18.5. The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of section 182 of the Finance Act 1989.
- 18.6. The Customer may, where it deems appropriate (including but not limited to circumstances where a successor or related project involves a procurement process governed by the Public Contracts Regulations 2015), require the Supplier to put in place steps to ensure due probity including the erection of ethical walls and obligations to provide specific information. In such circumstances, the Supplier shall comply with any such measures reasonably proposed by the Customer.

19. Prevention of Fraud and Corruption

- 19.1. The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 19.2. The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent fraud by the Staff and the Supplier (including its shareholders,

members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

- 19.3. If the Supplier or the Staff engages in conduct prohibited by clause 19.1 or commits fraud in relation to the Agreement or any other contract with the any Contracting Authority (including the Customer) the Customer may:

- 19.3.1. terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or

- 19.3.2. recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

20. IR35

- 20.1. This Agreement constitutes a contract for the provision of goods and/or services. Where the Supplier (or its Sub-Contractors) have included one or more people that are non-permanent members of staff that are not on the Supplier's (or its Sub-Contractors) payroll ("Contractor(s)") to fulfil its service obligations under this Agreement, the Supplier shall be fully responsible for and shall indemnify the Customer for:

- 20.1.1. any proceedings, claims or demands by any third party (including specifically, but without limitation, HMRC and any successor, equivalent or related body pursuant to the IR35 legislation and/or any of the provisions of Income Regulations);

- 20.1.2. any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the services or any payment or benefit received by the Contractor in respect of the services, where such recovery is not prohibited by law; and all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Customer in connection with or in consequence of any such liability, deduction, contribution, assessment or claim.

- 20.2. The Customer may at its option satisfy such indemnity (in whole or in part) by way of deduction from payments due to the Supplier.

- 20.3. The Supplier warrants that it is not, nor will it prior to the cessation of this Agreement, become a managed service company, within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.

- 20.4. The Supplier shall monitor the provision of the services and notify the Customer where it considers that the activity of the Customer may impact the Suppliers' (or its Sub-Contractors) IR35 assessment in relation to the Contractors.

21. Dispute Resolution

- 21.1. If there is a dispute in relation to this Agreement, the Party raising the dispute shall serve a notice on the other Party in writing ("**Dispute Notice**") setting out the details of the dispute. The Parties shall then attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.

- 21.2. If the dispute cannot be resolved by the Parties within one month of the date of the Dispute Notice (being the date it was received) either Party may exercise any remedy it has under applicable law. For the avoidance of doubt, neither Party shall be

prevented by this Dispute Resolution process from commencing court proceedings more quickly if it is necessary to comply with a limitation period or if it is necessary to seek an urgent remedy.

- 21.3. The obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a dispute to any Dispute Resolution Process and the Supplier shall, and shall procure that the Staff shall comply fully with the requirements of this Agreement at all times.

22. General

- 22.1. Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 22.2. A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 22.3. Subject to clause 12.10 the Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 22.4. The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 22.5. Any waiver or relaxation, either partly or wholly of any of the terms and conditions of the Agreement, shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 22.6. The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 22.7. Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 22.8. If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

23. Notices

- 23.1. Any notice to be given under the Agreement shall be in writing and shall include the Agreement reference and title. All notices must be served by email, and, subject to clause 23.2, may in addition be served by personal delivery or first class recorded post. All notices must be served using the addresses of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.

- 23.2. Notices under clauses 16 (Force Majeure) and 17 (Termination) must be served by email and personal delivery or recorded delivery in the manner set out in clause 23.1.
- 23.3. Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.

24. Security of Supplier Staff

- 24.1. Supplier Staff shall be subject to pre-employment checks that include, as a minimum: verification of identity, employment history, unspent criminal convictions and right to work, as detailed in the HMG Baseline Personnel Security Standard (<https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>), as may be amended or replaced by the Government from time to time.
- 24.2. The Supplier shall agree on a case by case basis which Supplier Staff roles which require specific government National Security Vetting clearances (such as 'SC') including system administrators with privileged access to IT systems which store or process Customer Data.
- 24.3. The Supplier shall prevent Supplier Staff who have not yet received or are unable to obtain the security clearances required by this clause from accessing systems which store, process, or are used to manage Customer Data, or from accessing Customer premises, except where agreed with the Customer in writing. All Supplier Staff that have the ability to access Customer Data or systems holding Customer Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Customer in writing, this training must be undertaken annually. Where Supplier Staff are granted the ability to access Customer Data or systems holding Customer Data, those Supplier Staff shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need such access or leave the organisation, their access rights shall be revoked within one (1) Working Day.

25. Publicity and Branding

- 25.1. The Supplier shall not:
 - 25.1.1. make any press announcements or publicise this Agreement or its contents in any way; or
 - 25.1.2. use the Customer's name or brand in any promotion or marketing or announcement of orders,without the prior written consent of the Customer.
- 25.2. Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

26. Exit Plan and Exit Management Requirements

- 26.1. The Parties shall throughout the Term, comply with the provisions of Annex 4 (Exit Management Requirements), including any current Exit Plan in relation to orderly transition of the Services to the Customer or a Replacement Supplier.

27. Service Continuity and Disaster Recovery

- 27.1. The Supplier shall throughout the Term comply with the provisions of Annex 5 (Service Continuity and Disaster Recovery), in order to maintain service continuity of the Services to the Customer.]

28. Governing Law and Jurisdiction

- 28.1. The validity, construction and performance of the Agreement, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts.

29. Execution and Counterparts

- 29.1. This Agreement may be executed in any number of counterparts (including by electronic transmission), each of which when executed shall constitute an original but all counterparts together shall constitute one and the same instrument.
- 29.2. Execution of this Agreement may be carried out in accordance with the Electronic Identification and Trust Services for Electronic Transactions Regulations 2016 (SI 2016/696) and the Electronic Communications Act 2000. In the event each Party agrees to sign this Agreement by electronic signature (whatever form the electronic signature takes) it is confirmed that this method of signature is as conclusive of each Party's intention to be bound by this Agreement as if signed by each Party's manuscript signature. In such situation, this Agreement shall be formed on the date on which both Parties have electronically signed the Agreement as recorded in the Customer's electronic contract management system.

Annex 2 – Specification and Solution

1.1 Scope of Services required:

The Supplier shall provide:

For SnowOwl

From Start date to 31st March 2023 Development only.

For SnowOwl and SnowRay

From 1st April 2023 to 31st March 2026 Development, Support and Maintenance

During the Term, call offs in the form of project specific Statement of Requirements (“**SOR(s)**”) will be called off in line with the commissioning process detailed at section 1.2 of this Annex 2.

1.2 Future Services and the Commissioning Process:

Development of SnowOwl only for 2022/23. SnowOwl and SnowRay support, maintenance and development services will be required for the remainder of this contract please refer to Annex 3 – (Charges) for a breakdown of capped development days.

Support and Maintenance will be required for SnowOwl and SnowRay from 1st April 2023 – 31st March 2026. Please refer to Annex 3 – (Charges).

The Parties acknowledge that these requirements are not fully defined at the point of awarding this Agreement and will be developed over the Term as several projects (“**Future Services**”). Future phases of work will be called off using the Commissioning Process outlined at Annex 4 to this Agreement.

The Customer is not obliged to request any Future Services. In the event that the Customer does raise a request for Future Services, the Supplier is required to respond in accordance with the terms and conditions of this Agreement.

1.3 SLAs

During the Term of this Agreement, the Customer may require additional service levels applicable to the provision of the Deliverables under this Agreement, which shall be implemented via a variation in accordance with clause 3.3 and any additional SLAs shall be incorporated into and will form part of this Agreement. The Supplier shall comply with any further written instructions with respect to SLAs by the Customer.

Annex 2.1 – Commissioning Process for Future Services

The Supplier shall provide the Services in accordance with the commissioning process leading to one or more Statements of Requirements (SOR(s)) substantially based on the template set out in Annex 2.2 to this Agreement.

Commissioning Process

Where the Customer wishes to commission work under this Agreement, it shall:

1. Detail the requirements for each individual project including milestones and acceptance criteria and a populated data protection table containing complete and accurate details of the Personal Data Processing applicable to the SOR ("**Project Requirements**") substantially in the format of the Statement of Requirements template set out in Annex 2.2 to this Agreement.
2. The Customer's commercial team will communicate Project Requirements in writing to the Supplier whereupon the Supplier shall have five (5) Working Days (or an alternative time period as set out by the Customer upon communicating the Project Requirements) to respond. All commissioning requests shall be routed through the Customer's Commercial department/dedicated Commercial Leads.
3. The Supplier shall respond to the Project Requirements (the "**Supplier's Solution**") in the format specified by the Customer at the point of communicating the Project Requirements.
4. The Parties will use the commissioning process to assess and agree the data processing requirements for each project, determine the data subjects and data classes to be processed by the Supplier, such details to be included in the relevant Statement of Requirements.
5. The Supplier's Solution shall include details of how the work will be undertaken, a timeline/activity plan along a summary of the resources, it shall also include a detailed price for the delivery of the Project Requirements in the format provided by the Customer. Where no format is specified a section 3 (above) the method used to calculate the price shall be set out in sufficient detail for the Customer to understand how the price was determined and, as a minimum, the Supplier's pricing will be broken down by the day rates of resources proposed to fulfil the Supplier's Solution and will be no more expensive than the day rates set out in its tender.
6. In most instances, fixed fee or output based pricing will be used. In other instances, time and materials will be utilised based on the submitted rate card. The final decision would lie with the Customer.
7. Within five (5) Working Days of receipt of the Supplier's Solution, or in any other time period the Customer deems appropriate, it shall review and feedback comments on the Supplier's Solution.
8. Within two (2) Working Days of the Customer providing this feedback (or an alternative time period as set out by the Customer upon communicating its feedback) the Supplier shall provide a final Supplier's Solution to the Customer.
9. Where the Customer agrees with either the initial or revised Supplier's Solution the Supplier's Solution shall be attached to the proposed SOR containing the Project Requirements and the

- Customer shall sign and return the proposed SOR to the Supplier for countersigning whereupon the Supplier shall commence delivery of the Services detailed in the SOR.
10. Amendments to the SOR (and associated pricing) after the execution of the associated SOR shall follow the variation process set out at clause 3.3 of the Agreement and actioned through the Commercial Team.
 11. Close off from projects after the execution of a SOR shall follow Annex 2.2 of the Statement of Requirements - Acceptance Criteria Sign Off.
 12. At any point during or before the Commissioning Process, the Customer may seek alternative means of delivering the requirement including potentially re-competing the requirement.
 13. The Agreement is non-exclusive, and the Customer does not commit to awarding any work or SOR as part of this Agreement.
 14. Each SOR will have a unique identifying number supplied by the Customer.

Reporting and Governance

Project Team weekly call – prior to the call, the Supplier shall provide to the Customer the following reporting:

1. Progress reports against milestones set out in each Project Requirement detailing milestone's due for completion that are achieved, not achieved (with accompanying explanations) and any proposed changes to future milestone dates (with accompanying explanations and impact assessment).
2. Risks and issues associated with future milestones and details of actions being taken by the Supplier to remedy those risks and issues
3. Any additional reporting requirements as set out in individual Project Requirements being delivered at that time
4. The Supplier shall provide the Customer with financial updates against each project to help facilitate forecasted accruals
5. Changes to the way in which the Services are to be delivered must be brought to the Customer's attention and agreed prior to any changes being implemented

Security requirements

Some projects may require Supplier's resources to be cleared to the Customer's security clearance level of Security Check (SC). Some projects may require a higher or lower level of clearance. The level of security clearance required will be communicated in the Project Requirements and prior to each Statement of Requirements commencing. The Customer will make best endeavours in providing as much prior notice as is possible in such an event.

Statements of Requirements

During the Term, the Customer and Supplier may agree and execute completed Statement of Requirements. Upon execution of a Statement of Requirements the provisions detailed

therein shall be incorporated into the Agreement. The Customer and Supplier shall complete and execute Statements of Requirement in the form of the template at Annex 2.2, below.

Upon agreement by the Customer and the Supplier, each agreed Statement of Requirements is deemed incorporated into this Agreement as a supplementary Statement of Requirement. Each Statement of Requirement must have a unique identifying reference

Annex 2.2 – Statement of Requirements Template

1. STATEMENT OF REQUIREMENTS (“SOR”) DETAILS

Upon execution, this SOR will form part of the Agreement (referenced below).

The Parties will execute a SOR for each of the Customer requirements/ Deliverables required. Any ad-hoc Service requirements/ Deliverables are to be treated as individual requirements in their own right; and the Parties should execute a separate SOR in respect of each, or alternatively agree a variation to the existing SOR via a change control notice (CCN).

The rights, obligations and details agreed by the Parties and set out in this SOR apply only in relation to the Services/ Deliverables that are to be delivered under this SOR and will not apply to any other SORs executed or to be executed under this Agreement unless otherwise agreed by the Parties in writing.

Unless otherwise explicitly specified in this SOR, the terms of the Agreement shall apply to the scope of work set out in this SOR unamended. Unless otherwise specified, changes made to the terms of this Agreement set out herein only apply to the scope of work as set out in this SOR.

Date of SOR:	insert SOR Date
SOR Title:	insert SOR Title
SOR Reference:	insert SOR Reference
SOR Version:	V1.0
Atamis Contract Reference:	insert Atamis Reference
Workplan:	
Customer Portfolio Number:	Insert Portfolio Code/s
Customer:	Health and Social Care Information Centre (known as NHS Digital)
Supplier:	B2i Healthcare Kft.
SOR Start Date:	This SOR shall commence on [insert SOR Start Date]
SOR End Date:	This SOR shall expire on [insert SOR End Date], unless terminated earlier by either Party in accordance with the terms detailed in Clause 10 of the Call-Off Contract.
Duration of SOR	insert Duration of SOR

Charging Method(s) for this SOR:	
Key Customer Staff	List of any Customer Staff
Key Supplier Staff	List of any Supplier Staff
Key Sub-contractors	List of any Key Sub-Contractors

2. SOR CONTRACT SPECIFICATION - PROGRAMME CONTEXT				
Programme Background	[This must clearly define the context of the SOR within the context of the overall Agreement]			
Delivery Phase	Choose an item.			
Overview of Requirement	[Insert a text description of what is to be undertaken under cover of this SOR – provide the detail by reference to the milestones.]			
3. CUSTOMER REQUIREMENTS – SOR DELIVERABLES				
Deliverables				
Delivery Plan	Insert detail if applicable			
Dependencies				
Supplier Resource Plan				
Security Applicable to SOR				
Additional Requirements				
Milestone Ref	Milestone Description	Increment Included	Due date	Key Date
MS01	Insert high description title here. For the first milestone/s complete a detailed Increment Definition for each milestone	<input checked="" type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>
MS02	Insert high level description here, Increment Definition to be completed as appropriate	<input type="checkbox"/>	dd/mm/yyyy	<input type="checkbox"/>
	<i>Copy from above</i>			
4. CHARGES				

The applicable charging method(s) for this SOR is (check one):

The estimated maximum number of days is: [00]

The estimated maximum value of this SOR is: £[]

The Charges detailed in the financial model shall be invoiced in accordance with the process outlined in the Agreement.

Financial Model

5. SECURITY REQUIREMENTS

The Supplier confirms that all Supplier Staff working on Customer Sites and on Customer Systems and Deliverables, have completed Supplier Staff Vetting.

6. CHANGE PROCESS

In the event of a change being required to this Statement of Requirements, the Parties will follow clause 3.3 (variation process) of the Agreement.

7. TERMINATION WITHOUT CAUSE

The Customer shall have the right to terminate this Statement of Requirements at any time by issuing a Termination

Notice to the Supplier giving at least (10) days written. [or other timescale the parties agree per SOR]

7.1 Without prejudice to the rights and liabilities of the parties under Clause 17 (Termination) of the Agreement, and subject to the provisions of paragraph 8.2 of this SOR below, the Customer has the right to terminate this Statement of Requirements at any time without reason and without compensation or costs by giving the Supplier not less than 30 days' written notice.

7.2 Where the Customer exercises its rights to terminate this SOR in accordance with paragraph 8.1 above, the provisions of Clause 17.6 of the Agreement will apply to the termination of this SOR and the Deliverables under it in the same way shall apply to termination of the Agreement, under Clause 17 of the Agreement.

8. INTELLECTUAL PROPERTY RIGHTS

As per clause 9 (Intellectual Property Rights) of the Agreement, save as expressly granted elsewhere

under this

Agreement, the Supplier shall not acquire any right, title, or interest in or to the Intellectual Property Rights of

the Customer or its licensors, including the:

- Customer Background IPRs.
- Customer Data; and
- Project Specific IPRs.

Unless specifically noted below the Supplier agrees that the Deliverables under this Statement of Requirements will not,

in any way, be dependent on either Supplier or Supplier furnished 3rd Party IPR

One or more Deliverables under this Statement of Requirements will be dependent of Supplier and/or Supplier furnished 3rd Party IPR as detailed below



The specific IPR (and associated licence terms) are detailed in:

[Customer Guidance: applicable licence terms should be attached as an Appendix to this Statement of Requirements]

9. SIGNATURES AND APPROVALS

Agreement of this SOR

BY SIGNING this Statement of Requirements, the Parties agree that it shall be incorporated into the Agreement and be legally binding the Parties:

For and on behalf of the Supplier

Name and title

Date

Signature

For and on behalf of the Customer

Name and title

Date

	Signature		

Annex 2.3 – Acceptance Criteria – on completion and final invoice of the Statement of Requirements

Deliverables Sign Off and Value for Money Statement

Health and Social Care Information Centre (known as NHS Digital) ("**Customer**")

and

B2i Healthcare Kft. ("**Supplier**")

Date of this Statement of Requirements:	XX/XX/20XX
Statement of Requirements Reference:	XXX
Agreement Reference:	Con
Project Ref	XXX

Unless otherwise explicitly specified in this SOR, the terms of the Agreement shall apply to the scope of work set out in this SOR unamended. Unless otherwise specified, changes made to the terms of the Agreement set out herein only apply to the scope of work as set out in this SOR.

The Parties agree that upon signature by both Parties, this Statement of Requirements is a valid variation of the Agreement and clause 3.3 (variation procedure), and this Statement of Requirements forms part of the Agreement as referenced above.

Deliverable

Milestone	Description	Timeframe/Acceptance Criteria/Sign Off

Value for Money Statement

Requirement Summary/Actual Value Delivered: a summary describing the requirement.

Financial Value Statement: details of the financial/quantifiable value to be delivered by the contract as stated in the SOR.

Non-Financial Value Statement: details of any non-financial/unquantifiable value to be delivered by the contract, as stated in the SOR

Annex 3 - Charges



Annex 4 – Exit Management Requirements

1. Definitions

- 1.1. In this Annex 4, the following words shall have the following meanings and they shall supplement 1 (Interpretation):

"Customer Assets" the Customer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Customer and which is or may be used in connection with the provision of the Deliverables which remain the property of the Customer throughout the term of the Agreement;

"Documentation" descriptions of the Services and service levels, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) is required to be supplied by the Supplier to the Customer under an Agreement as: a) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Customer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables b) is required by the Supplier in order to provide the Deliverables; and/or c) has been or shall be generated for the purpose of providing the Deliverables;

"Exclusive Assets" Supplier Assets used exclusively by the Supplier in the provision of the Deliverables;

"Exit Information" has the meaning given to it in paragraph 3.1 of this Annex 4;

"Exit Manager" the person appointed by each Party to manage their respective obligations under this Annex 4;

"Net Book Value" the current net book value of the relevant Supplier Asset(s) calculated in accordance with the depreciation policy of the Supplier (which the Supplier shall ensure is in accordance with Good Industry Practice);

"Non-Exclusive Assets" those Supplier Assets used by the Supplier in connection with the Deliverables but which are also used by the Supplier for other purposes;

"Registers" the register and configuration database referred to in paragraph 2.2 of this Annex 4;

"Replacement Services" any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the end date, whether those goods are provided by the Customer internally and/or by any third party;

"Replacement Supplier" any third party provider of Replacement Services appointed by or at the direction of the Customer from time to time or where the Customer is providing Replacement Services for its own account, shall also include the Customer;

"Supplier Assets" all assets and rights used by the Supplier to provide the Deliverables in accordance with the Agreement but excluding the Customer Assets;

"Termination Assistance" the activities to be performed by the Supplier pursuant to the Exit Plan, and other assistance required by the Customer pursuant to the Termination Assistance Notice;

"Termination Assistance Notice" has the meaning given to it in paragraph 5.1 of this Annex 4;

"Termination Assistance Period" the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to paragraph 5.2 of this Annex 4;

"Transferable Assets" Exclusive Assets which are capable of legal transfer to the Customer;

"Transferable Contracts" Sub-contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Customer or any Replacement Supplier to provide the Deliverables /or Replacement Services, including in relation to licences all relevant Documentation;

"Transferring Assets" has the meaning given to it in paragraph 8.2.1 of this Annex 4;

"Transferring Contracts" has the meaning given to it in paragraph 8.2.3 of this Annex 4;

2. Supplier must always be prepared for contract exit

- 2.1. The Supplier shall within 30 days from the Start date provide to the Customer a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.
- 2.2. During the Term, the Supplier shall promptly:
 - 2.2.1. create and maintain a detailed register of all Supplier Assets (including description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and sub-contracts and other relevant agreements required in connection with the Deliverables; and
 - 2.2.2. create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Deliverables ("**Registers**").
- 2.3. The Supplier shall:
 - 2.3.1. ensure that all Exclusive Assets listed in the Registers are clearly physically identified as such; and
 - 2.3.2. procure that all licences for Third Party Software and all sub-contracts shall be assignable and/or capable of novation (at no cost or restriction to the Customer) at the request of the Customer to the Customer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Deliverables (or part of them) and if the Supplier is unable to do so then the Supplier shall promptly notify the Customer and the Customer may require the Supplier to procure an alternative Subcontractor or provider of Deliverables.
- 2.4. Each Party shall appoint an Exit Manager within three (3) Months of the Start date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Agreement.

3. **Assisting re-competition for Deliverables**

- 3.1. The Supplier shall, on reasonable notice, provide to the Customer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), such information (including any access) as the Customer shall reasonably require in order to facilitate the preparation by the Customer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence (the "**Exit Information**").
- 3.2. The Supplier acknowledges that the Customer may disclose the Supplier's Confidential Information (excluding the Supplier's or its sub-contractors' prices or costs) to an actual or prospective Replacement Supplier to the extent that such disclosure is necessary in connection with such engagement.
- 3.3. The Supplier shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the Customer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Deliverables (and shall consult the Customer in relation to any such changes).
- 3.4. The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Deliverables; and not be disadvantaged in any procurement process compared to the Supplier.

4. **Exit Plan**

- 4.1. The Supplier shall, within three (3) Months after the Start date, deliver to the Customer an Exit Plan which complies with the requirements set out in paragraph 4.3 of this Annex 4 and is otherwise reasonably satisfactory to the Customer.
- 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 twenty (20) Working Days of the latest date for its submission pursuant to paragraph 4.1, then such dispute shall be resolved in accordance with the Dispute Resolution Procedure, as set out at clause 21 of this Agreement.
- 4.3. The Exit Plan shall set out, as a minimum:
 - 4.3.1. a detailed description of both the transfer and cessation processes, including a timetable;
 - 4.3.2. how the Deliverables will transfer to the Replacement Supplier and/or the Customer;
 - 4.3.3. details of any contracts which will be available for transfer to the Customer and/or the Replacement Supplier upon the expiry date together with any reasonable costs required to effect such transfer;
 - 4.3.4. proposals for the training of key members of the Replacement Supplier's staff in connection with the continuation of the provision of the Deliverables following the expiry date;
 - 4.3.5. proposals for providing the Customer or a Replacement Supplier copies of all documentation relating to the use and operation of the Deliverables and required for their continued use;

- 4.3.6. proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Deliverables;
- 4.3.7. proposals for the identification and return of all Customer Property in the possession of and/or control of the Supplier or any third party;
- 4.3.8. proposals for the disposal of any redundant Deliverables and materials;
- 4.3.9. how the Supplier will ensure that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period; and
- 4.3.10. any other information or assistance reasonably required by the Customer or a Replacement Supplier.
- 4.4. The Supplier shall:
 - 4.4.1. maintain and update the Exit Plan (and risk management plan) no less frequently than:
 - (a) every six (6) months throughout the Term; and
 - (b) no later than twenty (20) Working Days after a request from the Customer for an up-to-date copy of the Exit Plan;
 - (c) as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than ten (10) Working Days after the date of the Termination Assistance Notice;
 - (d) as soon as reasonably possible following, and in any event no later than twenty (20) Working Days following, any material change to the Deliverables (including all changes under the variation procedure); and
 - 4.4.2. jointly review and verify the Exit Plan if required by the Customer and promptly correct any identified failures.
- 4.5. Only if (by notification to the Supplier in writing) the Customer agrees with a draft Exit Plan provided by the Supplier under paragraph 4.2 or 4.4 (as the context requires), shall that draft become the Exit Plan for this Agreement.
- 4.6. A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Supplier.

5. Termination Assistance

- 5.1. The Customer shall be entitled to require the provision of Termination Assistance at any time during the Term by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) months prior to the expiry date or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
 - 5.1.1. the nature of the Termination Assistance required; and
 - 5.1.2. the start date and period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) months after the date that the Supplier ceases to provide the Deliverables.
- 5.2. The Customer shall have an option to extend the Termination Assistance Period beyond the Termination Assistance Notice period provided that such extension shall not extend for more than six (6) months beyond the end of the Termination

Assistance Period and provided that it shall notify the Supplier of such this extension no later than twenty (20) Working Days prior to the date on which the provision of Termination Assistance is otherwise due to expire. The Customer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier.

- 5.3. In the event that Termination Assistance is required by the Customer but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to paragraph 4, the Supplier will provide the Termination Assistance in good faith and in accordance with the principles in this Annex 4 and the last Customer approved version of the Exit Plan (insofar as it still applies).

6. Termination Assistance Period

- 6.1. Throughout the Termination Assistance Period the Supplier shall:

- 6.1.1. continue to provide the Deliverables (as applicable) and otherwise perform its obligations under this Agreement and, if required by the Customer, provide the Termination Assistance;
 - 6.1.2. provide to the Customer and/or its Replacement Supplier any reasonable assistance and/or access requested by the Customer and/or its Replacement Supplier including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the Customer and/or its Replacement Supplier;
 - 6.1.3. use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Customer;
 - 6.1.4. subject to paragraph 6.3, provide the Deliverables and the Termination Assistance at no detriment to the Performance Indicators (PI's) or Service Levels, the provision of the Management Information or any other reports nor to any other of the Supplier's obligations under this Agreement;
 - 6.1.5. at the Customer's request and on reasonable notice, deliver up-to-date Registers to the Customer;
 - 6.1.6. seek the Customer's prior written consent to access any Customer premises from which the de-installation or removal of Supplier Assets is required.
- 6.2. If it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in paragraph 6.1.2 without additional costs to the Customer, any additional costs incurred by the Supplier in providing such reasonable assistance shall be subject to the variation procedure.
- 6.3. If the Supplier demonstrates to the Customer's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Levels, the Parties shall vary the relevant Service Levels and/or the applicable Service Credits accordingly.

7. Obligations when the contract is terminated

- 7.1. The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 7.2. Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Deliverables and the Termination Assistance), the Supplier shall:

- 7.2.1. vacate any Customer premises;
- 7.2.2. remove the Supplier Equipment together with any other materials used by the Supplier to supply the Deliverables and shall leave the sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier;
- 7.2.3. provide access during normal working hours to the Customer and/or the Replacement Supplier for up to twelve (12) months after expiry or termination to:
 - (a) such information relating to the Deliverables as remains in the possession or control of the Supplier; and
 - (b) such members of the Supplier Staff as have been involved in the design, development and provision of the Deliverables and who are still employed by the Supplier, provided that the Customer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to such requests for access.
- 7.3. Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Customer to the Supplier in relation to the Deliverables shall be terminated with effect from the end of the Termination Assistance Period.

8. Assets, Sub-contracts and Software

- 8.1. Following notice of termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, without the Customer's prior written consent:
 - 8.1.1. terminate, enter into or vary any sub-contract or licence for any software in connection with the Deliverables; or
 - 8.1.2. (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets.
- 8.2. Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier, the Customer shall notify the Supplier setting out:
 - 8.2.1. which, if any, of the Transferable Assets the Customer requires to be transferred to the Customer and/or the Replacement Supplier ("**Transferring Assets**");
 - 8.2.2. which, if any, of:
 - (a) the Exclusive Assets that are not Transferable Assets; and
 - (b) the Non-Exclusive Assets,
 the Customer and/or the Replacement Supplier requires the continued use of; and
 - 8.2.3. 8.2.3 which, if any, of Transferable Contracts the Customer requires to be assigned or novated to the Customer and/or the Replacement Supplier (the "**Transferring Contracts**"),

in order for the Customer and/or its Replacement Supplier to provide the Deliverables from the expiry of the Termination Assistance Period. The Supplier shall provide all reasonable assistance required by the Customer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts are required to provide the Deliverables or the Replacement Goods and/or Replacement Services.

- 8.3. With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Customer and/or the Replacement Supplier for their Net Book Value less any amount already paid for them through the Charges.
- 8.4. Risk in the Transferring Assets shall pass to the Customer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title shall pass on payment for them.
- 8.5. Where the Customer 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:
 - 8.5.1. procure a non-exclusive, perpetual, royalty-free licence for the Customer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
 - 8.5.2. procure a suitable alternative to such assets, the Customer or the Replacement Supplier to bear the reasonable proven costs of procuring the same.
- 8.6. The Supplier shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Customer and/or the Replacement Supplier. The Supplier shall execute such documents and provide such other assistance as the Customer reasonably requires to effect this novation or assignment.
- 8.7. The Customer shall:
 - 8.7.1. accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
 - 8.7.2. once a Transferring Contract is novated or assigned to the Customer and/or the Replacement Supplier, 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.
- 8.8. The Supplier shall hold any Transferring Contracts on trust for the Customer until the transfer of the relevant Transferring Contract to the Customer and/or the Replacement Supplier has taken place.
- 8.9. The Supplier shall indemnify the Customer (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 Customer (and/or Replacement Supplier) pursuant to paragraph 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.

9. No charges

- 9.1. Unless otherwise stated, the Customer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with this Annex 4.

10. Dividing the bills

- 10.1. All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Customer and/or the Replacement and the Supplier as follows:
 - 10.1.1. the amounts shall be annualised and divided by 365 to reach a daily rate;

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- 10.1.2. the Customer or Replacement Supplier (as applicable) 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
 - 10.1.3. the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

Annex 5 – Service Continuity and Disaster Recovery

1 Definitions

1.1 In this Annex 5, the following words shall have the following meanings and they shall supplement 1 (Interpretation):

"BCDR Plan" has the meaning given to it in paragraph 2.1 of this Annex 5;

"Business Continuity Plan" has the meaning given to it in paragraph 2.2.2 of this Annex 5;

"Disaster" the occurrence of one or more events which, either separately or cumulatively, mean that the Deliverables, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable) for the period of one **month** (for the purposes of this definition the **"Disaster Period"**);

"Disaster Recovery Deliverables" the Deliverables embodied in the processes and procedures for restoring the provision of Deliverables following the occurrence of a Disaster;

"Disaster Recovery Plan" has the meaning given to it in paragraph 2.2.3 of this Annex 5;

"Disaster Recovery System" the system embodied in the processes and procedures for restoring the provision of Deliverables following the occurrence of a Disaster;

"Related Supplier" any person who provides Deliverables to the Customer which are related to the Deliverables from time to time;

"Review Report" has the meaning given to it in paragraph 6.3 of this Annex 5; and

"Supplier's Proposals" has the meaning given to it in paragraph 6.3 of this Annex 5;

2 BCDR Plan

2.1 No more than **ninety (90)** Working Days after to the Start date the Supplier shall prepare and deliver to the Customer for the Customer's written approval a plan (a **"BCDR Plan"**), which shall detail the processes and arrangements that the Supplier shall follow to:

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

2.1.2 the recovery of the Deliverables in the event of a Disaster

2.2 The BCDR Plan shall be divided into three sections:

2.2.1 Section 1 which shall set out general principles applicable to the BCDR Plan;

2.2.2 Section 2 which shall relate to business continuity (the **"Business Continuity Plan"**); and

2.2.3 Section 3 which shall relate to disaster recovery (the **"Disaster Recovery Plan"**).

2.3 Following receipt of the draft BCDR Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

3 General Principles of the BCDR Plan (Section 1)

3.1 Section 1 of the BCDR Plan shall:

- 3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
 - 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the provision of the Deliverables and any goods and/or services provided to the Customer by a Related Supplier;
 - 3.1.3 contain an obligation upon the Supplier to liaise with the Customer and any Related Suppliers with respect to business continuity and disaster recovery;
 - 3.1.4 detail how the BCDR Plan interoperates with any overarching disaster recovery or business continuity plan of the Customer and any of its other Related Supplier in each case as notified to the Supplier by the Customer from time to time;
 - 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multiple channels;
 - 3.1.6 contain a risk analysis, including:
 - a) failure or disruption scenarios and assessments of likely frequency of occurrence;
 - b) identification of any single points of failure within the provision of Deliverables and processes for managing those risks;
 - c) identification of risks arising from the interaction of the provision of Deliverables with the goods and/or services provided by a Related Supplier; and
 - d) a business impact analysis of different anticipated failures or disruptions;
 - 3.1.7 provide for documentation of processes, including business processes, and procedures;
 - 3.1.8 set out key contact details for the Supplier (and any Subcontractors) and for the Customer;
 - 3.1.9 identify the procedures for reverting to "normal service";
 - 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss;
 - 3.1.11 identify the responsibilities (if any) that the Customer has agreed it will assume in the event of the invocation of the BCDR Plan; and
 - 3.1.12 provide for the provision of technical assistance to key contacts at the Customer as required by the Customer to inform decisions in support of the Customer's business continuity plans.
- #### 3.2 The BCDR Plan shall be designed so as to ensure that:
- 3.2.1 the Deliverables are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
 - 3.2.2 the adverse impact of any Disaster is minimised as far as reasonably possible;
 - 3.2.3 it complies with the relevant provisions of ISO/IEC 27002; ISO22301/ISO22313 and all other industry standards from time to time in force; and
 - 3.2.4 it details a process for the management of disaster recovery testing.

- 3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Deliverables and the business operations supported by the provision of Deliverables.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators (PI's) or Service levels, 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 Contract.

4 Business Continuity (Section 2)

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of Deliverables remain supported and to ensure continuity of the business operations supported by the Services including:
 - 4.1.1 the alternative processes, options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Deliverables; and
 - 4.1.2 the steps to be taken by the Supplier upon resumption of the provision of Deliverables in order to address the effect of the failure or disruption.
- 4.2 The Business Continuity Plan shall:
 - 4.2.1 address the various possible levels of failures of or disruptions to the provision of Deliverables;
 - 4.2.2 set out the goods and/or services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Deliverables;
 - 4.2.3 specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators (PI's) or Service Levels in respect of the provision of other Deliverables during any period of invocation of the Business Continuity Plan; and
 - 4.2.4 set out the circumstances in which the Business Continuity Plan is invoked.

5 Disaster Recovery (Section 3)

- 5.1 The Disaster Recovery Plan (which shall be invoked only upon the occurrence of a Disaster) shall be designed to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Customer 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 Supplier's BCDR Plan shall include an approach to business continuity and disaster recovery that addresses the following:
 - 5.2.1 loss of access to the Customer Premises;
 - 5.2.2 loss of utilities to the Customer Premises;
 - 5.2.3 loss of the Supplier's helpdesk or CAFM system;
 - 5.2.4 loss of a Subcontractor;
 - 5.2.5 emergency notification and escalation process;
 - 5.2.6 contact lists;
 - 5.2.7 staff training and awareness;
 - 5.2.8 BCDR Plan testing;

- 5.2.9 post implementation review process;
- 5.2.10 any applicable Performance Indicators (PI's) with respect to the provision of the disaster recovery services and details of any agreed relaxation to the Performance Indicators (PI's) or Service Levels in respect of the provision of other Deliverables during any period of invocation of the Disaster Recovery Plan;
- 5.2.11 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;
- 5.2.12 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- 5.2.13 testing and management arrangements.

6 Review and changing the BCDR Plan

6.1 The Supplier shall review the BCDR Plan:

- 6.1.1 on a regular basis and as a minimum once every six (6) Months;
- 6.1.2 within three (3) calendar Months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 7; and
- 6.1.3 where the Customer requests in writing any additional reviews (over and above those provided for in Paragraphs 6.1.1 and 6.1.2 of this Schedule) whereupon the Supplier shall conduct such reviews in accordance with the Customer's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Customer for the Customer's approval. The costs of both Parties of any such additional reviews shall be met by the Customer except that the Supplier shall not be entitled to charge the Customer for any costs that it may incur above any estimate without the Customer's prior written approval.

6.2 Each review of the BCDR Plan pursuant to Paragraph 6.1 shall assess its suitability having regard to any change to the Deliverables or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan, and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within such period as the Customer shall reasonably require.

6.3 The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Customer a report (a **"Review Report"**) setting out the Supplier's proposals (the **"Supplier's Proposals"**) for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan.

6.4 Following receipt of the Review Report and the Supplier's Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the Supplier's Proposals. If the Parties are unable to agree Review Report and the Supplier's Proposals within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure as set out at clause 21 of this Agreement.

6.5 The Supplier shall as soon as is reasonably practicable after receiving the approval of the Supplier's proposals 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 Deliverables.

7 Testing the BCDR Plan

7.1 The Supplier shall test the BCDR Plan:

- 7.1.1 regularly and in any event not less than once in every contract year;
- 7.1.2 in the event of any major reconfiguration of the Deliverables
- 7.1.3 at any time where the Customer considers it necessary (acting in its sole discretion).

7.2 If the Customer requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Customer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Customer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.

7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with and under the supervision of the Customer and shall liaise with the Customer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Customer.

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 Customer. Copies of live test data used in any such testing shall be (if so required by the Customer) destroyed or returned to the Customer on completion of the test.

7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Customer a report setting out:

- 7.5.1 the outcome of the test;
- 7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
- 7.5.3 the Supplier's proposals for remedying any such failures.

7.6 Following each test, the Supplier shall take all measures requested by the Customer to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at its own cost, by the date reasonably required by the Customer.

8 Invoking the BCDR Plan

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

9 Circumstances beyond your control

9.1 The Supplier shall not be entitled to relief if it would not have been impacted by the Force Majeure Event had it not failed to comply with its obligations under this Annex 5.