

- 1.8 the Schedules (and any appendix or annex to any Schedule) form part of the Contract and will have the same force and effect as if expressly set out in the body of the Contract;
- 1.9 the expression "person" means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
- 1.10 the words "including", "includes" and "included" will be construed without limitation unless inconsistent with the context.

2 COMMENCEMENT AND DURATION

- 2.1 The Contract commences on the Contract Commencement Date and shall continue, subject to Clause 2.2 and to earlier termination in accordance with Clause 34, until 31st March 2019 (the "Initial Term") or (if later having regard to the duration of any Handback Period) until the Expiry Date.
- 2.2 The Authority has an option, exercisable at its sole discretion, to extend the duration of the Contract for a further period or periods up to a total of 2 (two) years (the "Extension Years"), following which any subsequent Handback Period shall apply, such that the provisions of this Contract shall continue until the Expiry Date. The Authority shall serve such notice in writing to the Service Provider at least three months prior to the expiry of the Initial Term of the Contract or the expiry of any previous extension, if later.

3 TRANSITION

- 3.1 The Service Provider and the Authority shall comply with their respective obligations set out in Schedule 3 (Transition) such that Transition will be completed in accordance with the Transition Plan and notwithstanding that the Contract will commence from and including the Contract Commencement Date, the specific responsibilities of the Parties in relation to the other Services will come into effect from the Service Commencement Date as provided in Schedule 3.

4 THE SERVICES

- 4.1 The Service Provider:
 - 4.1.1 shall provide the Services to the Authority in accordance with the Contract;
 - 4.1.2 acknowledges that it has sufficient information about the Authority and the Specification and that it has made all appropriate and necessary enquiries to enable it to perform the Services in accordance with the Contract;
 - 4.1.3 shall neither be entitled to any additional payment nor excused from any obligation or liability under the Contract due to any misinterpretation or to any misunderstanding by the Service Provider of any fact relating to the Specification or otherwise to the Contract; and
 - 4.1.4 shall comply with all lawful and reasonable directions of the Authority relating to its performance of the Services.
- 4.2 Notwithstanding anything to the contrary in the Contract, the Authority's discretion in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of the Contract;

4.3 The Service Provider shall provide the Services:

- 4.3.1 with the high degree of skill, care and diligence normally exercised by recognised professional firms or by highly skilled and experienced service providers providing services of a similar scope, type and complexity to the Services and with sufficient resources including project management resources;
 - 4.3.2 in conformance in all respects with the Specification and so that they fulfil the purpose indicated by or to be reasonably inferred from the Specification;
 - 4.3.3 in a manner that will, on the termination or expiry of all or part of this Contract (or any of the Services), facilitate an orderly handover of the provision of such Services to the Authority and/or Successor Operator(s);
 - 4.3.4 in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner;
 - 4.3.5 so that they are properly managed and monitored and shall immediately inform the Authority if any aspect of the Contract is not being or is unable to be performed; and
 - 4.3.6 meeting its obligations in accordance with Schedule 8 (Service Management).
- 4.4 Without limiting Clauses 40 and 42, where reasonably requested to do so by the Authority and provided the Service Provider is willing to so contract, the Service Provider shall contract with such other member(s) of the Authority Group as on the terms of this Contract with only the necessary changes of Parties' details being made.
- 4.5 Throughout the Term of the Contract the Service Provider shall when required give to the Authority such written or oral advice or information regarding any of the Services as the Authority may reasonably require.

5 PERFORMANCE REGIME

- 5.1 From the Service Commencement Date the Service Provider will provide the Services in accordance with the required service levels set out in Schedule 8 (Service Management), each being a "**Service Level**".
- 5.2 The Service Provider will report to the Authority in relation to its provision of the Services as required by the reporting regime specified in this Contract (including Schedule 8 (Service Management)).
- 5.3 If the Service Provider fails to provide the Services in accordance with the Service Levels, then the Service Provider will take such action as is required pursuant to this Contract including payment of any Service Credits in accordance with the provisions of this Contract. If the Service Provider betters certain identified Service Levels as set out in Schedule 8 (Service Management) then, if and to the extent provided in Schedule 8, the Service Provider will be entitled to corresponding Service Bonuses in accordance with the provisions of this Contract. The payment of Service Credits is in addition and will be without prejudice to any other right or remedy of the Authority under the Contract or otherwise, provided that any Service Credits paid will be taken into account when assessing the quantum of any additional damages or other sums that may be due to the Authority under the Contract or otherwise.

6 NOT USED

7 NOT USED

8 NOT USED

9 MAJOR INCIDENT MANAGEMENT

9.1 The Service Provider shall comply with its obligations in respect of Major Incident Management in Schedule 8 (Service Management), including in respect of the development and maintenance of a Major Incident Plan).

10 CHARGES

10.1 The Service Provider shall invoice the Authority in accordance with the procedures set out in Clause 11 and in consideration of, and subject to the due and proper performance of the Services by the Service Provider in accordance with the Contract, the Authority shall pay the Service Provider the Charges in accordance with those procedures and with the other terms and conditions of the Contract.

10.2 The Service Provider is not entitled to reimbursement for expenses unless such expenses are specified in Schedule 7 (Pricing Schedule) or have been incurred with the prior written consent of the Authority, in which case the Service Provider shall supply appropriate evidence of expenditure in a form acceptable to the Authority.

10.3 All Charges exclude any VAT which may be chargeable, which will be payable in addition to the sum in question at the rate and in the manner for the time being prescribed by law on delivery of a valid VAT invoice.

11 PAYMENT PROCEDURES AND APPROVALS

11.1 The Service Provider shall invoice the Authority in respect of the Charges:

11.1.1 where no Milestones are specified in Schedule 7 (Pricing Schedule), at such dates or at the end of such periods as may be specified in Schedule 1 (Key Contract Information); or

11.1.2 if specified in Schedule 7 (Pricing Schedule), on completion of each Milestone provided that any preceding Milestones have been completed in accordance with the Contract,

and shall not make any separate charge for submitting any invoice.

11.2 The Service Provider shall submit invoices to the postal address set out in Schedule 1 (Key Contract Information) or, where an electronic format for submission of invoices is set out in Schedule 1 (Key Contract Information), such electronic format shall, unless the Authority requires otherwise, be used. Each such invoice shall contain all information required by the Authority including the Contract Reference Number, SAP order number, Service Provider's name, address and bank account details to which payment should be made, a separate calculation of VAT and a brief description of the Services provided. Invoices shall be clear, concise, accurate, and adequately descriptive to avoid delays in processing subsequent payment.

11.3 In the event of a Variation to the Services in accordance with the Contract that involves the payment of additional charges to the Service Provider, the Service Provider shall identify these separately on the relevant invoices.

11.4 The Authority shall consider and verify each invoice, which is submitted by the Service Provider in accordance with this Clause 11, in a timely manner. If the Authority considers that the Charges claimed by the Service Provider in any invoice have:

11.4.1 been correctly calculated and that such invoice is otherwise correct, the invoice shall be approved and payment shall be made by bank transfer (Bank Automated Clearance System (BACS)) or such other method as the Authority may choose from time to time within 30 days of receipt of such invoice or such other time period as may be specified in Schedule 1 (Key Contract Information);

11.4.2 not been calculated correctly or if the invoice contains any other error or inadequacy, the Authority shall notify the Service Provider and the Parties shall work together to resolve the error or inadequacy. Upon resolution (including by reference to Clause 33 where necessary), the Service Provider shall submit a revised invoice to the Authority.

The Authority shall not be entitled to treat any properly submitted invoice as disputed or incorrect solely due to its own undue delay in considering and verifying it.

11.5 Save where inconsistent with the requirements of Schedule 7 (Pricing Schedule) (including, for example, for payments which are associated with Milestones which have not yet been achieved), the Service Provider shall submit all invoices for Services supplied up to Period 12 (ending early March) of every financial year by the date which is ten Business Days prior to 31st March. For Services supplied during period 13 (to 31st March), the Service Provider shall provide the following:

11.5.1 an estimate (together with backup information supporting it). The estimate should only be for the value of Services expected to be provided up to and including 31st March of the same financial year which have not yet been invoiced;

11.5.2 the estimate and backup must be on the Service Provider's headed paper and signed by the appropriate signatory, and is to reach the Authority by the date which is ten Business Days prior to 31st March of every year where Services have been provided in that same financial year.

11.6 No payment made by the Authority (including any final payment) or act or omission or approval by the Authority or Contract Manager (whether related to payment or otherwise) shall:

11.6.1 indicate or be taken to indicate the Authority's acceptance or approval of the Services or any part of them or any act or omission of the Service Provider, or otherwise prejudice any rights, powers or remedies which the Authority may have against the Service Provider, or absolve the Service Provider from any obligation or liability imposed on the Service Provider under or by virtue of the Contract; or

- 11.6.2 prevent the Authority from recovering any amount overpaid or wrongfully paid including payments made to the Service Provider by mistake of law or fact. Without prejudice to Clause 25, the Authority shall be entitled to withhold such amount from any sums due or which may become due to the Service Provider or the Authority may recover such amount as a debt.
- 11.7 Except where otherwise provided in the Contract, the Charges shall be inclusive of all costs of staff, facilities, equipment, materials and other expenses whatsoever incurred by the Service Provider in discharging its obligations under the Contract.
- 11.8 Interest shall accrue at the rate of two percent (2%) above the base rate of the Bank of England from time to time on all sums due and payable under this Contract from the due date until the date of actual payment (both before and after judgement). All such interest shall be calculated on the basis of the actual number of days elapsed, over a three hundred and sixty five (365) day year and compounded at monthly intervals. The parties agree that this provision constitutes a substantial remedy for late payment of any sum payable under the Contract in accordance with s8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.

12 WARRANTIES, OBLIGATIONS AND PARENT COMPANY GUARANTEES AND BONDS

- 12.1 Without prejudice to any other warranties expressed elsewhere in the Contract or implied by law, the Service Provider warrants, represents and undertakes to the Authority that:
- 12.1.1 the Service Provider:
- 12.1.1.1 has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of any Holding Company) to enter into and to perform the Contract;
- 12.1.1.2 is aware of the purposes for which the Services are required and acknowledges that the Authority is reliant upon the Service Provider's expertise and knowledge in the provision of the Services; and
- 12.1.1.3 is entering into this Contract as principal and not as agent for any person and that it will act as an independent contractor in carrying out its obligations under this Contract;
- 12.1.2 the Contract is executed by a duly authorised representative of the Service Provider;
- 12.1.3 all materials, equipment and goods used or supplied by the Service Provider in connection with the Contract shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended), sound in design and in conformance in all respects with the Specification; and
- 12.1.4 all documents, drawings, computer software and any other work prepared or developed by the Service Provider or supplied to the Authority under the Contract shall not infringe any Intellectual Property Rights or any other legal or equitable right of any person.